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Executive Orders

EXECUTIVE ORDER BJ 09-09

Establish the Office of Louisiana
Youth for Excellence (LYFE)

WHEREAS, the Citizens of the State of Louisiana face many challenges, including high rates of teenage pregnancy and sexually transmitted diseases, which hinder our ability to prepare our youth for the opportunities of the future;

WHEREAS, many Louisiana adolescents remain poorly informed about consequences of at-risk behavior, including pregnancy and sexually transmitted diseases (STDs);

WHEREAS, the Governor's Office fights for young people and families of this State and preemptively strikes at the growing crimes related to at-risk behaviors while promoting a successful and thriving generation of Louisiana leaders;

WHEREAS, sex related crimes and social issues including sex texting, i.e. "sexting," online sex predators, human sex trafficking, and other related issues have drastically increased due to growing online access;

WHEREAS, positive youth development, abstinence education, and life skills training are needed components of education in the schools to teach the next generation of Louisiana leaders character, discipline, good decision making skills, leadership, and other life improvement skills;

WHEREAS, youth development along with education programs will encourage Louisiana's youth to say no to at-risk behaviors and yes to the positive choices involved in youth development that will lead to their success in life; and

WHEREAS, funding pursuant to Title V of the Social Security Act, as provided in 42 U.S.C. §710 to enable states to provide abstinence education and provide appropriate mentoring, counseling, and adult supervision to youth to promote abstinence from premarital sexual activity, focusing on those groups which have a higher premarital pregnancy rate, was discontinued June 30, 2009;

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

SECTION 1: The Office of Louisiana Youth for Excellence ("LYFE") is established and created within the Executive Department, Office of Community Programs, Office of the Governor, replacing the Office of Abstinence Education;

SECTION 2: The goals of the Office of LYFE shall include, but are not limited to, the following:

A. Promoting positive youth development by teaching goal setting, leadership development, character building, and integrity in school settings and after school programs;

B. Mitigating the effects of at-risk behaviors for the youth of Louisiana;

C. Reducing the incidence of premarital sexual activity among the youth of Louisiana;

D. Reducing the rate of sexually transmitted diseases among the youth of Louisiana;

E. Lowering the premarital pregnancy rate among the youth of Louisiana; and

F. Lowering the number of high-school drop-outs related to at risk behaviors in Louisiana.

SECTION 3: The duties of the Office of LYFE shall include, but are not limited to the following:

A. Applying for and receiving funding for the development and administration of the Office of LYFE from public and private sources;

B. Providing youth with the authentic messages of character, integrity, and excellence by speaking with school assemblies and other youth venues to promote the positive messages of youth development and dangers of at-risk behaviors while using age appropriate and medically accurate data;

C. Providing parents with family life education and skills which emphasize and support their role as the primary educator of family values;

D. Coordinating with non-profit and faith based organizations as well as other state agencies on best practices to reach youth with the messages of the LYFE campaign;

E. Promoting character qualities and human skills that are beneficial to marriage and to raising responsible and productive children; and

F. Developing an aggressive LYFE campaign targeting adolescents ages 12-19 and parents that will build awareness of the consequences of at-risk behaviors, reinforce positive youth development, partner with non-profit and faith-based organizations as well as other state agencies, and coordinate with school administrators and education officials to promote positive life skills and education regarding youth development.

SECTION 4:

A. The Office of LYFE shall be directed by an executive director who shall be appointed by and serve at the pleasure of the Governor. The executive director shall be responsible for administering, overseeing, and evaluating the programs of the Office of LYFE in a manner which facilitates the accomplishment of the program's duties and goals, as set forth in Sections 2 and 3.

B. The executive director shall submit an annual comprehensive report to the Governor, by January 1, which addresses the fulfillment of the Office of LYFE's goals, as set forth in Section 2 of this Order, and its duties, as defined in Section 3 of this Order. Annual reports shall include all relevant comparative data and information relating to the effectiveness of the Office of LYFE to similar programs of other states.

SECTION 5: The executive director of the Office of LYFE shall be located in, and operated from, a state-owned facility. The Office shall be permitted staff and resources to fulfill the goals, duties, and responsibilities specified in this

Order. It shall be permitted to accept the efforts of volunteers in accordance with state law.

SECTION 6: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Office of LYFE in implementing the provisions of this Order.

SECTION 7: The provisions of this Order are effective upon signature and shall remain in effect until amended, modified, terminated or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 13th day of July, 2009.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0908#114

EXECUTIVE ORDER BJ 09-10

Office of Community Programs
Amend Executive Order No. BJ 08-34

WHEREAS, Executive Order No. BJ 08-34, issued on August 22, 2008, established the Office of Community Programs within the Office of the Governor; and

WHEREAS, it is necessary to amend Executive Order No. BJ 08-34 to reflect programmatic changes and recent legislation;

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

direct as follows:

SECTION 1: Section 2 of Executive Order No. BJ 08-34, issued on August 22, 2008, is amended to provide as follows:

The Office shall be composed of the following agencies and divisions of the Office of the Governor:

A. Office of Disability Affairs (R.S. 46:2581, et seq.);

B. Office of Elderly Affairs (R.S. 46:931, et seq.);

C. Office of Indian Affairs (R.S. 46:2301, et seq.);

D. Louisiana State Interagency Coordinating Council for Child Net [R.S. 17:1979 and R.S. 36.4(R)];

E. Office of Louisiana Youth for Excellence (Executive Order No. BJ 2009-9);

F. Governor's Office of Safe and Drug Free Schools and Communities;

G. Drug Policy Board (R.S. 49:219.1, et seq.);

H. Office on Women's Policy (R.S. 46:2521, et seq.);

I. Children's Cabinet (R.S. 46:2602, et seq.); and

J. Louisiana Animal Welfare Commission (R.S. 3:2364.

SECTION 2: Subsection 5(B) of Executive Order No. BJ 2008-34 is amended to read as follows:

The executive director shall be the appointing authority and budget authority for all the agencies, divisions, and/or programs of the Office of the Governor listed in Section 2 and Section 3 of this Order, with the exception of the Office of Elderly Affairs.

SECTION 3: All other sections, subsections, and/or paragraphs of Executive Order No. BJ 08-34 shall remain in full force and effect.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 13th day of July, 2009.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0908#115

EXECUTIVE ORDER BJ 09-11

Executive Department—Limited Hiring Freeze

WHEREAS, pursuant to R.S. 42:375, the Governor may issue executive orders which prohibit or regulate the filling of any new or existing vacancies in positions of employment in the executive branch of state government (hereafter "hiring freeze");

WHEREAS, R.S. 39:84 provides authority to the Governor to regulate and control personnel transactions;

WHEREAS, to limit or control the growth in government positions and to prepare for the budget challenges in the ensuing years, prudent fiscal management practices dictate that the best interests of the citizens of the State of Louisiana will be served by the implementation of a hiring freeze in the executive branch of state government to achieve at least a state general fund dollar savings of $20 million;

WHEREAS, higher education plays a vital role for the citizens of our state; and, in addition, higher education in Louisiana has a unique management structure. Recognizing this, the Commissioner of Higher Education shall have the authority to manage the positions within higher education, including the hospitals, within the confines of this Executive Order and any subsequent memorandum issued by the Commissioner of Administration as authorized by this Order limiting the number of Table of Organization (T.O.) and Non-T.O. Full-Time Equivalents (FTEs); and

WHEREAS, due to the critical nature of direct patient care and direct public safety positions, special consideration is given to provide more flexibility to the departments in hiring these positions;

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: No vacancy in an existing or new position of employment within the executive branch of state government that exists on or occurs after the effective date of this order shall be filled without the express written approval of the Commissioner of Administration. This includes Appropriated Table of Organization Full-Time Equivalent positions (T.O. FTEs), Other Compensation positions (Non-T.O. FTEs), Other Charges positions (Non-T.O. FTEs), job appointments (Non-T.O. FTEs), and restricted appointments (Non-T.O. FTEs).

A. The following departments, agencies, and/or budget units of the executive branch of the State of Louisiana (hereafter "Unit" and/or "Units"), as described in and/or funded by appropriations through Acts 10, 122 (Section 6), and 40 of the 2009 Regular Session of the Louisiana Legislature (hereafter "Acts"), shall be subject to the hiring freeze as provided in this Executive Order:

Executive Branch
Schedule 01—Executive Department
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01-101—Office of Indian Affairs
01-102—Office of the Inspector General
01-103—Mental Health Advocacy Service
01-107—Division of Administration
01-109—Office of Coastal Protection and Restoration
01-111—Governor's Office of Homeland Security & Emergency Preparedness
01-112—Department of Military Affairs
01-114—Office on Women's Policy
01-116—Louisiana Public Defender Board
01-126—Board of Tax Appeals
01-129—Louisiana Commission on Law Enforcement and Administration of Criminal Justice
01-133—Office of Elderly Affairs
01-254—Louisiana State Racing Commission
01-255—Office of Financial Institutions
Schedule 03—Veterans Affairs
Schedule 05—Economic Development
Schedule 07—Transportation and Development
Schedule 08—Corrections Services
Schedule 08—Public Safety Services
Schedule 08—Youth Services
Schedule 09—Health and Hospitals
Schedule 10—Social Services
Schedule 11—Natural Resources
Schedule 12—Revenue
Schedule 13—Environmental Quality
Schedule 14—Louisiana Workforce Commission
Schedule 16—Wildlife and Fisheries
Schedule 17—Civil Service
17-560—State Civil Service
17-561—Municipal Fire and Police Civil Service
17-562—Ethics Administration
17-563—State Police Commission
17-564—Division of Administrative Law
Schedule 19—Higher Education
Schedule 19—Special Schools and Commissions
19B-651—Louisiana School for the Visually Impaired
19B-653—Louisiana School for the Deaf
19B-655—Louisiana Special Education Center
19B-657—Louisiana School for Math, Science and the Arts
19B-662—Louisiana Educational TV Authority
19B-666—Board of Elementary & Secondary Education
19B-673—New Orleans Center for the Creative Arts
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Schedule 19—LSU Health Sciences Center Health Care Services Division
Schedule 21—Ancillary
21-790—Donald J. Thibodaux Training Academy
21-796—Central Regional Laundry
21-800—Office of Group Benefits
21-804—Office of Risk Management
21-805—Administrative Services
21-806—Louisiana Property Assistance
21-807—Federal Property Assistance
21-808—Office of Telecommunications Management
21-810—Public Safety Services Cafeteria
21-811—Prison Enterprises
21-813—Sabine River Authority
21-814—Patient's Compensation Fund Oversight Board
21-829—Office of Aircraft Services

B. The Commissioner of Administration is hereby authorized to and shall establish, on a continuing basis, the number of FTEs, hereafter referred to as "positions", to be frozen for each such department, agency, and/or budget unit specified in Paragraph A of this Section together with the expenditure of funds appropriated for such positions.

C. After the effective date of this Order, employee transfers, promotions, re-allocations, and the creation of any new positions of employment within the executive branch of state government shall not, in any manner, decrease, or in the case of Non-T.O. FTEs increase, the number of such frozen positions within the department, budget unit, agency, and/or office, within the executive branch of state government below the number frozen determined as provided in this Section unless otherwise adjusted by the Commissioner of Administration.

SECTION 2: No later than August 3, 2009, in order to implement the freeze provided in Section 1, 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 adjustment plan, on the BA-7 form and questionnaire, which reflects the Unit's proposed allocation of the position freeze ordered in Section 1 of this Order (hereafter "mid-year budget adjustment plan"), and a rationale or explanation of the mid-year budget adjustment plan.

A. The allocation of the position freeze shall be implemented by the Unit only upon the Commissioner's prior written approval of the Unit's mid-year budget adjustment plan.

B. Once approved, a mid-year budget adjustment plan may not be changed without the Commissioner's prior written approval.

SECTION 3:

A. The Commissioner is authorized to grant any departments, agencies, and/or budget units in the executive branch of state government an exemption, on a case-by-case basis, from all or a part of the prohibition set forth in Section 1 of this Order, as the Commissioner deems necessary and appropriate. Such an exemption shall be express and in writing.

B. Requests for an exemption from all or a part of the prohibition set forth in Section 1 of this Order, on a case-by-case basis, shall be submitted by the secretary or head of a department, or by the head of a budget unit, agency, and/or office which is not within a department. Each request for an exemption shall be in writing and shall contain a description of the exemption sought and full justification for the request.

C. The Commissioner may develop guidelines pertaining to requests for exemption from all or part of the prohibition set forth in Section 1 of this Order.

D. If necessary, the Commissioner may develop definitions for the terms and/or the descriptions used in this Order.

SECTION 4: All departments, budget units, agencies, offices, entities, 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: The Governor, in accordance with R.S. 42:375(D) may order the commissioner of administration to withhold allotments in the appropriate category of expenditures from which the salary or compensation of any employee employed in violation of this executive order is paid in an amount equal to such compensation.

SECTION 6: This Order is effective upon signature and shall remain in effect through June 30, 2010, or 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 July, 2009.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0908#116

EXECUTIVE ORDER BJ 09-12

Qualified School Construction Bond Program

WHEREAS, pursuant to the Section 54F of the Internal Revenue Code, added by Section 1521(a) of Title 1 of Division B of the American Recovery and Reinvestment Act of 2009 (Pub.L. No. 115,123 Stat. 115), which set forth the program provisions for Qualified School Construction Bonds;

WHEREAS, through the Qualified School Construction Bond (QSCB) Program each state is allocated an amount of qualified school construction bonds through the United States Department of the Treasury;

WHEREAS, the State of Louisiana received its allocation in qualified school construction bonds and anticipates additional allocations in future years;

WHEREAS, the QSCB Program provides tax credits, in lieu of interest, to lenders who issue bonds to eligible school districts; and

WHEREAS, pursuant to Section 54F of the Internal Revenue Code, the State is authorized to administer the Qualified School Construction Bond Program (QSCB);

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: I hereby authorize the State Superintendent of Education to take immediate steps to provide the overall administration of the Qualified School Construction Bond Program (QSCB).

SECTION 2: The State Superintendent of Education is authorized, subject to all constitutional and statutory requirements, to utilize the resources, personnel and expertise of the Louisiana Department of Education to review and design the State program to identify the eligible issuers of the debt instruments and to appropriately authorize the loan allocations for the Qualified School Construction Bond Program (QSCB).

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 24th day of July, 2009.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0908#117

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development
Office of Business Development

Small and Emerging Business Development Program
(LAC 19:II.Chapters 1, 5 and 9)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Economic Development, Office of Business Development, hereby proposes to amend its existing Rules and Regulations relative to its Small and Emerging Business Development Program, and to adopt the following amended Rules and Regulations relative to the Small and Emerging Business Development Program. The intended action complies with the statutory law administered by the agency, as authorized by R.S. 51:941, et seq.

The Department of Economic Development has found an immediate need to extend availability of the bonding assistance program until June 30, 2012 for small construction companies with the SEBD status of "graduated" or "certified active." This extension is necessary to provide bonding assistance to small Louisiana contractors who are losing certification due to length of time in the SEBD program, yet are competing to participate in the current high volume of contracts being let for the rebuilding of the gulf coast. Any delay in promulgating this rule change means lost opportunity for small Louisiana contractors who need bonding to participate in this economic recovery activity, hence affecting negatively the public welfare of these businesses and the state.

This Rule, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective August 24, 2009, and shall remain in effect for the maximum period allowed under the Act, or until the adoption of a permanent rule, whichever occurs first.

Title 19
CORPORATIONS AND BUSINESS
PART II. Small And Emerging Business Development Program

Chapter 1. General Provisions

§105. Definitions

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

* * *

Small and Emerging Business (SEB)—a small business organized for profit and performing a commercially useful function which is at least 51 percent owned and controlled by one or more small and emerging business persons and for which the principal business operations of the business are located in Louisiana including Louisiana as the primary place of employment for the employees of the business. A nonprofit organization is not a small and emerging business for purposes of this Chapter.

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

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), amended by the Department of Economic Development, Office of Business Development, LR 29:542 (April 2003), LR 30:753 (April 2004), LR 33:2030 (October 2007), LR 35:

§107. Eligibility Requirements for Certification

A. - B.2. …

3. Net Worth. The person's net worth may not exceed $400,000. The market value of the assets of the person's small and emerging business, personal residence, 401K, IRA, and other legal retirement funds will be excluded from the net worth calculation.

C. - D. …

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), LR 25:1084 (June 1999), LR 26:1572 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:542 (April 2003), LR 30:754 (April 2004), LR 33:2030 (October 2007), LR 35:

Chapter 5. Mentor-Protégé Credit Program

§507. Internal Controls and Monitoring

A. - C.1. …

2. reviewing quarterly progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the approved agreement, and a final report within 30 days following the completion of the agreement, or by July 31 each year, whichever comes first.

3 - 4. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 51.942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:546 (April 2003), LR 30:757 (April 2004), LR 34:603 (April 2008), LR 35:

Chapter 9. Small Business Bonding Program

§903. Direct Bonding Assistance

A. Direct Bonding Assistance. All certified active small and emerging construction businesses, and all other certified active SEBs (non-construction) may be eligible for surety bond guarantee assistance not to exceed the lesser of 25 percent of contract or $200,000 on any single project. Small and emerging construction businesses with the status of certified active or graduated may be eligible for surety bond guarantee assistance until June 30, 2012. After June 30, 2012, only certified active small and emerging businesses may be eligible for surety bond guarantee assistance. All obligations, whether contractual or financial, will require the approval of the undersecretary.

B. - C.2. …

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:430 (March 1998), amended by the Department of Economic Development, Office of Business Development, LR 29:547 (April 2003), LR 30:758 (April 2004), LR 35:

Stephen Moret
Secretary

0908#106

DECLARATION OF EMERGENCY

Student Financial Assistance Commission
Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.301, 507, and 703)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Scholarship/Grant programs [R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)].

This rulemaking will implement Act 232 of the 2009 Regular Session of the Louisiana Legislature by expanding the definition of "returning student" for purposes of the Taylor Opportunity Program (TOPS) to include those students who first enroll as a first-time freshmen in an eligible college or university in Louisiana, subsequently enroll in an out-of-state college or university and then return to an eligible college or university in Louisiana during the 2009-2010 academic year or thereafter.

This rulemaking will implement the provisions of Act 232 that provide a grace period for students returning to Louisiana during the 2007-2008 academic year (college) or thereafter of up to 120 days after the final deadline for receipt of the application to return from an out-of-state college. Eligibility for the award will be reduced by one semester if the application is one to 60 days late and by two semesters if the application is 61 to 120 days late. An application received more than 120 days after the deadline will not be considered.

This Declaration of Emergency is effective August 4, 2009, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG10109E)

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

* * *

Returning Student—a student who graduated from high school beginning with academic year (high school):

a. 2001-2002, and met all the academic requirements for a TOPS Award, but who enrolled for the first time as a full-time student no later than the deadline established in §703.A.4 in an out-of-state postsecondary institution accredited by a regional accrediting organization recognized by the United States Department of Education and, thereafter, returns to Louisiana and enrolls as a full-time student in an eligible college or university; or

b. Who was determined eligible for a TOPS opportunity, performance or honors award and enrolled for the first time as a full-time student no later than the deadline established in §703.A.4 in an eligible college or university in Louisiana, subsequently enrolled in an out-of-state postsecondary institution accredited by a regional accrediting organization recognized by the United States Department of Education and, thereafter, returns to Louisiana and enrolls as a full-time student in an eligible college or university during or after the 2009-2010 academic year (college).

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:228 (February 2009), LR 35:

Chapter 5. Applications, Federal Grant Aid and ACT Test

§507. Final Deadline for Submitting Documentation of Eligibility

A. - C.3.a. …

b.i. To receive the full benefits of a TOPS award as provided in §701.E, returning students, who enroll in an eligible college or university in the fall semester of 2007 or later, must submit an application to return from an out-of-state college no later than July 1 immediately following the academic year (college) the student enrolls as a full-time student in an eligible college or university and must submit any supporting documentation required by the application no later than January 15 following the July 1 deadline.

ii. If an application to return from an out-of-state college is received after the July 1 deadline as provided in the clause above, but not later than 60 days after that date, the time period of eligibility for the award shall be reduced by one semester, two quarters, or an equivalent number of units at an eligible institution which operates on a schedule based on units other than semesters or quarters.

iii. If an application to return from an out-of-state college is received more than 60 days after the July 1 deadline as provided in the clause above, but not later than 120 days after that date, the time period of eligibility for the award shall be reduced by two semesters, three quarters, or an equivalent number of units at an eligible institution which operates on a schedule based on units other than semesters or quarters.

iv. An application to return from an out-of-state college received more than 120 days after the July 1 deadline shall not be considered.

v. If a prescribed deadline date falls on a weekend or holiday, it will automatically be extended to the next business day.

c. Examples

i. A returning student who enrolled in an eligible college or university in the fall semester of 2005 must submit the application to return from an out-of-state college no later than July 1, 2006, and any required supporting documentation such as college transcripts no later than April 15, 2007.

ii. A returning student who enrolled in an eligible college or university in the spring semester of 2007 must submit the application to return from an out-of-state college no later than July 1, 2007, and any required supporting documentation such as college transcripts no later than April 15, 2008.

iii. A returning student who enrolled in an eligible college or university in the fall semester of 2007 must submit the application to return from an out-of-state college no later than July 1, 2008, and any required supporting documentation such as college transcripts no later than January 15, 2009.

iv. A returning student who enrolled in an eligible college or university in the spring semester of 2008 must submit the application to return from an out-of-state college no later than July 1, 2008, and any required supporting documentation such as college transcripts no later than January 15, 2009.

v. A returning student who enrolls in an eligible college or university in the fall semester of 2009 must submit the application to return from an out-of-state college no later than July 1, 2010, and any required supporting documentation such as college transcripts no later than January 15, 2011.

vi. A returning student who enrolls in an eligible college or university in the fall semester of 2009, and whose application to return from an out-of-state college is received on July 10, 2010, will be eligible for a TOPS award reduced by one semester or two quarters if any required supporting documentation such as college transcripts is received no later than January 15, 2011.

vii. A returning student who enrolls in an eligible college or university in the fall semester of 2009, and whose application to return from an out-of-state college is received on September 10, 2010, will be eligible for a TOPS award reduced by two semesters or three quarters if any required supporting documentation such as college transcripts is received no later than January 15, 2011.

C.4.a. - D.3. …

E. The reduction of the student's period of eligibility for this award under §507.C above shall not be cumulative with any reduction under §505.D or §509.C.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), repromulgated LR 27:1847 (November 2001), amended LR 28:447 (March 2002), LR 30:1161 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 32:2238 (December 2006), LR 33:2357 (November 2007), LR 34:1389 (July 2008), LR 34:1884 (September 2008), LR 35:

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

§703. Establishing Eligibility

A. - G.2. …

H. Returning Students

1. A *returning student*, as defined in §301, is eligible for a TOPS Award if:

a. he submits an application to return from an out-of-state college that includes:

H.1.a.i. - J.4.b.ii. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 35:

George Badge Eldredge
General Counsel

0908#031

DECLARATION OF EMERGENCY

Tuition Trust Authority
Office of Student Financial Assistance

START Savings Program
(LAC 28:VI.301)

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

The Emergency Rule will repeal a provision that requires that at least one year must lapse between the date the account owner makes the first deposit opening an account and the first disbursement from the account to pay a beneficiary's qualified higher education expenses.

This Declaration of Emergency is effective on August 4, 2009, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (ST10110E)

Title 28
EDUCATION
Part VI. Student Financial Assistance—Higher Education Savings
Chapter 3. Education Savings Account
§301. Education Savings Accounts

A. - H.4. …

I. Repealed.

J. …

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:713 (June 1997), amended LR 24:436 (March 1998), LR 24:1269 (July 1998), LR 25:1794 (October 1999), LR 26:2262 (October 2000), LR 27:1878 (November 2001), LR 28:450 (March 2002), LR 28:778 (April 2002), LR 28:2334 (November 2002), LR 30:786 (April 2004), LR 33:443 (March 2007), LR 35:

George Badge Eldredge
General Counsel

0908#030

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Adult Dentures—Reimbursement Rate Reduction
(LAC 50:XXV.701)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend 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 and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed the provisions governing adult denture services in LAC 50:XVII under the Durable Medical Equipment Program and repromulgated these provisions as LAC 50:XXV Chapters 1-7 (*Louisiana Register*, Volume 31, Number 7).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the provisions governing the reimbursement methodology for adult denture services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department determined that it was necessary to repeal the provisions of the May 1, 2009 Emergency Rule (*Louisiana Register*, Volume 35, Number 8) and to amend the reimbursement methodology for adult dentures to adjust the reimbursement rate reductions.

This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Adult Dentures Program by approximately $159,913 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for adult denture services to reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXV. Adult Dentures
Chapter 7. Reimbursement
§701. Fees

A. ...

B. Effective for dates of service on or after August 4, 2009, reimbursement for adult denture services shall be reduced by 6.7 percent of the fee amounts on file as of August 3, 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 31:81 (January 2005), repromulgated LR 31:1589 (July 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, 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

0908#028

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Adult Dentures
Repeal of Reimbursement Rate Reduction
(LAC 50:XXV.701)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend 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.

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing determined that it was necessary to amend the provisions governing the reimbursement methodology for adult denture services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates paid for adult denture services.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the May 1, 2009 Emergency Rule which reduced the reimbursement rates for adult denture services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXV. Adult Dentures
Chapter 7. Reimbursement
§701. Fees

A. ...

B. 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 31:81 (January 2005), repromulgated LR 31:1589 (July 2005), amended by the Department of Health and Hospitals, 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

0908#001

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

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

The Department of Health and Hospitals, 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 amended 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 discontinued the lifetime service limits for certain endodontic procedures and provided 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.

Effective August 23, 2009, the Department of Health and Hospitals, 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), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, 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 by the Department of Health and Hospitals, 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

0908#081

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

End Stage Renal Disease Facilities
Repeal of Reimbursement Rate Reduction
(LAC 50:XI.6901 and 6903)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.6901 and §6903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This 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.

As a result of a budgetary shortfall, the bureau promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for end stage renal disease (ESRD) facilities to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 3).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act in state fiscal year 2010, the bureau determined that it was necessary to further reduce the reimbursement rates paid to end stage renal disease facilities (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates paid to end stage renal disease facilities.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates for services provided by end stage renal disease facilities.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XI. Clinic Services
Subpart 9. End Stage Renal Disease Facilities
Chapter 69. Reimbursement

§6901. Non-Medicare Claims

A. For non-Medicare claims, end stage renal disease (ESRD) facilities are reimbursed a hemodialysis composite rate. The composite rate is a comprehensive payment for the complete hemodialysis treatment in which the facility assumes responsibility for providing all medically necessary routine dialysis services.

B. Covered non-routine dialysis services, continuous ambulatory peritoneal dialysis (CAPD), continuous cycling peritoneal dialysis (CCPD), epogen (EPO) and injectable drugs are reimbursed separately from the composite rate.

C. Effective for dates of service on or after February 26, 2009, the reimbursement to ESRD facilities shall be reduced by 3.5 percent of the rates in effect on February 25, 2009.

D. 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 30:1022 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§6903. Medicare Part B Claims

A. For Medicare Part B claims, ESRD facilities are reimbursed for full co-insurance and deductibles.

B. The Medicare payment plus the amount of the Medicaid payment (if any) shall be considered to be payment in full for the service. The recipient does not have any legal liability to make payment for the service.

C. Effective for dates of service on or after February 26, 2009, the reimbursement to ERSD facilities for Medicare Part B claims shall be reduced by 3.5 percent of the rates in effect on February 25, 2009.

D. 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, 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

0908#018

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

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

The Department of Health and Hospitals, Bureau of Health Services Financing and the 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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule 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 (*Louisiana Register*, Volume 35 Number 1). 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 Emergency Rule is being promulgated to continue the provisions of the January 20, 2009 Emergency Rule. This action is being taken to secure enhanced federal revenue.

Effective September 19, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the 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, Bureau of Health Services Financing and the 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, Bureau of Health Services Financing and the 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, Bureau of Health Services Financing and the 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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, 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

0908#082

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Children's Choice—Repeal of Reimbursement Rate Reduction (LAC 50:XXI.12101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends LAC 50:XXI.12101 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.

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities determined that it was necessary to amend the provisions governing the reimbursement methodology for Children's Choice Waiver services to reduce the reimbursement rates (Louisiana Register, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates paid for Children's Choice Waiver services.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities repeals the provisions of the May 1, 2009 Emergency Rule.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services Waivers
Subpart 9. Children's Choice
Chapter 121. Reimbursement
§12101. Reimbursement Methodology

A. - B.4.j.iv. ...

C. - C.1. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1987 (September 2002), LR 33:1872 (September 2007), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:250 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 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

0908#002

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver
Reimbursement Rate Reduction
(LAC 50:XXI.14301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends LAC 50:XXI.14301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for the New Opportunities Waiver to reduce the reimbursement rates paid for certain services (*Louisiana Register*, Volume 35 Number 2). As a result of a budgetary shortfall, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities have now determined that it is necessary to further reduce the reimbursement rates paid for NOW services. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the New Opportunities Waiver by approximately $9,129,849 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends the provisions governing the reimbursement methodology for the New Opportunities Waiver to further reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 11. New Opportunities Waiver
Chapter 143. Reimbursement
§14301. Reimbursement Methodology

A. - F.10.d. …

G. Effective for dates of service on or after February 1, 2009, the reimbursement rates for certain services provided in the NOW Waiver shall be reduced by 3.5 percent of the rate in effect on January 31, 2009.

1. The reimbursement rates shall be reduced for the following services:
   a. individualized and family support services;
   b. center-based respite care;
   c. community integration development;
   d. residential habilitation-supported independent living;
   e. substitute family care;
   f. day habilitation;
   g. supported employment;
   h. employment-related training; and
   i. professional services.

2. The following services shall be excluded from the rate reductions:
   a. environmental accessibility adaptations;
   b. specialized medical equipment and supplies;
   c. personal emergency response systems (PERS);
   d. skilled nursing services; and
   e. one-time transitional expenses.

H. Effective for dates of service on or after August 4, 2009, the reimbursement rates for certain services provided in the NOW Waiver shall be reduced.

1. The reimbursement rates for individualized and family support (IFS) services shall be reduced by 3.11 percent of the rates in effect on August 3, 2009.

2. The reimbursement rates for residential habilitation-supported independent living (SIL) services

shall be reduced by 10.5 percent of the rates in effect on August 3, 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 Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:252 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, 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

0908#020

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

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

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amends LAC 50:XXI.6101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. 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.

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities determined that it was necessary to amend the provisions governing the reimbursement methodology for Supports Waiver services to reduce the reimbursement rates (Louisiana Register, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates paid for Supports Waiver services.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities repeals the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates for Supports Waiver services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services Waivers
Subpart 5. Supports Waiver
Chapter 61. Reimbursement Methodology
§6101. Reimbursement Methodology

A. - J. ...

K. - K.1. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 34:662 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 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

0908#021

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Home Health Program
Durable Medical Equipment—Reimbursement Reduction (LAC 50:XIII.10301)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XIII.103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for medical equipment, supplies and appliances to reduce the reimbursement rates and to repromulgate the general provisions governing the reimbursement methodology, in its entirety, in the appropriate place in the *Louisiana Administrative Code (Louisiana Register*, Volume 35, Number 2). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to further reduce the reimbursement rates paid for medical equipment, supplies and appliances (*Louisiana Register*, Volume 35, Number 5). Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department determined that it was necessary to repeal the rate reduction provisions of the May 1, 2009 Emergency Rule (*Louisiana Register*, Volume 35, Number 8) and to amend the reimbursement methodology for durable medical equipment, supplies and appliances to adjust the reimbursement rate reductions.

This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately $350,899 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for medical equipment, supplies and appliances under the Home Health Program to further reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XIII. Home Health Program
Subpart 3. Medical Equipment, Supplies and Appliances
Chapter 103. Reimbursement Methodology

§10301. General Provisions

A. Unless otherwise stated in this Part XIII, the reimbursement for all medical equipment, supplies and appliances is established at:

1. 70 percent of the 2000 Medicare fee schedule for all procedure codes that were listed on the 2000 Medicare fee schedule and at the same amount for the Health Insurance Portability and Accountability Act (HIPAA) compliant codes which replaced them; or

2. 70 percent of the Medicare fee schedule under which the procedure code first appeared; or

3. 70 percent of the manufacturer's suggested retail price (MSRP) amount; or

4. billed charges, whichever is the lesser amount.

B. If an item is not available at the rate of 70 percent of the applicable established flat fee or 70 percent of the MSRP, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

C. Effective for dates of service on or after February 1, 2009, the reimbursement paid for the following medical equipment, supplies, appliances and repairs shall be reduced by 3.5 percent of the rate on file as of January 31, 2009:

1. ambulatory equipment;

2. bathroom equipment;

3. hospital beds, mattresses and related equipment; and

4. the cost for parts used in the repair of medical equipment, including the parts used in the repair of wheelchairs.

D. Effective for dates of service on or after August 4, 2009, the reimbursement paid for medical equipment, supplies and appliances shall be reduced by 4 percent of the rates on file as of August 3, 2009.

1. The following medical equipment, supplies and appliances are excluded from the rate reduction:

a. enteral therapy pumps and related supplies;

b. intravenous therapy and administrative supplies;

c. apnea monitor and accessories;

d. nebulizers;

e. hearing aids and related supplies;

f. respiratory care (other than ventilators and oxygen);

g. tracheostomy and suction equipment and related supplies;

h. ventilator equipment;

i. oxygen equipment and related supplies;

j. vagus nerve stimulator and related supplies; and

k. augmentative and alternative communication devices.

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

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

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

0908#004

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Home Health Program
Durable Medical Equipment
Repeal of Reimbursement Reduction
(LAC 50:XIII.10301)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:IX.15111 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.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for medical equipment, supplies and appliances to reduce the reimbursement rates and to repromulgate the general provisions governing the reimbursement methodology, in its entirety, in the appropriate place in the *Louisiana Administrative Code (Louisiana Register,* Volume 35, Number 2). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to further reduce the reimbursement rates paid for medical equipment, supplies and appliances (*Louisiana Register,* Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which further reduced the reimbursement rates paid for durable medical equipment.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates for durable medical equipment.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XIII. Home Health Program
Subpart 3. Medical Equipment, Supplies and Appliances
Chapter 103. Reimbursement Methodology
§10301. General Provisions

A. Unless otherwise stated in this Part XIII, the reimbursement for all medical equipment, supplies and appliances is established at:

1. 70 percent of the 2000 Medicare fee schedule for all procedure codes that were listed on the 2000 Medicare fee schedule and at the same amount for the Health Insurance Portability and Accountability Act (HIPAA) compliant codes which replaced them; or

2. 70 percent of the Medicare fee schedule under which the procedure code first appeared; or

3. 70 percent of the manufacturer's suggested retail price (MSRP) amount; or

4. billed charges, whichever is the lesser amount.

B. If an item is not available at the rate of 70 percent of the applicable established flat fee or 70 percent of the MSRP, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

C. Effective for dates of service on or after February 1, 2009, the reimbursement paid for the following medical equipment, supplies, appliances and repairs shall be reduced by 3.5 percent of the rate on file as of January 31, 2009:

1. ambulatory equipment;

2. bathroom equipment;

3. hospital beds, mattresses and related equipment; and

4. the cost for parts used in the repair of medical equipment, including the parts used in the repair of wheelchairs.

D. - E.1.k. 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, 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

0908#026

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Hospice—Payment for Long Term Care Residents
Reimbursement Rate Reduction (LAC 50:XV.4307)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.4307 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The Secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the Secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Section 1902(a)(13)(B) of the Social Security Act allows Medicaid programs to pay hospice providers an additional amount equal to at least 95 percent of the nursing facility or intermediate care facility for persons with developmental disabilities (ICF/DD) per diem rate when hospice patients are residents of nursing facilities or ICF/DDs. Pursuant to Section 1902, the department established provisions to pay hospice providers 100 percent of the long term care facility's per diem rate *(Louisiana Register*, Volume 28, Number 6*)*.

At the recommendation of the Centers for Medicare and Medicaid Services (CMS), the department amended the provisions of the June 20, 2002 Rule governing hospice services covered under the Medicaid Program to clarify the hospice payment rate provisions (*Louisiana Register*, Volume 34, Number 3).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for hospice services provided to long term care residents to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 2). The department amended the February 1, 2009 Emergency Rule to further clarify the provisions governing the reimbursement methodology for hospice services provided to long term care residents (*Louisiana Register*, Volume 35, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2009 Emergency Rule.

Effective September 18, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for hospice services provided to long term care residents.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 3. Hospice
Chapter 43. Reimbursement
§4307. Payment for Long Term Care Residents

A. Pursuant to Section 1902(a)(13)(B) of the Social Security Act, an additional amount will be paid to hospice providers for routine home care and continuous home care to take into account the room and board furnished by a long term care facility for a Medicaid recipient:

1. who is residing in a nursing facility or intermediate care facility for persons with developmental disabilities (ICF/DD);

2. who would be eligible under the State Plan for nursing facility services or ICF/DD services if he or she had not elected to receive hospice care;

3. who has elected to receive hospice care; and

4. for whom the hospice agency and the nursing facility or ICF/DD have entered into a written agreement in accordance with the provisions set forth in the Licensing Standards for Hospice Agencies (LAC 48:I.Chapter 82), under which the hospice agency takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual.

B. Under these circumstances, payment to the facility is discontinued and payment is made to the hospice provider which must then reimburse the facility for room and board.

C. The rate reimbursed to hospice providers shall be 95 percent of the per diem rate that would have been paid to the facility for the recipient if he/she had not elected to receive hospice services.

1. This rate is designed to cover "room and board" which includes performance of personal care services, including assistance in the activities of daily living, administration of medication, maintaining the cleanliness of the patient's environment, and supervision and assistance in the use of durable medical equipment and prescribed therapies.

2. This rate is in addition to the routine home care rate or the continuous home care rate.

D. Any patient liability income (PLI) determined by the Bureau will be deducted from the additional payment. It is the responsibility of the Medicaid enrolled facility to collect the recipient's PLI.

E. - F. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1471 (June 2002), 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

0908#083

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.953, §955 and §959 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with the directives of Act 17 of the 2006 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology for inpatient hospital services to increase the Medicaid reimbursement rates paid to private hospitals and free-standing and distinct part psychiatric units (*Louisiana Register*, Volume 33, Number 2). The bureau subsequently adopted a Rule to provide for a supplemental Medicaid payment to non-rural, non-state acute care

hospitals for having a Medicaid inpatient utilization greater than thirty percent (hereafter referred to as high Medicaid)and teaching hospitals for furnishing additional graduate medical education services as a result of the suspension of training programs at the Medical Center of Louisiana in New Orleans due to the impact of Hurricane Katrina *(Louisiana Register,* Volume 34, Number 5).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the bureau promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates (*Louisiana Register,* Volume 35, Number 2). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the provisions governing the reimbursement methodology for inpatient hospital services to further reduce the reimbursement rates (*Louisiana Register,* Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department determined that it was necessary to repeal the rate reduction provisions of the May 1, 2009 Emergency Rule (*Louisiana Register,* Volume 35, Number 8) and to amend the reimbursement methodology for inpatient hospital services to adjust the reimbursement rate reductions. This action is necessary to avoid a budget deficit in the medical assistance programs.

Taking the proposed per diem rate reduction into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) inpatient hospital services under the State Plan are available at least to the extent that they are available to the general population in the state. It is estimated that implementation of this Emergency Rule will reduce expenditures for inpatient hospital services by approximately $31,874,562 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§953. Acute Care Hospitals

A. - B.3. …

C. Effective for dates of service on or after February 20, 2009, the prospective per diem rate paid to acute care hospitals shall be reduced by 3.5 percent of the per diem rate on file as of February 19, 2009.

1. Payments to the following hospitals and/or specialty units for inpatient hospital services shall be exempted from these reductions:

a. small rural hospitals, as defined in R.S. 40:1300.143; and

b. high Medicaid hospitals, level III Regional Neonatal Intensive Care Units and level I Pediatric Intensive Care Units as defined in R.S. 46.979;

2. For the purposes of qualifying for the exemption to the reimbursement reduction as a high Medicaid hospital, the following conditions must be met.

a. The inpatient Medicaid days utilization rate for high Medicaid hospitals shall be calculated based on the cost report filed for the period ending in state fiscal year 2007 and received by the department prior to April 20, 2008.

b. Only Medicaid covered days for inpatient hospital services, which include newborn and distinct part psychiatric unit days, are included in this calculation.

c. Inpatient stays covered by Medicare Part A cannot be included in the determination of the Medicaid inpatient utilization days rate.

D. Effective for dates of service on or after February 20, 2009, the amount appropriated for quarterly supplemental payments to non-rural, non-state acute care hospitals that qualify as a high Medicaid hospital shall be reduced to $4,925,000. Each qualifying hospital's quarterly supplemental payment shall be calculated based on the pro rata share of the reduced appropriation.

E. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to acute care hospitals shall be reduced by 6.3 percent of the per diem rate on file as of August 3, 2009.

1. Payments to small rural hospitals as defined in R.S. 40:1300.143 shall be exempt from this reduction.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§955. Long Term Hospitals

A. …

B. For dates of service on or after February 20, 2009, the prospective per diem rate paid to long term hospitals for inpatient services shall be reduced by 3.5 percent of the rate on file as of February 19, 2009.

1. Payments for inpatient hospital services to high Medicaid hospitals classified as long term hospitals shall be exempted from these reductions.

2. For the purposes of qualifying for the exemption to the reimbursement reduction as a high Medicaid hospital, the following conditions must be met.

a. The inpatient Medicaid days utilization rate for high Medicaid hospitals shall be calculated based on the cost report filed for the period ending in state fiscal year 2007 and received by the department prior to April 20, 2008.

b. Only Medicaid covered days for inpatient hospital services, which include newborn and distinct part psychiatric unit days, are included in this calculation.

c. Inpatient stays covered by Medicare Part A cannot be included in the determination of the Medicaid inpatient utilization days rate.

C. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to long term

hospitals for inpatient services shall be reduced by 6.3 percent of the per diem rate on file as of August 3, 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: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§959. Inpatient Psychiatric Hospital Services

A. …

B. Effective for dates of service on or after February 20, 2009, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units shall be reduced by 3.5 percent of the rate on file as of February 19, 2009.

1. Distinct part psychiatric units that operate within an acute care hospital that qualifies as a high Medicaid hospital, as defined in §953.C.2, are exempt from the rate reduction.

C. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals shall be reduced by 5.8 percent of the rate on file as of August 3, 2009.

D. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to non-rural, non-state distinct part psychiatric units shall be reduced by 6.3 percent of the rate on file as of August 3, 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 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, 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

0908#019

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.953, §955 and §959 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.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates (*Louisiana Register,* Volume 35, Number 2). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the provisions governing the reimbursement methodology for inpatient hospital services to further reduce the reimbursement rates (*Louisiana Register,* Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates paid for inpatient hospital services.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the rate reduction provisions of the May 1, 2009 Emergency Rule governing inpatient hospital services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 1. Inpatient Hospitals
Chapter 9. Non-Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology
§953. Acute Care Hospitals

A. - B.3. …

C. Effective for dates of service on or after February 20, 2009, the prospective per diem rate paid to acute care hospitals shall be reduced by 3.5 percent of the per diem rate on file as of February 19, 2009.

1. Payments to the following hospitals and/or specialty units for inpatient hospital services shall be exempted from these reductions:

a. small rural hospitals, as defined in R.S. 40:1300.143; and

b. high Medicaid hospitals, level III Regional Neonatal Intensive Care Units and level I Pediatric Intensive Care Units as defined in R.S. 46.979;

2. For the purposes of qualifying for the exemption to the reimbursement reduction as a high Medicaid hospital, the following conditions must be met.

a. The inpatient Medicaid days utilization rate for high Medicaid hospitals shall be calculated based on the cost report filed for the period ending in state fiscal year 2007 and received by the department prior to April 20, 2008.

b. Only Medicaid covered days for inpatient hospital services, which include newborn and distinct part psychiatric unit days, are included in this calculation.

c. Inpatient stays covered by Medicare Part A cannot be included in the determination of the Medicaid inpatient utilization days rate.

D. Effective for dates of service on or after February 20, 2009, the amount appropriated for quarterly supplemental payments to non-rural, non-state acute care hospitals that qualify as a high Medicaid hospital shall be reduced to $4,925,000. Each qualifying hospital's quarterly supplemental payment shall be calculated based on the pro rata share of the reduced appropriation.

E. - E.1. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§955. Long Term Hospitals

A. …

B. For dates of service on or after February 20, 2009, the prospective per diem rate paid to long term hospitals for inpatient services shall be reduced by 3.5 percent of the rate on file as of February 19, 2009.

1. Payments for inpatient hospital services to high Medicaid hospitals classified as long term hospitals shall be exempted from these reductions.

2. For the purposes of qualifying for the exemption to the reimbursement reduction as a high Medicaid hospital, the following conditions must be met.

a. The inpatient Medicaid days utilization rate for high Medicaid hospitals shall be calculated based on the cost report filed for the period ending in state fiscal year 2007 and received by the department prior to April 20, 2008.

b. Only Medicaid covered days for inpatient hospital services, which include newborn and distinct part psychiatric unit days, are included in this calculation.

c. Inpatient stays covered by Medicare Part A cannot be included in the determination of the Medicaid inpatient utilization days rate.

C. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§959. Inpatient Psychiatric Hospital Services

A. …

B. Effective for dates of service on or after February 20, 2009, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals and distinct part psychiatric units shall be reduced by 3.5 percent of the rate on file as of February 19, 2009.

1. Distinct part psychiatric units that operate within an acute care hospital that qualifies as a high Medicaid hospital, as defined in §953.C.2, are exempt from the rate reduction.

C. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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

0908#024

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Repeal of Outlier Payment Reduction
(LAC 50:V.954)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.954 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.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for payments to disproportionate share hospitals for catastrophic costs associated with providing medically necessary services to children less than six years of age (*Louisiana Register*, Volume 20, Number 6). These provisions also addressed payments to all acute care hospitals for catastrophic costs associated with providing medically necessary services to infants one year of age or younger. An outlier payment is calculated on an individual case basis and paid at cost if the covered charges for medically necessary services exceed a designated percent of the prospective payment. The June 20, 1994 Rule was subsequently amended to: 1)reduce the outlier payments made to private (non-state) hospitals by amending the definition of marginal cost; 2) change the base period for the hospital calculation of payments; and 3) establish a deadline for receipt of the written request for outlier payments (*Louisiana Register*, Volume 29, Number 6). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the department determined that it was necessary to amend the provisions of the June 20, 2003 Rule to reduce outlier payments made to non-rural, non-state hospitals and to repromulgate these provisions governing outliers in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget

reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the payment reduction provisions of the May 1, 2009 Emergency Rule which reduced the outlier payments made to non-rural, non-state hospitals.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the payment reduction provisions of the May 1, 2009 Emergency Rule governing outlier payments.

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
§954. Outlier Payments

A. Pursuant to §1902(s)(1) of Title XIX of the Social Security Act, additional payments called outlier payments shall be made to hospitals for catastrophic costs associated with inpatient services provided to:

1. children less than six years of age who receive services in a disproportionate share hospital setting; and

2. infants less than one year of age who receive services in any acute care hospital setting.

B. The marginal cost factor for outlier payments is considered to be 100 percent of costs after the costs for the case exceed the sum of the hospital's prospective payment and any other payment made on behalf of the patient for that stay by any other payee.

1. Repealed.

C. To qualify as a payable outlier claim, a deadline of not later than six months subsequent to the date that the final claim is paid shall be established for the receipt by the department of the written request for outlier payments.

D. The hospital specific cost to charge ratio shall be reviewed bi-annually and updated according to the current cost report data.

E. Outlier payments are not payable for transplant procedures.

F. - H. 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, 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

0908#015

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XIX.4329 and §§4334-4337 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing reimbursement for laboratory and x-ray services in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 28, Number 5). As a result of a budgetary shortfall, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to reduce the reimbursement rates paid for laboratory and x-ray services, hereafter referred to as radiology services (*Louisiana Register*, Volume 35, Number 3). The department later amended the provisions of the February 26, 2009 Emergency Rule to clarify the reimbursement methodology for radiation therapy centers (*Louisiana Register*, Volume 35, Number 6).

As a result of a budgetary shortfall, the department has determined that it is necessary to amend the provisions governing the reimbursement methodology for laboratory and radiology services to further reduce the reimbursement rates. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures for laboratory and radiology services by approximately $4,073,563 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for laboratory and radiology services to further reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XIX. Other Services
Subpart 3. Laboratory and Radiology
Chapter 43. Billing and Reimbursement
Subchapter B. Reimbursement

§4329. Laboratory Services (Physicians and Independent Laboratories)

A. Providers should use the most appropriate Healthcare Common Procedure Coding System (HCPCS)/Current Procedural Terminology (CPT) code representing the service performed when submitting claims to Medicaid.

1. - 3. Repealed.

B. Guidelines indicated in the pertinent CPT manual are to be followed when billing for these services unless specifically directed otherwise by the Department.

C. Limitations on select services are indicated on the published fee schedules and/or in provider manuals.

D. Reimbursement for clinical laboratory procedures shall not exceed 100 percent of the current year's Medicare allowable. Reimbursement of clinical laboratory services shall be paid at the lower of billed charges or the fee on file, minus the amount which any third party coverage would pay.

E. Those services not subject to the Medicare fee schedule shall continue to be reimbursed to physicians and independent laboratories based on the published Medicaid fee schedule or billed charges, whichever is lower.

F. Effective for dates of service on or after February 26, 2009, the reimbursement rates for laboratory services shall be reduced by 3.5 percent of the fee amounts on file as of February 25, 2009.

G. Effective for dates of service on or after August 4, 2009, the reimbursement rates for laboratory services shall be reduced by 4.7 percent of the fee amounts on file as of August 3, 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 28:1025 (May 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§4334. Radiology Services

A. Providers should use the most appropriate Healthcare Common Procedure Coding System (HCPCS)/Current Procedural Terminology (CPT) code representing the service performed when submitting claims to Medicaid.

B. Guidelines indicated in the pertinent CPT manual are to be followed when billing for these services unless specifically directed otherwise by the Department.

C. Limitations on select services are indicated on the published fee schedules and/or in provider manuals.

D. Reimbursement of radiology services shall be the lower of billed charges or the fee on file, minus the amount which any third party coverage would pay.

E. Effective for dates of service on or after February 26, 2009, the reimbursement rates for radiology services shall be reduced by 3.5 percent of the fee amounts on file as of February 25, 2009.

F. Effective for dates of service on or after August 4, 2009, the reimbursement rates for radiology services shall be reduced by 4.7 percent of the fee amounts on file as of August 3, 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, Bureau of Health Services Financing, LR 35:

§4335. Portable Radiology Services

A. Providers should use the most appropriate Healthcare Common Procedure Coding System (HCPCS)/Current Procedural Terminology (CPT) code representing the service performed when submitting claims to Medicaid.

B. Reimbursement of portable radiology services shall be the lower of billed charges or the fee on file, minus the amount which any third party coverage would pay.

C. Effective for dates of service on or after February 26, 2009, the reimbursement rates for portable radiology services shall be reduced by 3.5 percent of the fee amounts on file as of February 25, 2009.

D. Effective for dates of service on or after August 4, 2009, the reimbursement rates for portable radiology services shall be reduced by 4.7 percent of the fee amounts on file as of August 3, 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, Bureau of Health Services Financing, LR 30:1026 (May 2004), amended LR 35:

§4337. Radiation Therapy Centers

A. Radiation therapy centers are reimbursed fee for service according to the appropriate procedure code.

B. Reimbursement for radiation therapy center services shall be the lower of billed charges or the fee on file, minus the amount which any third party coverage would pay.

C. Effective for dates of service on or after February 26, 2009, the reimbursement rates for radiology services provided by radiation therapy centers shall be reduced by 3.5 percent of the fee amounts on file as of February 25, 2009.

D. Effective for dates of service on or after August 4, 2009, the reimbursement rates for radiology services provided by radiation therapy centers shall be reduced by 4.7 percent of the fee amounts on file as of August 3, 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, Bureau of Health Services Financing, 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

0908#006

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.325 and §353 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for emergency and non-emergency ambulance transportation services to increase the reimbursement for ground mileage and ancillary services *(Louisiana Register,* Volume 34, Number 5*)* and repromulgated the existing provisions in a codified format for inclusion in the *Louisiana Administrative Code*. The bureau amended the provisions governing the reimbursement methodology for emergency medical transportation to increase the reimbursement rates for rotor winged aircraft emergency transportation services and repromulgated the existing Rule in its entirety for the purpose of adopting those provisions in a codified format for inclusion in the *Louisiana Administrative Code (Louisiana Register*, Volume 35, Number 1*)*.

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the provisions governing reimbursement for emergency medical transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department determined that it was necessary to repeal the provisions of the May 1, 2009 Emergency Rule (*Louisiana Register*, Volume 35, Number 8) and to amend the reimbursement methodology for emergency medical transportation services to reduce the reimbursement for disposable and routine supplies.

This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency rule will reduce expenditures in the Medicaid Program by approximately $640,024 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for emergency medical transportation to reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXVII. Medical Transportation Program
Chapter 3. Emergency Medical Transportation
Subchapter B. Ground Transportation
§325. Reimbursement

A. - E. …

F. Effective for dates of service on or after August 4, 2009, the reimbursement rates for the following supplies shall be reduced by 36 percent of the rate on file as of August 3, 2009:

1. advanced life support special service disposable intravenous supplies; and
2. advanced life support routine disposable supplies.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter C. Aircraft Transportation
§353. Reimbursement

A. - D. …

E. Effective for dates of service on or after August 4, 2009, the reimbursement rates for the following supplies shall be reduced by 36 percent of the rate on file as of August 3, 2009:

1. advanced life support special service disposable intravenous supplies; and
2. advanced life support routine disposable supplies.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 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

0908#005

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.325 and §353 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

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.

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the provisions governing the reimbursement methodology for emergency medical transportation services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates for emergency medical transportation services.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates for emergency medical transportation services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXVII. Medical Transportation Program
Chapter 3. Emergency Medical Transportation
Subchapter B. Ground Transportation
§325. Reimbursement

A. - E. ...

F. Repealed

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter C. Aircraft Transportation
§353. Reimbursement

A. - D. …

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 35:70 (January 2009), amended by the Department of Health and Hospitals, 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

0908#017

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.571 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. 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.

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the provisions governing the reimbursement rates paid for non-emergency ambulance transportation services (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates paid for non-emergency ambulance transportation.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the May 1, 2009 Emergency Rule which reduced the reimbursement for non-emergency ambulance services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part. XXVII. Medical Transportation Program
Chapter 5. Non-Emergency Medical Transportation
Subchapter D. Reimbursement
§571. Non-Emergency Ambulance Transportation

A. - C. …

D. 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 33:462 (March 2007), LR 34:878 (May 2008), amended by the Department of Health and Hospitals, 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

0908#011

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Ambulance Services
Repeal of Reimbursement Rate Reduction
(LAC 50:XXVII.573)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.573 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. 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.

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the provisions governing the reimbursement rates paid for non-emergency ambulance transportation services (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates paid for non-emergency ambulance transportation.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the May 1, 2009 Emergency Rule which reduced the reimbursement for non-emergency ambulance services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part. XXVII. Medical Transportation Program
Chapter 5. Non-Emergency Medical Transportation
Subchapter D. Reimbursement
§573. Non-Emergency, Non-Ambulance Transportation

A. - C. …

D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:879 (May 2008), amended by the Department of Health and Hospitals, 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

0908#010

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Mental Health Rehabilitation Program
Service Limitations and Reimbursement Rate Reductions
(LAC 50:XV.401-405 and 901)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.401-405 and §901 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the Mental Health Rehabilitation (MHR) Program to: 1) clarify staffing requirements, medical necessity criteria, provider participation requirements and provider responsibilities; and 2) remove the application fee requirement for prospective MHR providers (*Louisiana Register*, Volume 34, Number 9).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for mental health rehabilitation services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 2).

As a result of a budgetary shortfall for state fiscal year 2009-2010, the bureau has determined that it is necessary to further reduce the reimbursement rates paid for mental health rehabilitation services and to establish service limitations. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce the expenditures in the Mental Health Rehabilitation Program by approximately $1,051,592 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for mental health rehabilitation services to reduce the reimbursement rates and to establish service limitations.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Mental Health Rehabilitation

Chapter 3. Covered Services and Staffing Requirements

Subchapter D. Service Limitations

§401. Individual Daily Service Limits

A. Individual daily service limits shall be placed on the following services.

1. Individual, Family or Group Counseling (any modifier). The maximum number of units provided on any given date of service shall not exceed eight units (two hours).

2. Psychosocial Skills Training. The maximum number of units provided on any given date of service shall not exceed 12 units (three hours).

3. Community Supports. The maximum number of units provided on any given date of service shall not exceed 12 units (three hours).

4. Assessment. The maximum number of units provided for an initial assessment shall not exceed six units (1.5 hours).

5. Reassessment. The maximum number of units provided for a reassessment shall not exceed three units (0.75 hours).

B. Medicaid will not reimburse services in excess of these limits.

1. Exceptions may be made on a case-by-case basis for special circumstances or crisis situations with documentation of medical necessity. Requests to exceed the established limits are subject to review and approval by the department.

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

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

§403. Combined Daily Service Limits

A. Daily service limits shall be placed on the combination of counseling, psychosocial skills training and community support services. The maximum units of service for a combination of these services shall not exceed a total of 16 units (four hours) on any given date of service.

1. The individual daily service limits in §401 are applicable to the services that are being combined.

B. Medicaid will not reimburse services in excess of these limits.

1. Exceptions may be made on a case-by-case basis for special circumstances or crisis situations with documentation of medical necessity. Requests to exceed the established limits are subject to review and approval by the department.

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

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

§405. Combined Weekly Service Limits

A. Weekly service limits shall be placed on the combination of counseling, psychosocial skills training and community support services. The maximum units of service for a combination of these services shall not exceed a total of 80 units (20 hours) in any given calendar week (Sunday through Saturday).

1. The individual and combined daily service limits in §401 and §403 are applicable to these services.

B. Medicaid will not reimburse services in excess of these limits.

1. Exceptions may be made on a case-by-case basis for special circumstances or crisis situations with documentation of medical necessity. Requests to exceed the established limits are subject to review and approval by the department.

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

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

Chapter 9. Reimbursement

§901. Reimbursement Methodology

A. - B. …

C. Effective for dates of service on or after February 1, 2009, the reimbursement rates for MHR services shall be reduced by 3.5 percent of the fee amounts on file as of January 31, 2009.

D. Effective for dates of service on or after August 4, 2009, the reimbursement rates for the following MHR services shall be reduced by 1.23 percent of the fee amounts on file as of August 3, 2009:

1. counseling;
2. oral medication administration;
3. psychosocial skills training;
4. community supports; and
5. injections.

E. Effective for dates of service on or after August 4, 2009, the reimbursement rates for parent/family intervention (intensive) services shall be reduced by 17.6 percent of the fee amounts on file as of August 3, 2009.

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

HISTORICAL NOTE: Promulgate by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1091 (May 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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

0908#008

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Multi-Systemic Therapy
Reimbursement Rate Reduction
(LAC 50:XV.25701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.25701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing 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 *(Louisiana Register*, Volume 35, Number 2). As a result of a budgetary shortfall, the Department of Health and Hospitals, Bureau of Health Services Financing has determined that it is necessary to amend the provisions governing the reimbursement methodology for multi-systemic therapy to reduce the reimbursement rates. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Multi-Systemic Therapy Program by approximately $534,360 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for multi-systemic therapy to reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 17. Multi-Systemic Therapy
Chapter 257. Reimbursement
§25701. Reimbursement Methodology

A. - A.2. …

B. Effective for dates of service on and after August 4, 2009, the reimbursement rates for multi-systemic therapy services will be reduced by 5.17 percent of the rates on file as of August 3, 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, Bureau of Health Services financing, LR 35:245 (February 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, 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

0908#009

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Nursing Facility Minimum Licensing Standards
Emergency Preparedness Electronic Reporting
Requirements (LAC 48:I.9729)

The Department of Health and Hospitals, 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 40:2009.2-2009.11. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing emergency preparedness requirements for nursing facilities to allow 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 35, Number 2). The department amended the February 20, 2009 Rule to establish provisions requiring all nursing facilities licensed in Louisiana to file electronic reports of their operational status during declared disasters or other emergency situations (*Louisiana Register*, Volume 35, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2009 Emergency Rule.

This action is being taken to prevent imminent peril, during and immediately after declared disasters or other emergencies, to the health and well-being of Louisiana citizens who depend on nursing facility services.

Effective September 3, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing emergency preparedness for all nursing facilities licensed in Louisiana.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing
Chapter 97. Nursing Facilities
Subchapter B. Organization and General Services
§9729. Emergency Preparedness

A. - B.3. …

4. Effective immediately, upon declaration by the secretary and notification to the Louisiana Nursing Home Association and Gulf States Association of Homes and Services for the Aging, all nursing facilities licensed in Louisiana shall file an electronic report with the HSS emergency preparedness webpage/operating system, or a successor operation system, during a declared disaster or other public health emergency.

a. The electronic report will enable the department to monitor the status of nursing facilities during and immediately following an emergency event.

b. The electronic report shall be filed twice daily at 7:30 a.m. and 2:30 p.m. throughout the duration of the disaster or emergency event.

c. The electronic report shall include, but is not limited to the following:

i. status of operation (open, limited or closed);

ii. availability of beds;

iii. resources that have been requested by the nursing facility from the local or state Office of Emergency Preparedness;

iv. generator status;

v. evacuation status;

vi. shelter in place status; and

vii. other information requested by the department.

NOTE: The electronic report is not to be used to request resources or to report emergency events.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2009.2–2009.11.

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), amended LR 34:1917 (September 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing LR 35:248 (February 2009), amended 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 Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Alan Levine
Secretary

0908#084

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Outpatient Hospital Services
Non-Rural, Non-State Hospitals
Reimbursement Rate Reduction
(LAC 50:V.5313, 5513, 5713, 5913 and 6115)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:V.5313, §5513, §5713, §5913 and to adopt §6115 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with the directives of Act 17 of the 2006 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for outpatient hospital services to increase the reimbursement paid to private (non-state) acute care hospitals for cost-based outpatient services (*Louisiana Register*, Volume 33, Number 2). As a result of a budgetary shortfall, the Bureau promulgated an Emergency Rule to reduce the reimbursement paid to non-rural, non-state hospitals for outpatient services (*Louisiana Register*, Volume 35, Number 2). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to further reduce the reimbursement rates paid to non-rural, non-state hospitals for outpatient services (Louisiana Register, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department determined that it was necessary to repeal the provisions of the May 1, 2009 Emergency Rule (*Louisiana Register*, Volume 35, Number 8) and to amend the reimbursement methodology for non-rural, non-state hospitals to reduce the reimbursement rates for outpatient services.

Taking into consideration the 5.65 percent reduction in outpatient hospital rates in state fiscal year 2010, the Department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) outpatient hospital services under the State Plan are available at least to the extent that they are available to the general population in the state.

This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately $9,467,649 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-rural-non-state hospitals to reduce the reimbursement rates for outpatient services.

Title 50
PULIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospitals
Subpart 5. Outpatient Hospitals

Chapter 53. Outpatient Surgery
Subchapter B. Reimbursement Methodology
§5313. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

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

Chapter 55. Clinic Services
Subchapter B. Reimbursement Methodology
§5513. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

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

Chapter 57. Laboratory Services
Subchapter B. Reimbursement Methodology
§5713. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

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

Chapter 59. Rehabilitation Services
Subchapter B. Reimbursement Methodology
§5913. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

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

Chapter 61. Other Outpatient Hospital Services
Subchapter B. Reimbursement Methodology
§6115. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 3.5 percent of the rates effective as of February 19, 2009. Final reimbursement shall be at 83.18 percent of allowable cost through the cost settlement process.

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 5.65 percent of the rates effective as of August 3, 2009. Final reimbursement shall be at 78.48 percent of allowable cost through the cost settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

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

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

0908#012

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Outpatient Hospital Services
Non-Rural, Non-State Hospitals
Repeal of Reimbursement Rate Reduction
(LAC 50:V.5313, 5513, 5713, 5913 and 6115)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.5313, §5513, §5713, §5913 and §6115 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.

As a result of a budgetary shortfall, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to reduce the reimbursement paid to non-rural, non-state hospitals for outpatient services (*Louisiana Register*, Volume 35, Number 2). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to further reduce the reimbursement rates paid to non-rural, non-state hospitals for outpatient services (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which further reduced the reimbursement rates paid to non-rural, non-state hospitals for outpatient services.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the provisions of the May 1, 2009 Emergency Rule which further reduced the reimbursement rates for outpatient hospital services.

Title 50
PULIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospitals
Subpart 5. Outpatient Hospitals
Chapter 53. Outpatient Surgery
Subchapter B. Reimbursement Methodology
§5313. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

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

Chapter 55. Clinic Services
Subchapter B. Reimbursement Methodology
§5513. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

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

Chapter 57. Laboratory Services
Subchapter B. Reimbursement Methodology

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

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

Chapter 59. Rehabilitation Services
Subchapter B. Reimbursement Methodology
§5913. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be reduced by 3.5 percent of the fee schedule on file as of February 19, 2009.

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

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

Chapter 61. Other Outpatient Hospital Services
Subchapter B. Reimbursement Methodology
§6115. Non-Rural, Non-State Hospitals

A. Effective for dates of service on or after February 20, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 3.5 percent of the rates effective as of February 19, 2009. Final reimbursement shall be at 83.18 percent of allowable cost through the cost settlement process.

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

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

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

0908#029

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services

Personal Care Services—Long-Term Reimbursement Rate Reduction (LAC 50:XV.12917)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amends LAC 50:XV.12917 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for long-term personal care services (LT-PCS) to reduce the reimbursement rates (L*ouisiana Register*, Volume 35, Number 2). As a result of a budgetary shortfall, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adults Services have determined that it is necessary to further reduce the reimbursement rates paid for LT-PCS. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately $9,697,054 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amends the provisions governing the reimbursement methodology for long-term personal care services to reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 9. Personal Care Services
Chapter 129. Long-Term Care
§12917. Reimbursement Methodology

A. - C.3. …

D. Effective for dates of service on or after February 1, 2009, the reimbursement rate for long-term personal care services shall be reduced by 3.5 percent of the rate on file as of January 31, 2009.

E. Effective for dates of service on or after August 4, 2009, the reimbursement rate for long-term personal care services shall be reduced by 4.8 percent of the rate on file as of August 3, 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 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:253 (February 2008), LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, 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

0908#007

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Pharmacy Program—Prescription Limit Reduction (LAC 50:XXIX.113)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.113 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act, and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The Secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to

precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Pharmacy Benefits Management Program in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 32, Number 6). As a result of a budgetary shortfall, the bureau determined that it was necessary to amend the provisions governing prescription limits to reduce the number of prescriptions covered by the Medicaid Program within a calendar month for certain recipients (*Louisiana Register*, Volume 35, Number 4). This Emergency Rule is being promulgated to continue the provisions of the May 1, 2009 Emergency Rule.

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

Effective August 30, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing prescription limits in the Pharmacy Benefits Management Program.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXIX. Pharmacy
Chapter 1. General Provisions
§113. Prescription Limit

A. Effective May 1, 2009, the Department of Health and Hospitals will pay for a maximum of five prescriptions per calendar month for Medicaid recipients.

B. The following federally mandated recipient groups are exempt from the five prescriptions per calendar month limitation:

1. persons under 21 years of age;
2. persons who are residents of long-term care institutions, such as nursing homes and ICF-DD facilities; and
3. pregnant women.

C. The five prescriptions per month limit can be exceeded when the prescriber determines an additional prescription is medically necessary and communicates the following information to the pharmacist in his own handwriting or by telephone or other telecommunications device:

1. "medically necessary override;" and
2. a valid ICD-9-CM Diagnosis Code that directly related to each drug prescribed that is over the five prescription limit (no ICD-9-CM literal description is acceptable).

D. The prescriber should use the Clinical Drug Inquiry (CDI) internet web application developed by the fiscal intermediary in his/her clinical assessment of the patient's disease state or medical condition and the current drug regime before making a determination that more than five prescriptions per calendar month is required by the recipient.

E. Printed statements without the prescribing practitioner's signature, check-off boxes or stamped signatures are not acceptable documentation.

F. An acceptable statement and ICD-9-CM are required for each prescription in excess of five for that month.

G. Pharmacists and prescribers are required to maintain documentation to support the override of a prescription limitation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1055 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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

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

Alan Levine
Secretary

0908#085

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Pregnant Women Extended Services
Dental Services Reimbursement Rate Increase
(LAC 50:XV.16105 and 16107)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.16105 and 16107 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 amended 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 clarified the provisions governing the reimbursement methodology for dental services rendered to Medicaid eligible pregnant women. (*Louisiana Register*, Volume 35, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 6, 2009 Emergency Rule.

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.

Effective September 5, 2009, the Department of Health and Hospitals, 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), amended by the Department of Health and Hospitals, Bureau of Health Services Financing 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 by the Department of Health and Hospitals, 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

0908#086

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Professional Services Program
Anesthesia Services—Reimbursement Rate Reduction
(LAC 50:IX.15111)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:IX.15111 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This

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

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for anesthesia services to reduce the reimbursement rates paid to certified registered nurse anesthetists (CRNAs) for services rendered to Medicaid recipients (*Louisiana Register*, Volume 35, Number 3). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the provisions governing anesthesia services to further reduce the reimbursement rates paid to CRNAs (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department determined that it was necessary to repeal the provisions of the May 1, 2009 Emergency Rule (*Louisiana Register*, Volume 35, Number 8) and to amend the reimbursement methodology for anesthesia services to reduce the reimbursement rates paid to physicians.

This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Professional Services Program by approximately $544,937 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for anesthesia services to reduce the reimbursement rates for physicians.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part IX. Professional Services Program
Subpart 15. Reimbursement
Chapter 151. Reimbursement Methodology
§15111. Anesthesia Services

A. The most appropriate procedure codes and modifiers shall be used when billing for surgical anesthesia procedures and/or other services performed under the professional licensure of the physician (anesthesiologist or other specialty) or certified registered nurse anesthetist (CRNA).

B. Formula-Based Reimbursement. Reimbursement is based on formulas related to 100 percent of the 2003 Medicare Region 99 payable.

C. Flat Fee Reimbursement

1. Reimbursement for maternity related anesthesia services is a flat fee except for general anesthesia related to a vaginal delivery which is reimbursed according to a formula.

2. Other anesthesia services that are performed under the professional licensure of the physician (anesthesiologist or other specialty) or CRNA are reimbursed a flat fee based on the appropriate procedure code.

D. Effective for dates of service on or after February 26, 2009, the reimbursement rates paid to CRNAs will be reduced by 3.5 percent of the reimbursement as of February 25, 2009.

E. Effective for dates of service on or after August 4, 2009, the reimbursement rates paid for anesthesia services that are performed under the professional licensure of a physician (anesthesiologist or other specialty) shall be reduced by 3.5 percent of the rates in effect on August 3, 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, Bureau of Health Services Financing, 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

0908#003

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Professional Services Program
Anesthesia Services—Repeal of Reimbursement
Rate Reduction (LAC 50:IX.15111)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:IX.15111 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.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for anesthesia services to reduce the reimbursement rates paid to certified registered nurse anesthetists (CRNAs) for services rendered to Medicaid recipients (*Louisiana Register*, Volume

35, Number 3). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the provisions governing the reimbursement methodology for anesthesia services to further reduce the reimbursement rates paid to CRNAs (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which further reduced the reimbursement rates paid for anesthesia services provided by CRNAs.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates paid to CRNAs for anesthesia services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part IX. Professional Services Program
Subpart 15. Reimbursement
Chapter 151. Reimbursement Methodology
§15111. Anesthesia Services

A. The most appropriate procedure codes and modifiers shall be used when billing for surgical anesthesia procedures and/or other services performed under the professional licensure of the physician (anesthesiologist or other specialty) or certified registered nurse anesthetist (CRNA).

B. Formula-Based Reimbursement. Reimbursement is based on formulas related to 100 percent of the 2003 Medicare Region 99 payable.

C. Flat Fee Reimbursement

1. Reimbursement for maternity related anesthesia services is a flat fee except for general anesthesia related to a vaginal delivery which is reimbursed according to a formula.

2. Other anesthesia services that are performed under the professional licensure of the physician (anesthesiologist or other specialty) or CRNA are reimbursed a flat fee based on the appropriate procedure code.

D. Effective for dates of service on or after February 26, 2009, the reimbursement rates paid to CRNAs will be reduced by 3.5 percent of the reimbursement as of February 25, 2009.

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, 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

0908#027

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Professional Services Program
Physician Services—Reimbursement Rate Reduction
(LAC 50:IX.15103)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:IX.15103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law."

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

In compliance with Act 18 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for physician services to adjust the reimbursement rates. In addition, the bureau repealed the provisions contained in the following rules governing the reimbursement methodology for physician services: December 20, 2000; May 20, 2001; August 20, 2002; and February 20, 2007 (*Louisiana Register*, Volume 34, Number 8).

As a result of a budgetary shortfall, the Department of Health and Hospitals, Bureau of Health Services Financing has determined that it is necessary to adjust the reimbursement rates paid for physician services. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately $18,455,238 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for physician services to adjust the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part IX. Professional Services Program
Subpart 15. Reimbursement
§15103. Physician Services

A. - B.2. ...

C. Effective for dates of service on or after August 4, 2009, the reimbursement for all physician services rendered to recipients 16 years of age or older shall be reduced to 80 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

1. For those services that are currently reimbursed at a rate below 80 percent of the Louisiana Medicare Region 99 allowable, effective for dates of service on or after August 4, 2009, the reimbursement for these services shall be increased to 80 percent of the Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

2. The following physician services are excluded from the rate adjustment:

a. preventive medicine evaluation and management;
b. immunizations;
c. family planning services; and
d. select orthopedic reparative 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 34:1629 (August 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of the provisions 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

0908#014

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Prosthetics and Orthotics
Reimbursement Rate Reduction
(LAC 50:XVII.501)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XVII.501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement for prosthetic and orthotic devices to repeal the reimbursement methodology for specific items and to increase the reimbursement rates (*Louisiana Register*, Volume 34, Number 5).

As a result of a budgetary shortfall, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for prosthetic and orthotic devices to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 3).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the March 7, 2009 Emergency Rule to further reduce the reimbursement for prosthetic and orthotic devices (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department determined that it was necessary to repeal the provisions of the May 1, 2009 Emergency Rule (Louisiana Register, Volume 35, Number 8). and to amend the reimbursement methodology for prosthetic and orthotics to reduce the reimbursement rates. This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately $525,825 for state fiscal year 2009-2010.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for prosthetics and orthotics to reduce the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XVII. Prosthetics and Orthotics
Subpart 1. General Provisions
Chapter 5. Reimbursement
§501. Reimbursement Methodology

A. - B. …

C. Effective for dates of service on or after March 7, 2009, the reimbursement for prosthetic and orthotic devices shall be reduced by 3.5 percent of the fee amounts on file as of March 6, 2009.

1. The rate reduction shall not apply to items that do not appear on the fee schedule and are individually priced.

D. Effective for dates of service on or after August 4, 2009, the reimbursement for prosthetic and orthotic devices for recipients 21 years of age and older shall be reduced by 4 percent of the fee amounts on file as of August 3, 2009.

1. The rate reduction shall not apply to items that do not appear on the fee schedule and are individually priced.

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 by the Department of Health and Hospitals, Bureau of Health Services Financing, 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

0908#013

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Prosthetics and Orthotics
Repeal of Reimbursement Rate Reduction
(LAC 50:XVII.501)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XVII.501 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.

As a result of a budgetary shortfall, the Department of Health and Hospitals, Bureau of Health Service Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for prosthetic and orthotic devices to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 3).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the March 7, 2009 Emergency Rule to further reduce the reimbursement for prosthetic and orthotic devices (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement for prosthetic and orthotic devices.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the May 1, 2009 Emergency Rule which reduced the reimbursement rates for prosthetic and orthotic devices.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XVII. Prosthetics and Orthotics
Subpart 1. General Provisions
Chapter 5. Reimbursement
§501. Reimbursement Methodology

A. - B. …

C. Effective for dates of service on or after March 7, 2009, the reimbursement for prosthetic and orthotic devices shall be reduced by 3.5 percent of the fee amounts on file as of March 6, 2009.

1. The rate reduction shall not apply to items that do not appear on the fee schedule and are individually priced.

D. - D.1. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1597 (July 2005), amended LR 34:881 (May 2008), amended by the Department of Health and Hospitals, 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

0908#025

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Targeted Case Management—Reimbursement Rate Reduction (LAC 50:XV.10701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.10701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 of the 2008 Regular Session of the Louisiana Legislature which states: "The Secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid program as necessary to control expenditures to the level appropriated in this Schedule. Notwithstanding any law to the contrary, the Secretary is hereby directed to utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for targeted case management services to: 1) require case management agencies to bill in 15 minute increments; 2) establish cost reporting requirements; and 3) increase the reimbursement rate paid for targeted case management services provided to infants and toddlers *(Louisiana Register*, Volume 35, Number 1).

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for targeted case management to reduce the reimbursement rate (*Louisiana Register*, Volume 35, Number 2). This rate reduction was not applicable to Infants and Toddlers and EPSDT case management. The department amended the February 1, 2009 Emergency Rule to further clarify the targeted populations impacted by the rate reduction (Louisiana Register 35, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2009 emergency Rule.

Effective September 18, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the February 1, 2009 Emergency Rule governing the reimbursement methodology for targeted case management.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart7. Targeted Case Management
Chapter 107. Reimbursement
§10701. Reimbursement

A. - D. …

E. Effective for dates of service on or after February 1, 2009, the reimbursement for case management services provided to the following targeted populations shall be reduced by 3.5 percent of the rates on file as of January 31, 2009:

1. participants in the Nurse Family Partnership Program;
2. individuals with developmental disabilities who are participants in the New Opportunities Waiver; and
3. individuals with disabilities resulting from HIV.

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), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

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

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

Alan Levine
Secretary

0905#087

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Targeted Case Management
Repeal of Reimbursement Rate Reduction
(LAC 50:XV.10701)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XV.10701 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.

As a result of a budgetary shortfall and to avoid a budget deficit in the medical assistance programs, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for targeted case management to reduce the reimbursement rate (*Louisiana Register*, Volume 35, Number 2). This rate reduction was not applicable to Infants and Toddlers and Early and Periodic Screening, Diagnosis and Treatment case management.

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the February 1, 2009 Emergency Rule to further reduce the reimbursement rates for targeted case management services (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department has now determined that it is necessary to repeal the provisions of the May 1, 2009 Emergency Rule which reduced the reimbursement rates for targeted case management.

Effective August 4, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the May 1, 2009 Emergency Rule which reduced reimbursement rates for targeted case management.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart7. Targeted Case Management
Chapter 107. Reimbursement
§10701. Reimbursement

A. - D. …

E. Effective for dates of service on or after February 1, 2009, the reimbursement for case management services

provided to the following targeted populations shall be reduced by 3.5 percent of the rates on file as of January 31, 2009:

1. participants in the Nurse Family Partnership Program;

2. individuals with developmental disabilities who are participants in the New Opportunities Waiver; and

3. individuals with disabilities resulting from HIV.

F. - F.3. 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 30:1040 (May 2004), amended LR 31:2032 (August 2005), amended LR 35:73 (January 2009), amended, 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

0908#016

DECLARATION OF EMERGENCY

Department of Revenue
Office of the Secretary

Louisiana Tax Delinquency Amnesty Act of 2009
(LAC 61:I.4912)

The Department of Revenue, Office of the Secretary, is exercising the provisions of the Administrative Procedure Act, R.S. 49:953(B) to adopt this emergency rule pertaining to the Louisiana Tax Delinquency Amnesty Act of 2009 (Acts 2009, No. 519) in accordance with the provisions of R.S. 47:1511. The rule is needed to provide guidelines for implementing and administering the Louisiana Tax Delinquency Amnesty Program scheduled to begin on September 1, 2009. The Emergency Rule shall be effective September 1, 2009, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

The Department of Revenue has established a tax amnesty program beginning September 1, 2009, and ending October 31, 2009. The tax amnesty program shall apply to all taxes administered by the department except for motor fuel taxes and penalties for failure to submit information reports that are not based on an underpayment of tax. Amnesty will be granted only for eligible taxes to eligible taxpayers who apply for amnesty during the amnesty period on forms prescribed by the secretary and who pay all of the tax, all fees and costs, if applicable, and half of the interest due for periods designated on the amnesty application. The amnesty application for taxpayers involved in field audits or litigation shall include all issues and all eligible periods involved in the audit or litigation. The secretary reserves the right to require taxpayers to file tax returns with the amnesty application. If the amnesty application is approved, the secretary shall waive the remaining half of the interest and all of the penalties associated with the tax periods for which amnesty is applied.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 49. Tax Collection
§4912. Louisiana Tax Delinquency Amnesty Act of 2009

A. Definitions.

Amnesty Application—a form, paper or electronic, distributed by the department or its authorized agent, listing the eligible tax types and eligible tax periods for which the taxpayer is requesting amnesty.

Applicant—a person applying for amnesty under the Louisiana Tax Delinquency Amnesty Act of 2009 (Acts 2009, No. 519).

Department—the Louisiana Department of Revenue.

Notice—a letter or assessment issued in accordance with R.S. 47:1562, R.S. 47:1564, R.S. 47:1565, or R.S. 47:1568 or a schedule prepared during an audit and presented to the taxpayer at the conclusion of the audit.

Taxable period—any period for which a tax return is required by law to be filed.

Taxpayer—an individual or entity subject to any tax imposed by any Louisiana state law, payable to the State of Louisiana, and collected by the department.

B. Amnesty Time Period

a. Acts 2009, No. 519 requires the Amnesty Program to be held for a period not to exceed two consecutive calendar months between July 1, 2009, and June 30, 2010.

b. The Amnesty Program will begin on September 1, 2009 and end on October 31, 2009.

C. Eligibility for Amnesty

1. A taxpayer is eligible for amnesty under any of the following circumstances:

a. the taxpayer has received a notice for the failure to timely file a return or for the failure to remit the amount owed;

b. a lien has been issued against the taxpayer's property pursuant to R.S. 47:1577;

c. the department has initiated proceedings under the assessment and distraint procedures pursuant to R.S. 47:1569 through 1573;

d. the department has entered into an installment agreement with the taxpayer;

e. the taxpayer has filed for bankruptcy protection;

f. the taxpayer is involved in a field audit;

g. the taxpayer is involved in litigation;

h. the taxpayer's liability consists of interest and penalty;

i. the taxpayer's liability consists of interest only; or

j. the taxpayer's liability consists of penalty only.

2. Taxpayers are not eligible for both Amnesty and a Voluntary Disclosure Agreement for the same tax type and same tax period.

3. Motor fuel taxes are not eligible for amnesty.

4. Penalties for failure to submit information reports that are not based on an underpayment of tax are not eligible for amnesty.

5. Taxpayers who are a party to any criminal investigation or criminal litigation, in any court of the United States or the State of Louisiana pending on July 10, 2009, for nonpayment, delinquency, or fraud in relation to any state tax imposed by a law of the State of Louisiana and administered by the department, are not eligible for amnesty.

6. Taxpayers who deliver or disclose any false or fraudulent application, document, return, or other statement to the department in connection with an amnesty application shall be ineligible for amnesty and shall be subject to the fraud penalty under R.S. 47:1604, which provides a penalty of 50 percent of the additional tax due, or a penalty of $10,000, as provided by Subsection 3(H) of the Louisiana Tax Delinquency Amnesty Act of 2009, whichever is greater.

D. Amnesty Application Procedure and Waivers

1. The secretary is authorized to accept an amnesty application for any of the following:

a. taxes due prior to January 1, 2009, for which the department has issued an individual or a business a proposed assessment, notice of assessment, bill, notice, or demand for payment on or after July 1, 2001, and before May 31, 2009;

b. taxes that became due on or after July 1, 2001 and before January 1, 2009;

c. taxes for which the taxpayer has entered into an agreement to suspend the running of prescription until December 31, 2009;

d. taxes that became due on or before July 1, 2001, if the taxpayer was ineligible for an earlier amnesty program because the matter was in civil litigation.

2. When the applicant signs the amnesty application, the applicant agrees to waive all rights, restrictions, and delays for assessing, collecting, or protesting taxes and interest due as set forth in R.S. 47:1562 through 1565 and 1576.

a. Filing the application makes the tax, interest, penalty, and fees immediately due and payable and subject to the distraint procedure.

b. Amnesty will be granted only for eligible taxes to eligible taxpayers who apply for amnesty during the amnesty period using the form prescribed by the secretary and who pay all of the tax, all fees and costs, if applicable, and half of the interest due for the tax types and tax periods shown on the application according to the department's records.

3. If a taxpayer submits an amnesty application containing the eligible tax types and tax periods, due according to the department's records, and pays all of the tax, all fees and costs, if applicable, and half of the interest, for the tax types and tax periods shown on the amnesty application, the department will consider the amnesty application to be complete.

a. Once the amnesty application is deemed complete, amnesty shall be granted and the secretary shall waive the remaining half of the interest and all penalties outstanding as of September 1, 2009. The taxpayer will be notified of the acceptance.

b. If an amnesty application is deemed incomplete, amnesty shall not be granted and the taxpayer will be notified of the denial.

4. If an amnesty application is submitted and with payment insufficient to pay all of the tax, half of the interest, fees, and costs, if applicable, thereby creating a partial period payment, any partial payments submitted will be treated as a regular tax payment and amnesty shall not be allowed.

5. The department shall not institute a civil suit or seek criminal prosecution for the tax type and tax period for which an amnesty application has been approved.

E. Payment Options and Related Matters

1. The taxpayer may use the following payment options to satisfy the amnesty requirement of paying all of the tax, all fees and costs, if applicable, and half of the interest to be submitted with the amnesty application:

a. cash,
b. personal check,
c. business check,
d. bank wire,
e. auto-debit,
f. smartcheck,
g. smartpay,
h. credit card,
i. American express moneygram,
j. western union quick collect, and
k. electronic payments via the internet web site.

2. The taxpayer shall pay any fees, including but not limited to attorney's fees, and cost, including but not limited to court cost, associated with any collection proceeding or litigation proceeding.

3. If a check, including smartcheck and smartpay, submitted in conjunction with an amnesty application is returned by the bank on which it is drawn for any reason related to the account on which the check is written, the returned check shall constitute failure to pay the entire amount due and unless payment is otherwise made before the October 31, 2009, amnesty deadline, amnesty will be denied.

4. If a debit card or credit card payment is dishonored, the dishonored payment shall constitute a failure to pay the entire amount due and unless payment is otherwise made before the October 31, 2009, amnesty deadline, amnesty will be denied.

5. Funds submitted without an amnesty application will not be considered as an amnesty payment and the monies shall be applied towards the taxpayer's account as a regular tax payment.

6. Payments submitted to the department before the amnesty period begins or payments submitted during the amnesty period without an amnesty application shall be applied to the oldest outstanding tax period in the following order:

a. tax,
b. penalty, and
c. interest.

F. Refunds and Overpayments

1. No refunds shall be given for amounts paid by the taxpayer to the department before September 1, 2009, for taxable periods that are eligible for amnesty as provided by §4912.D.1.

2. No interest will be paid on refunds issued for payments made under protest that are used as an amnesty payment.

3. Monies paid for tax periods for which amnesty was granted are ineligible for refund, credit, or claim against the state.

4. Monies paid for tax periods for which amnesty was granted are ineligible for redetermination under the provisions of R.S. 47:1565(C).

5. A taxpayer shall be eligible for a refund or credit under the following circumstances:

a. if the overpayment arises after the amnesty application is submitted and is attributable to a properly claimed Louisiana net operating loss, or

b. if the overpayment is attributable to an adjustment made by the Internal Revenue Service to the taxpayer's federal income tax, and the taxpayer provides notice of the adjustment to the secretary within 60 days of receipt of the adjustment from the Internal Revenue Service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and Acts 2009, No. 519.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of the Secretary, LR 35:

Cynthia Bridges
Secretary

0908#022

DECLARATION OF EMERGENCY

Department of Revenue
Policy Services Division

Annual Louisiana Second Amendment
Weekend Sales Tax Holiday (LAC 61:I.4425)

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. 47:1511, which allows the department to make reasonable rules and regulations, the Secretary hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule. This Emergency Rule shall be effective September 1, 2009, 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 the Annual Louisiana Second Amendment Weekend Sales Tax Holiday. This sales tax holiday is set for the first consecutive Friday through Sunday of September as enacted by Act 453 of the 2009 Regular Session of the Legislature. Act 453 known as the Annual Louisiana Second Amendment Weekend Holiday Act became effective on July 9, 2009.

The state and local sales and use tax exemption available only during the Annual Louisiana Second Amendment Weekend Sales Tax Holiday applies to an individual's purchase of firearms, ammunition and hunting supplies. The sales and use tax exemption is available only for an individual's purchase and is not available for businesses or business purchases. Consumer purchases do not include the purchase of animals for hunting. This Emergency Rule details which consumer purchases are eligible for state and local sales and use tax exemption during the Annual Louisiana Second Amendment Weekend Sales Tax Holiday and when these purchases are to occur.

Title 61
REVENUE AND TAXATION
Chapter 44. Sales and Use Tax Exemptions.
§4425. Annual Louisiana Second Amendment Weekend Sales Tax Holiday

A. Act 453 of the 2009 Regular Session of the Legislature provides an exemption of state and local sales and use taxes on consumer purchases of firearms, ammunition and hunting supplies. This sales tax holiday will occur each calendar year on the first consecutive Friday through Sunday of September. The Annual Louisiana Second Amendment Weekend Sales Tax Holiday begins at 12:01 a.m. on that Friday and ends at 12 midnight on the following Sunday. During this weekend the sales and use tax levied by the state and its political subdivisions shall not apply to the sales price or cost price of any consumer purchases of firearms, ammunition and hunting supplies.

B. Definitions

Ammunition—any projectile with a fuse, propelling charges or primers which is fired from a firearm or gun, which may be legally sold or purchased in Louisiana.

Consumer Purchases—a purchase by an individual of firearms, ammunition and hunting supplies. Consumer purchases do not include the purchase of animals, such as dogs.

Firearm—a shotgun, rifle, pistol, revolver, or other handgun, which may be legally sold or purchased in Louisiana..

Hunting Supplies—tangible personal property used for and designed for hunting. Hunting supplies include:

a. archery items used for hunting such as bows, crossbows, arrows, quivers and shafts;

b. off-road vehicles such as all terrain vehicles designed and intended primarily for hunting. The exemption does not apply to golf carts, go-carts, dirt bikes, mini-bikes, motorcycles, tractors, motor vehicles which may be legally driven on the streets and highways of Louisiana, or heavy equipment such as cranes, forklifts, backhoes and bulldozers.;

c. vessels such as airboats and pirogues designed and intended for hunting;

d. accessories designed to be used for hunting;

e. animal feed that is manufactured and marketed as being for consumption primarily by game which can be legally hunted. This does not include food for animals kept as pets;

f. apparel such as safety gear, camouflage clothing, jackets, hats, gloves, mittens, face masks and thermal underwear manufactured and marketed as being primarily for wear or use while hunting;

g. hunting shoes or boots designed and used for hunting.;

h. bags to carry game or hunting gear;

i. float tubes only if purchased to be used for hunting;

j. binoculars only if purchased to be used for hunting;

k. tools that are manufactured and marketed as being primarily for use in hunting;

l. firearm and archery cases;

m. firearm and archery accessories;

n. range finders;

o. knives that are manufactured and marketed as being primarily for use in hunting. This excludes the purchase of knives by an individual to be used for household, business or other recreational use;

p. decoys;

q. tree stands;

r. blinds;

s. chairs to be used for hunting. This excludes purchases by an individual of chairs or other furniture for household, business or other recreational use;

t. optics such as rifle scopes and impact resistant glasses for shooting;

u. hearing protection gear and enhancements;

v. holsters;

w. belts that are manufactured and marketed as being primarily for use in hunting;

y. slings; and

z. miscellaneous gear that is manufactured and marketed as being primarily for use in hunting. This includes other hunting-related gear or supplies not previously listed. This excludes the purchase of toy guns and vessels or off road vehicles utilized as children's toys.

C. During the Annual Louisiana Second Amendment Weekend Sales Tax Holiday, a consumer's purchase will be eligible for the state and local sales and use tax exemption, if one of the following occurs:

1. Title to or possession of firearms, ammunition and hunting supplies is transferred from a selling dealer to a purchaser.

2. A customer selects an eligible item from the selling dealer's inventory for layaway that is physically set aside in the selling dealer's inventory for future delivery to that customer.

3. The customer makes final payment and withdraws an item from layaway that might have been placed on layaway before the Annual Louisiana Second Amendment Weekend Sales Tax Holiday.

4. The customer orders and pays for an eligible item and the selling dealer accepts the order for immediate shipment, even if delivery is made after the time period provided for in §4425.A, provided that the customer has not requested delayed shipment.

D. Returns and rain checks of firearms, ammunition and hunting supplies during the Annual Louisiana Second Amendments Weekend Sales Tax Holiday are to be handled as follows:

1. Rain Checks. Purchases of eligible items made with a rain check issued before time period provided for in §4425.A will qualify for the exemption, regardless of when the rain check was issued. If a rain check is issued during the time period provided for in §4425.A but the eligible item is purchased after the time period, then the item will not qualify for the exemption.

2. Return and Exchange for an Identical Item. When a customer purchases an eligible item during the time period provided for in §4425.A, returns it without additional cash consideration after such time period and exchanges it for an essentially identical item of different size, caliber, color or other feature, then no additional tax is due.

3. Return and Exchange for a Non-Identical Item. When a customer purchases an item eligible for the sales tax exemption during the time period provided for in §4425.A, returns it after the time period set forth in §4425.A and then receives credit on the purchase of a different item, the sales tax is due on the purchase of the new item.

4. Return of an Eligible Item upon which Sales Tax was Charged and Paid. If a customer purchases an eligible item, pays sales tax on it and returns it within 60 days following the time period set forth in §4425.A, then the retailer can only issue a reimbursement, credit, or refund of sales tax on the item, only when the customer has a receipt or invoice indicating the sales tax was paid. A retailer may also issue a refund, if there is sufficient documentation indicating that sales tax was paid on the specific item. The 60 day time period does not affect a retailer's policy with regard to a customer's return of purchased merchandise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:337.2, R.S. 47:337.9, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 35:

Cynthia Bridges
Secretary

0908#023

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2009 Fall Shrimp Season

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or parts of state inside waters and shall have the authority to open or close state outside waters, the Wildlife and Fisheries Commission does hereby set the 2009 Fall Shrimp Season in inside waters to open as follows:

Shrimp Management Zone 1, that portion of Louisiana inside waters from the Mississippi-Louisiana state line to the eastern shore of South Pass of the Mississippi River, to open at 6:00 a.m. August 10, 2009, and

Shrimp Management Zone 2, that portion of state inside waters from the eastern shore of South Pass of the Mississippi River to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, to open at 6:00 a.m. August 10, 2009, and

Shrimp Management Zone 3, that portion of state inside waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island to the Louisiana-Texas state line, to open at 6:00 a.m. August 10, 2009.

The Commission also hereby sets the closing date for the 2009 Fall Shrimp Season in inside waters in Zones 1, 2 and 3 at official sunset December 22, 2009 except in the open waters of Breton and Chandeleur Sounds as described by the double-rig line (LA R.S. 56:495.1(A)2) which shall remain open until 6:00 a.m., March 31, 2010. The Commission also grants authority to the Secretary of the Department of Wildlife and Fisheries to change the closing dates if biological and technical data indicate the need to do so or if enforcement problems develop and to close and reopen all or

parts of state inside and outside waters if significant numbers of small white shrimp are found in these waters.

Robert J. Samanie, III
Chairman

0908#080

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2009-2010 Oyster Season

In accordance with the emergency provisions of the Administrative Procedure Act, Louisiana Revised Statutes (R.S.) 49:953(B) and 967(D), and under the authority of R.S. 56:433, R.S. 56:435.1, and R.S. 56:435.1.1(D) notice is hereby given that the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declare:

The 2009/2010 oyster season in the primary public oyster seed grounds east of the Mississippi River, as described in Louisiana Administrative Code (LAC) 76:VII.511 and LAC 76:VII.513, including the Bay Gardene Public Oyster Seed Reservation as described in R.S. 56:434.E, shall open one-half hour before sunrise on September 9, 2009 for the harvest of seed oysters for bedding purposes only until one-half hour after sunset on September 23, 2009, except for the Lake Machias/Fortuna Sacking-Only Area of the public grounds which is generally Lake Fortuna and Lake Machias to a line from Mozambique Point to Point Gardner to Grace Point at the Mississippi River Gulf Outlet, the Sacking-Only Area in the American Bay area which shall be that portion of the public grounds within Bay Long west of a line running generally north/south from a point at 29 degrees 31 minutes 13.78 seconds N latitude, 89 degrees 34 minutes 9.79 seconds W longitude to a point at 29 degrees 29 minutes 40.67 seconds N latitude, 89 degrees 34 minutes and 8.48 seconds W longitude, and the 2009 cultch plant areas in Black Bay and Three-Mile Bay within the following coordinates, which shall remain closed:

2009 Cultch Plant in Black Bay—Plaquemines Parish

1. 29 degrees 36 minutes 55.598 seconds N latitude 89 degrees 32 minutes 30.482 seconds W longitude
2. 29 degrees 36 minutes 25.239 seconds N latitude 89 degrees 32 minutes 12.858 seconds W longitude
3. 29 degrees 36 minutes 14.674 seconds N latitude 89 degrees 32 minutes 47.070 seconds W longitude
4. 29 degrees 36 minutes 45.476 seconds N latitude 89 degrees 33 minutes 02.681 seconds W longitude

2009 Cultch Plant in Three-Mile Bay—St. Bernard Parish

1. 30 degrees 01 minutes 15.884 seconds N latitude 89 degrees 21 minutes 19.511 seconds W longitude
2. 30 degrees 01 minutes 34.630 seconds N latitude 89 degrees 20 minutes 58.811 seconds W longitude
3. 30 degrees 01 minutes 11.418 seconds N latitude 89 degrees 21 minutes 12.304 seconds W longitude
4. 30 degrees 01 minutes 29.772 seconds N latitude 89 degrees 20 minutes 52.475 seconds W longitude

The primary public oyster seed grounds east of the Mississippi River, as described in Louisiana Administrative Code (LAC) 76:VII.511 and LAC 76:VII.513, including the Bay Gardene Public Oyster Seed Reservation as described in R.S. 56:434.E, and including the Lake Machias/Fortuna Sacking-Only Area and the Sacking-Only Area in the American Bay area as described above, shall then open at one-half hour before sunrise on October 28, 2009 for the taking of both seed and market-size oysters and shall close one half-hour after sunset on April 1, 2010, except for the following areas, which shall remain closed:

1. 2009 Cultch Plant in Black Bay as described above;
2. 2009 Cultch Plant in Three-Mile Bay as described above;
3. Southwest portion of Lake Fortuna which shall be that portion of the Lake Machias/Fortuna sacking-only area south of 29 degrees 40 minutes 00.00 seconds N latitude and west of 89 degrees 30 minutes 00.00 seconds W longitude.

The oyster season in the Hackberry Bay Public Oyster Seed Reservation as described in R.S. 56:434.E shall open at one-half hour before sunrise on October 28, 2009 and shall close at one-half hour after sunset on November 4, 2009, except for the 2008 cultch plant within the following coordinates which shall open at one-half hour before sunrise on October 28, 2009 and shall close at one-half hour after sunset on October 31, 2009:

2008 Cultch Plant in Hackberry Bay—
Jefferson/Lafourche Parish

1. 29 degrees 25 minutes 28.80 seconds N latitude 90 degrees 01 minutes 17.11 seconds W longitude
2. 29 degrees 25 minutes 37.79 seconds N latitude 90 degrees 00 minutes 55.39 seconds W longitude
3. 29 degrees 25 minutes 28.61 seconds N latitude 90 degrees 00 minutes 50.44 seconds W longitude
4. 29 degrees 25 minutes 19.63 seconds N latitude 90 degrees 01 minutes 12.17 seconds W longitude

The Little Lake Public Oyster Seed Grounds as described in LAC 76:VII:521 shall open one-half hour before sunrise on September 9, 2009 for the harvest of seed oysters for bedding purposes only until one-half hour after sunset on September 23, 2009. This area shall then re-open at one-half hour before sunrise on October 28, 2009 for the taking of both seed and market-size oysters and shall close one half-hour after sunset on April 1, 2010.

The oyster season in the Barataria Bay Public Oyster Seed Grounds as described in LAC 76:VII.517 shall open one-half hour before sunrise on September 9, 2009 for the harvest of seed oysters for bedding purposes only until one-half hour after sunset on September 30, 2009.

The oyster season in the Sister Lake Public Oyster Seed Reservation as described in R.S. 56:434.E shall open one-half hour before sunrise on October 28, 2009 and shall close one-half hour after sunset on November 13, 2009, except for the 2009 cultch plant located within the following coordinates which shall remain closed:

2009 Cultch Plant in Sister Lake—Terrebonne Parish

1. 29 degrees 14 minutes 50.179 seconds N latitude 90 degrees 55 minutes 01.367 seconds W longitude
2. 29 degrees 14 minutes 59.743 seconds N latitude 90 degrees 54 minutes 27.704 seconds W longitude
3. 29 degrees 14 minutes 39.398 seconds N latitude 90 degrees 54 minutes 17.987 seconds W longitude
4. 29 degrees 14 minutes 30.384 seconds N latitude 90 degrees 54 minutes 50.702 seconds W longitude

The oyster season in the Sister Lake Public Oyster Seed Reservation shall be opened as above with the following provisions:

1. Any vessel from which any person(s) takes or attempts to take oysters from the Sister Lake Public Oyster Seed Reservation described above shall:

a. Be limited to a daily take and possession limit not to exceed 50 sacks of oysters per vessel. A sack of oysters for the purposes of this declaration of emergency shall be defined as the size described in R.S. 56:440. The daily take and possession limit shall not apply to vessels harvesting seed oysters from the reservation for bedding purposes. The possession limit shall not apply to vessels operating under a valid Oyster Cargo Vessel Permit.

b. Be limited to either harvesting oysters for direct sale (sacking) or harvesting seed oysters for bedding purposes on any one day and is specifically prohibited from doing both.

2. If any person on a vessel takes or attempts to take oysters from the public oyster seed reservation described above, all oysters contained on that vessel shall be deemed to have been taken from said reservation.

3. Any oysters taken for direct sale (sacking) from the public oyster seed reservation described above must be contained within properly tagged sacks prior to departing the public oyster seed reservation; and undersized oysters that do not meet the requirements set forth in R.S. 56:433(A) and non-living reef material shall be immediately replaced and scattered broadcast upon the public oyster seed reservation from which taken.

The Vermilion/East and West Cote Blanche/Atchafalaya Bay Public Oyster Seed Grounds, as described in LAC 76:VII.507 and LAC 76:VII.509, shall open one-half hour before sunrise on September 9, 2009 for the harvest of seed oysters for bedding purposes only until one-half hour after sunset on October 11, 2009. These areas shall then re-open at one-half hour before sunrise on October 12, 2009 for the taking of both seed and market-size oysters and shall close one half-hour after sunset on April 30, 2010.

The oyster season in the Calcasieu Lake public oyster area, as described in R.S. 56:435.1 and R.S. 56:435.1.1, shall open one-half hour before sunrise on October 15, 2009 and shall close one half-hour after sunset on April 30, 2010, with the exception of the 2009 cultch plant within the following coordinates which shall remain closed:

2009 Cultch Plant in Calcasieu Lake—Cameron Parish

1. 29 degrees 50 minutes 36.930 seconds N latitude
   93 degrees 19 minutes 14.977 seconds W longitude
2. 29 degrees 50 minutes 33.787 seconds N latitude
   93 degrees 19 minutes 14.102 seconds W longitude
3. 29 degrees 50 minutes 34.266 seconds N latitude
   93 degrees 19 minutes 12.365 seconds W longitude
4. 29 degrees 50 minutes 31.840 seconds N latitude
   93 degrees 19 minutes 11.817 seconds W longitude
5. 29 degrees 50 minutes 32.893 seconds N latitude
   93 degrees 19 minutes 06.405 seconds W longitude
6. 29 degrees 50 minutes 34.263 seconds N latitude
   93 degrees 19 minutes 01.273 seconds W longitude
7. 29 degrees 50 minutes 39.274 seconds N latitude
   93 degrees 19 minutes 02.220 seconds W longitude
8. 29 degrees 50 minutes 39.047 seconds N latitude
   93 degrees 19 minutes 07.548 seconds W longitude

The sack limit for Calcasieu Lake is set at 15 sacks per day as provided for in R.S. 56:435.1.1. However, these conservation actions shall not supersede public health closures.

The following areas will remain closed for the entire 2009/2010 oyster season:

1. The southwest portion of the Lake Machias/Fortuna Sacking-Only Area described above;
2. The 2009 cultch plants as described above in Three-Mile Bay, Black Bay, Sister Lake, and Calcasieu Lake;
3. Deep Lake Public Oyster Seed Grounds (as described in LAC 76:VII:517);
4. Lake Tambour Public Oyster Seed Grounds (as described in LAC 76:VII:517);
5. Lake Chien Public Oyster Seed Grounds (as described in LAC 76:VII:517);
6. Lake Felicity Public Oyster Seed Grounds (as described in LAC 76:VII:517);
7. Lake Mechant Public Oyster Seed Grounds (as described in LAC 76:VII:517);
8. Bay Junop Public Oyster Seed Reservation (as described in R.S. 56:434.E);
9. Sabine Lake Public Oyster Area (as described in R.S. 56:435.1).

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of non-living reef material in seed oyster loads, or if oyster resources and/or reefs are being adversely impacted, or if enforcement problems are encountered.

The secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource has ended, or may open areas if substantial oyster resources are located.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action unless such closure is ordered by the Louisiana Department of Health and Hospitals for public health concerns.

Robert J. Samanie, III
Chairman

0908#096

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Early Migratory Bird Season

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

The hunting seasons for early migratory birds during the 2009-2010 hunting season shall be as follows:

Dove: The term "dove" refers to the following species, and only the following species: mourning doves, white-winged doves, Eurasian collared-doves and ringed-turtle doves.

Dove South Zone:
September 5 - September 13
October 17 - November 29
December 19 - January 4

Dove North Zone:
September 5 - September 20
October 10 - November 8
December 12 - January 4

Bag Limit: Mourning and white-winged doves and fully dressed Eurasian collared- and ringed-turtle doves: Daily bag limit 15 in aggregate, Possession 30 in aggregate, but note there is no bag limit on Eurasian collared-doves or ringed-turtle doves provided that a fully feathered wing and head remain attached to the carcass of the bird. Fully dressed Eurasian-collared doves and ringed-turtle doves (those without a fully feathered wing and head naturally attached to the carcass) shall be included in the aggregate bag.

Dove Hunting Zones: The state shall be divided into North and South Dove Hunting Zones by the following boundary: Beginning at the Texas-Louisiana border on La. Highway 12; thence east along La. Highway 12 to its intersection with U.S. Highway 190; thence east along U.S. Highway 190 to its intersection with Interstate 12; thence east along Interstate 12 to its intersection with Interstate 10; thence east along Interstate 10 to the Mississippi State Line.

Teal: September 12 - September 27

Daily bag limit 4, possession limit 8, blue-winged, green-winged and Cinnamon teal only. Federal and state waterfowl stamps required.

Rail: Split Season, Statewide, 70 days
September 12 - September 27

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

King and Clapper: Daily bag limit 15 in the aggregate and possession 30 in the aggregate. Sora and Virginia: Daily and possession bag 25 in the aggregate.

Gallinule: Split Season, Statewide, 70 days
September 12 - September 27

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

Common and Purple: Daily bag limit 15 in the aggregate, possession of 30 in the aggregate.

Woodcock: December 18 - January 31, Statewide
Daily bag limit 3, possession limit 6.

Snipe: Deferred to be set in August with the duck regulations.

Extended Falconry Season
Dove: Statewide
September 21 - October 6
Woodcock: Split Season, Statewide
October 28 - December 17
February 1 - February 11

Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during the extended falconry seasons and regular hunting seasons. Remainder of extended falconry seasons for ducks, rails, gallinules to be set in August with the duck regulations.

Shooting and Hawking Hours:

Dove: One-half hour before sunrise to sunset except 12:00 noon to sunset on September 5, 2009.

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

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 100,000 sportsmen, selection of season dates, bag limits, and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective on September 1, 2009 and extend through sunset on February 28, 2010.

Robert J. Barham
Secretary

0908#079

Rules

RULE

Department of Agriculture and Forestry
Board of Animal Health

Reporting of Trichomoniasis
(LAC 7:XXI.101, 121, and 339)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and with the enabling statutes, R.S. 3:2093, 3:2095, and 3:2097, the Louisiana Board of Animal Health amends and adopt the attached regulations for the reporting of trichomoniasis in cattle, restrictions on the entry of bulls into Louisiana, the testing of bulls for trichomoniasis and the movement of bulls testing positive for trichomoniasis.

The impact of the Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the Rule on small businesses.

Trichomoniasis is a venereal disease of cattle caused by *Tritrichomonas foetus,* a protozoal parasite. Trichomoniasis causes early embryonic death of the fetus, usually in the first 30 to 90 days of pregnancy, but may cause late term abortion. The parasite is carried by bulls and is passed to cows during breeding. The parasite is almost impossible to detect in cows and is difficult to detect in bulls. The parasite may be transmitted from the cow to her calf during birthing.

Infected herds have had up to a 55 percent decrease in the number of calves being born. The financial losses caused by trichomoniasis are substantial. The Louisiana cattle industry has approximately 420,000 breeding age cows and 25,600 bulls. Based on this number of cows the calving rate is approximately 85 percent, for a total of 544,000 calves a year. A breeding cow will sell, on average, for approximately $1,200 and a breeding bull will sell, on average for approximately $2,000. A calf will sell, on average, for $500. A cow or bull sold for slaughter will bring, on average, $500. If Louisiana's cattle become infected statewide with trichomoniasis it is conservatively estimated that 50 percent of the cows and bulls will be infected and that the calving rate will decrease to a 50 percent birthing rate. Based on this estimate the Louisiana cattle industry would lose $112,000,000 from unborn calves, $22,400,000 from the sale of infected breeding cows for slaughter rather than as a breeder, and $19,200,000 from the sale of infected bulls for slaughter, rather than as a breeding bull. The cost for replacing the infected cows and bulls with cows and bulls capable of breeding immediately would be $38,400,000 for replacement cows and $25,600,000 for replacement bulls. The cost for testing bulls is a minimum of $100. The vaccine for cows is approximately $10 for the vaccination and $5 for each yearly booster. Thus the cost of testing all bulls in the state would be $2,560,000. The vaccination for cows would cost $6,400,000 initially and $3,200,000 yearly thereafter based on 640,000 breeding cows per year. As an example, the owners of a Louisiana herd of 3000 cattle infected with trichomoniasis has suffered over $1,000,000 in one year in financial losses from the cost of testing, destruction of infected bulls and cows, replacement animals, and reductions in the calf crop. The threat posed by trichomoniasis is real and immediate and creates an imminent peril to the public welfare of the citizens of this state, the viability of Louisiana's cattle industry and to the health and safety of the cattle in this state.

Title 7
AGRICULTURE AND ANIMALS
Part XXI. Diseases of Animals

Chapter 1. General Provisions

§101. Definitions

* * *

APHIS—the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

* * *

Bull—an uncastrated male of domestic cattle.

1. *Breeding Bull*—a bull less than 24 months of age in which there is no presence of both permanent central incisor teeth in wear if the bull has been commingled with breeding females; a bull less than 24 months of age in which there is the presence of both permanent central incisor teeth in wear; and a bull that is 24 months of age or older.

2. *Virgin Bull*—a bull less than 24 months of age in which both permanent central incisor teeth in wear are not present and that has never been commingled with breeding females.

* * *

Commissioner—the commissioner of agriculture and forestry.

* * *

Department—the department of agriculture and forestry

* * *

Slaughter Permit—an official document issued by an authorized agent of the department, a representative of APHIS veterinary services, or an accredited veterinarian that is required to accompany any animal that is a reactor, or suspect or exposed to a disease, and the animal is required to be taken to slaughter. The slaughter permit shall list the tag number of all reactors, the official ear tag number of all suspect or exposed animals, the owner's name and address, the origin and destination locations, number of animals covered, and the purpose of the movement. If a change in destination becomes necessary, a new permit shall be issued by authorized personnel. No diversion from the destination on the permit is allowed.

* * *

Trichomoniasis—a venereal disease of cattle caused by *Tritrichomonas foetus,* a protozoal parasite

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:230 (March 1985), amended LR 11:615 (June 1985), LR 12:289 (May 1986), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 12:498 (August 1986), LR 14:217 (April 1988), LR 15:811 (October 1989), LR 16:391 (May 1990), LR 17:29 (January 1991), LR 18:840 (August 1992), LR 23:949 (August 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:1677 (September 1998), LR 28:1170 (June 2002), amended by the Department of Agriculture and Forestry, Board of Animal Health, LR 34:2336 (November 2008), LR 35:1465 (August 2009).

§121. Requiring the Reporting of Contagious Diseases

A. All veterinarians practicing veterinary medicine in this state shall report any of the diseases listed in this Section to the state veterinarian within 24 hours after making a diagnosis or tentative diagnosis of any such disease. The report may be made by telephone, fax, or electronic mail. The reportable diseases are: classical swine fever (hog cholera), anthrax, vesicular conditions, all equine encephalomyelitis conditions, transmissible spongiform encephalopathies (including chronic wasting disease, scrapie, bovine spongiform encephalopathy), pseudorabies (Aujeszky's Disease), tuberculosis, Brucellosis, rabies, strangles (*Streptococcus equi equi)*, equine herpes virus 1, equine viral arteritis, spring viremia of carp, viral hemorrhagic septicemia, Newcastle disease and other paramyxovirus infections, avian influenza (highly pathogenic), ornithosis (chlamydiosis, psittacosis), Salmonellas (pullorum disease or fowl typhoid), infectious laryngotracheitis (other than vaccine induced), trichomoniasis, any disease classified by USDA as a foreign animal disease, or any other disease condition which may seriously threaten the any animal population of this state.

B. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, R.S. 3:2094 and R.S. 3:2095.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:234 (March 1985), amended LR 11:615 (June 1985), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 15:813 (October 1989), LR 16:391 (May 1990), LR 23:197 (February 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 28:1170 (June 2002), LR 29:1460 (August 2003), amended by the Department of Agriculture and Forestry, Board of Animal Health, LR 34:2337 (November 2008), LR 35:1466 (August 2009).

§339. Trichomoniasis Testing and Movement Requirements for Cattle

A. No bull that has tested positive for trichomoniasis shall be brought into this state for any purpose whatsoever.

B. No bull may be brought into this state without being accompanied by a negative test for trichomoniasis except for the following animals:

1. exhibition and rodeo bulls that are temporarily in the state only for the purpose of the event and will be leaving the state after the event;
2. bulls consigned to go directly to slaughter; and
3. virgin bulls.

C. A bull that is brought into this state without being accompanied by a negative test for trichomoniasis shall not be comingled with any cow unless the bull is tested and found to be negative for trichomoniasis prior to comingling.

D. All bulls, except exhibition and rodeo bulls, brought into this state shall be identified by one or more of the following means prior to importation:

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

E. Virgin bulls, other than exhibition and rodeo bulls, brought into this state shall, in addition to any other required documentation, be accompanied by a certification of virgin status signed by the owner of the bull, or the owner's representative or a duly authorized veterinarian. The certification shall include the bull's individual identification. If the owner seeking to import the virgin bull into this state acquired the bull from a breeder or another owner then a certification of virgin status signed by the breeder and each prior owner of the bull, or their representative must also accompany the bull.

F. The requirements for testing bulls for trichomoniasis, whether in this state or to be imported into this state, are as follows.

1. All samples to be submitted for testing for Trichomoniasis shall be drawn by a certified accredited veterinarian.
2. The testing of samples shall be performed at an official laboratory or by a certified accredited veterinarian, qualified to test for Trichomoniasis.
3. Three separate official culture tests, each conducted not less than one week apart, or one Polymerase Chain Reaction test (PCR) shall be performed, no more than 30 days prior to entry of the bull into this state. Test samples shall not be pooled. A bull undergoing the three separate official culture tests must test negative on each such test to be considered free of trichomoniasis.
4. A positive result on any test shall immediately cause the bull to be classified as a trichomoniasis infected bull subject to the restrictions set out in these regulations.
5. A PCR test to confirm the presence of trichomoniasis may be requested in the event of a positive result on a test, but the request for the confirmatory test must be made within 5 days of notification of the positive test result.
   a. If the confirming PCR test comes back negative then the bull is considered negative for trichomoniasis and may be moved as a negative bull.
   b. If the confirming PCR test comes back positive then the bull shall be considered to be infected and subject to the restrictions set out in these regulations.
6. Bulls being tested for trichomoniasis shall be kept separate from female cattle at all times during the entire test period and from the completion of the test until importation into this state.
7. All test results for trichomoniasis, whether negative or positive, shall be reported to the state veterinarian within 24 hours after receipt of the results. When a positive test result is received the treating veterinarian shall consult with the state veterinarian on the first business day after receipt of the test results to determine a plan of action regarding the animal testing positive.

D. Bulls in Louisiana testing positive for trichomoniasis shall be subject to the following restrictions.

1. If a confirming PCR test is timely requested then the bull testing positive shall be segregated from all other cattle until the PCR test results are received.

2. A bull that has tested positive for trichomoniasis for which no confirming PCR test has been timely requested or which is confirmed by the PCR test to be infected with trichomoniasis shall be immediately isolated from and kept isolated from all other cattle, except for other known infected bulls and shall not be moved except as provided in these regulations.

3. An infected bull shall be moved directly to slaughter, or sold directly for slaughter through a livestock market, within 30 days from receipt of the positive results of the original test or the results of the confirming PCR test, whichever is later.

a. Movement of an infected bull shall be under a VS 1-27 permit issued by the testing veterinarian or the state veterinarian or his representative.

b. The VS 1-27 permit shall accompany the bull upon movement of the animal.

4. If an infected bull has been in a herd with other breeding bulls then the other breeding bulls shall automatically be under quarantine until they have tested negative for trichomoniasis.

a. All of the other breeding bulls shall be immediately separated from, and kept separate from, all female cattle and from all virgin bulls or other breeding bulls that have tested negative for trichomoniasis.

b. Each breeding bull that has been in a herd with an infected bull shall be tested for trichomoniasis.

c. Two PCR tests conducted at least seven days apart or three separate official culture tests, each conducted not less than one week apart, shall be performed on each bull. Test samples shall not be pooled. Each test conducted on a bull must show a negative result before the tested bull can be declared to be free of Trichomoniasis.

d. A bull that has tested negative shall be immediately removed from all of the other bulls that have not been tested, or for which the test results have not been received and shall be free of the hold or do not remove order.

e. A positive result on any test shall immediately cause the tested bull to be classified as a Trichomoniasis infected bull subject to the restrictions set out in these regulations.

f. A PCR test to confirm the presence of Trichomoniasis may be requested in the event of a positive result on a culture test, but the request for the confirmatory test must be made within 5 days of notification of the positive test result.

i. If the confirming PCR test comes back negative then negative then the bull is considered negative for trichomoniasis and may be moved as a negative bull.

ii. If the confirming PCR test comes back positive then the bull shall be considered to be infected and subject to the restrictions set out in these regulations.

E. A virgin bull or breeding bull that has tested negative for trichomoniasis but which has been comingled with cows that come from a known trichomoniasis infected herd shall not be moved to a herd not known to be infected or comingled with cows from such a herd unless the bull has been tested for trichomoniasis and has negative test results.

F. A violation of these regulations shall subject the violator to the following actions:

1. imposition by the board of a maximum $1,000 civil penalty for each violation, with each day being a separate violation, as provided by R.S. 3:2093 if the violation does not involve the bringing of infected bulls into this state or the transportation of infected bulls through or within this state;

2. imposition by the board of a maximum $5,000 civil penalty for each violation, with each day being a separate violation, as provide by R.S. 3:2097, if the violation involves the bringing of infected bulls into this state or the transportation of infected bulls through or within this state;

3. criminal prosecution under R.S. 3:2097 if the violation involves the bringing of infected bulls into this state or the transportation of infected bulls through this state, or within this state without a VS-127; conviction of which subjects the violator to a fine of not less that $5,000 but not more that $25,000, or imprisonment, with or without hard labor, for not less than 1 year but not more than 10 years, or both;

4. criminal prosecution under R.S. 14:133 if the violation involves the filing of a false public record; conviction of which subjects the violator to a fine of not more than $5,000, or imprisonment for not more than 5 years with or without hard labor, or both.

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

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

Mike Strain, DVM
Commissioner

0908#100

RULE

Department of Agriculture and Forestry
Structural Pest Control Commission

Definitions, Fees, Minimum Termite Treatment
Specifications and Treatments for Wood Destroying Beetles
(LAC 7:XXV.101,117, 119, 141 and 145)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the enabling statute, R.S. 3:3366, the Department of Agriculture and Forestry, Structural Pest Control Commission, amends regulations to define certain terms; to raise fees on wood destroying insect reports and contracts; provides minimum specifications for treatment for termite on new-construction; and to clarify treatment requirements for wood destroying beetles.

The impact of the Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the Rule that will

accomplish the objectives of applicable statutes while minimizing the adverse impact of the Rule on small businesses.

The structural pest control commission finds that the implementation of these amendments to rules and regulations are necessary to define and give clarity to terms used by the structural industry; to provide homeowners and pest control operators additional treatment options in new construction while still providing for minimum termite treatment specifications; to provide additional protection for consumers by requiring a 5 year damage repair guaranty; to raise the fees for wood destroying insect reports and contracts to allow for continued oversight of the pest control industry; and to clarify that treatment for wood destroying beetles must be based on a finding of an active infestation prior to the recommendation or application of such a treatment.

Title 7
AGRICULTURE AND ANIMALS
Part XXV. Structural Pest Control
Chapter 1. Structural Pest Control Commission
§101. Definitions

A. The definitions in R.S. 3:3362 are applicable to this Part.

B. The following words and terms are defined for the purposes of this Part.

Act—the Structural Pest Control Law, which is currently Part VII of Chapter 20 of Title 3 of the Louisiana Revised Statutes of 1950.

* * *

Construction—the act of building a structure from the start of the first stage of physical work until completion which is when either the structure is ready to be inhabited, final inspection and approval by an appropriate building inspector, or completion of the final grade.

* * *

Pest Control Operator—any person conducting or performing structural pest control.

* * *

Termiticide Treatment—application of a termiticide.

1. *Pre-Construction Treatment*—a termiticide treatment for subterranean termites made with a commission approved termiticide prior to the stage of construction where a slab or concrete is poured or piers are being built or placed into position. Borate treatments during any stage of construction shall be considered a pre-construction treatment.

2. *New-Construction Treatment*—a termiticide treatment made with any commission approved termiticide(s) or baiting system that meets minimum specification requirements for that type of treatment and which is applied or installed during or after the stage of construction where a slab or concrete is poured or piers are being built or placed into position and up to 12 months after completion of construction. New-construction treatments are to be made in accordance with the post-construction treatment section of termiticide labels.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission LR 15:954 (November 1989), 17:251 (March 1991), LR 23:855 (July 1997), LR 30:1143 (June 2004), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 31:26 (January 2005), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 32:796 (May 2006), repromulgated LR 32:1015 (June 2006), amended LR 33:39 (January 2007), LR 35:204 (February 2009), LR 35:1468 (August 2009).

§117. Obligations of the Licensee

A. - I.1.l. …

m. total amount of product mixture applied;

I.1.n. - L. ...

M. The fee for each standard contract and wood-destroying insect report that has been issued is $8. All such fees are due and payable to the department at the time the reports required by §119.E are due.

N. - P. …

Q. The pest control operator shall record the nature of the completion and the date of completion that construction of a structure is completed, as found in §101.B within the definition of *construction*, and maintain the date as part of the application records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:327 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:956 (November 1989), LR 21:930 (September 1995), LR 23:855 (July 1997), LR 26:2437 (November 2000), LR 29:1062 (July 2003), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 30:196 (February 2004), LR 31:2761 (November 2005), LR 35:1468 (August 2009).

§119. Contracts for Termite Control Work

A. The licensee shall enter into a written contract for termite work with the property owner employing him. The contract shall:

1. be in a form provided or approved by the commission;

2. guarantee performance for a period of not less than 1 year after the treatment is made;

3. guarantee treatment of the structure(s) in accordance with minimum specifications for termite control work set forth in §141 hereof;

4. provide for at least one inspection of all unobstructed or accessible areas outside of the structure(s) prior to expiration of the agreement;

5. include an inspection diagram;

6. provide for the treatment of all subterranean termites; and

7. include a damage repair warranty and be exclusive to the property owner for 5 years subject to the terms and conditions of the contract, if the contract is for pre construction or new construction termiticide treatment.

B. - E. ...

F. The licensee or permittee shall pay to the department the required fee for each standard contract issued when the required monthly report is filed with the department.

G. Termite treatment contracts that include termite monitoring stations shall include a contract addendum that provides the number of monitoring station(s) and the

frequency of inspection(s). The contract addendum shall be approved by the commission prior to its use.

H. - H.5.…

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and R.S. 3:3370.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:328 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:957 (November 1989), LR 26:2437 (November 2000), LR 27:1179 (August 2001), LR 27:2084 (December 2001), LR 28:1171 (June 2002), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 30:196 (February 2004), LR 30:1144 (June 2004), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 31:26 (January 2005), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 35:1468 (August 2009).

§141. Minimum Specifications for Termite Control Work

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

B. Requirements for Trench and Treat

1. All trenches must be approximately 4 inches wide at the top angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at the rate and manner prescribed on the label and labeling. Rodding will be acceptable only when trenching will damage flowers and/or shrubs.

C. - C.7.d. …

8. Ground Treatment

a. …

b. All trenches must be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches.

9. - 10. …

D. Treatment of Existing Slab-Type Construction

1. Ground Treatment

a. ...

b. All trenches must be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches.

2. - 3.c. …

E. Pre-Treatment of Slabs

1. The licensee shall report the completion of the application to the outside of the foundation to the department on the termite perimeter application form. Within 12 months after initial treatment, the outside perimeter of the foundation, will be treated as follows:

a. trench around the entire perimeter of the structure being treated, adjacent to the foundation wall. All trenches must be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches;

b. rod under or drill through any slab(s) adjoining or abutting the initial pre-treated slab and treat all areas beneath adjoining or abutting slab(s) as per label and labeling instructions. When any slab(s) is drilled, the holes must be no more than 18 inches (unless label requires closer distance) apart along the above stated areas.

2. If, during the treatment of any area which will be beneath a slab foundation, the operator must leave the site for any reason prior to the completion of the application, the operator must prominently display a poster, furnished by the department, which states that the treatment of the area under the slab is not complete.

3. All pre-treatment of slabs must be called or faxed to the department's district office in which the pretreat occurs, a minimum of 1 hour prior to beginning the application of termiticides. The information provided shall include treatment company name; treatment structure street address, city, parish; directions to the property being pre-treated; date and time of beginning the application of termiticides to the property; square or linear footage of each structure to be treated; and number of structures. All pest control operators must keep a log of all pretreats including the information noted. The following is a list of parishes in each of the department's seven district offices. Pre-treatments in a parish shall be called into the corresponding district office.

a. - e. …

f. Baton Rouge District—Pointe Coupee, West Feliciana, East Feliciana, St. Helena, Tangipahoa, Washington, St. Tammany, Livingston, St. James, Lafourche, Terrebonne, Assumption, Ascension, Iberville, West Baton Rouge, and East Baton Rouge.

E.3.g. - J.6. ...

7. Ground monitoring and bait stations, used as monitors, shall be inspected bi-monthly, not to exceed 65 days, from the date of installation or last inspection. When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitor as required in LAC 7:XXV.141.J.9.

8. When there is termite feeding on any bait and/or monitoring station(s) at the contracted structure; all above ground bait stations and ground monitoring and bait stations shall be inspected bi-monthly, not to exceed 65 days from the date of installation or last inspection and such inspections shall continue until there is no termite feeding on any bait and\or monitoring station, in any station, at the contracted structure for 90 days from the date of installation or last inspection; When there is no termite feeding on any bait or monitoring station for 90 days from the date of installation or last inspection; monitor as required in LAC 7:XXV.141.J.9.

J.9. - L.3. …

M. Requirements for Borates Pre-construction Treatments

1. Treat according to the borate label.

2. A perimeter soil treatment shall be applied within 12 months after initial treatment, the outside perimeter of the foundation, shall be treated as follows:

a. trench around the entire perimeter of the structure being treated, adjacent to the foundation wall. All trenches must be approximately 4 inches wide at the top, angled toward the foundation and sufficiently deep (approximately 6 inches) to permit application of the required chemical. Apply the product mixture into the trench at a rate and manner prescribed on the label and labeling. Rodding will be acceptable where trenching will damage flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches;

b. rod under or drill through any slab(s) adjoining or abutting the slab and treat all areas beneath adjoining or abutting slab(s) as per label and labeling instructions. When any slab(s) is drilled, the holes must be no more than 18 inches (unless label requires closer distance) apart along the above stated areas;

3. treat bath traps as per termiticide label and labeling or as follows:

a. if the soil in a trap does not reach the bottom of the slab, the trap must be filled to within 2 inches of the top of the slab with soil prior to treatment. Treat bath trap(s) as required by label and labeling;

b. a tar filled bath trap must also be drilled and treated as required by label and labeling;

c. if bath trap is solid concrete pour, it must be drilled and treated as close as practical to the bathtub plumbing;

4. if, during the treatment of any area, the operator must leave the site for any reason prior to the completion of the application, the operator must prominently display a poster at the treatment site, which states that the treatment of the area is not complete;

5. the treatments of structures required in this section shall be called or faxed to the department's district office in which the treatment occurs, a minimum of one hour prior to beginning the application of termiticides. The information provided shall include: treatment company name; treatment structure street address, city, parish; directions to the property being pre-treated; date and time of beginning the application of termiticides to the property; square or linear footage of the each structure to be treated; and number of structures. Permitees or licensees shall keep a log of all pretreats including the information noted. The following is a list of parishes in each of the department's seven district offices. Treatments in a parish shall be called into the corresponding district office:

a. Shreveport District—Caddo, Bossier, Webster, Claiborne, Bienville, Red River, and Desoto;

b Monroe District—Union, Morehouse, West Carroll, East Carroll, Madison, Richland, Ouachita, Lincoln, Jackson, Winn, Caldwell, Franklin, Tensas, Concordia, and Catahoula;

c. Alexandria District—Sabine, Natchitoches, Grant, LaSalle, Avoyelles, Rapides, and Vernon;

d. Crowley District—Beauregard, Allen, Acadia, Jefferson Davis, Cameron, Calcasieu;

e. Opelousas District—Evangeline, St. Landry, St. Martin, Iberia, St. Mary, Vermillion, and Lafayette;

f. Baton Rouge District—Pointe Coupee, West Feliciana, East Feliciana, St. Helena, Tangipahoa, Washington, St. Tammany, Livingston, St. James, Lafourche, Terrebonne, Assumption, Ascension, Iberville, West Baton Rouge, and East Baton Rouge;

g. New Orleans District—St. John the Baptist, St. Charles, Jefferson, Orleans, St. Bernard, and Plaquemines;

6. all borate treatments shall be contracted and reported as provided by R.S. 3:3370 and §119.E of this Part and the fee for each such contract shall be paid in accordance with §119(F) of this Part;

7. records of contracts, graphs, monitoring (if required), and applications shall be kept as required by §117.I;

8. all retreatments shall be as required by §141.L of this Part;

9. the permittee or licensee shall report the completion of the application to the outside of the foundation to the department on the termite perimeter application form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:958 (November 1989), LR 20:644 (June 1994), LR 21:931 (September 1995), LR 23:1285 (October 1997), LR 25:235 (February 1999), LR 25:1620 (September 1999), LR 26:2437 (November 2000), LR 27:1180 (August 2001), LR 29:1063 (July 2003), LR 30:1145 (June 2004), repromulgated LR 30:1614 (August 2004), amended LR 35:207 (February 2009), LR 35:1469 (August 2009).

§145. Wood-Destroying Beetles

A. An active infestation of wood destroying beetles, as described below, shall be found by the pest control operator prior to recommending entering into a contract, applying a treatment, or performing a service to control or eradicate the infestation.

1. Powder Post Beetle (Anobiidae and Lyctidae)

a. Power post beetle frass must be exuding or streaming from the holes on the outside of the wood or live larvae or pupae are found in the wood members.

2. Old House Borer (Hylotrupes bajulus)

a. The presence of live larvae or pupae, adult beetles or oblong exit holes with frass in pine or other softwoods will be evidence of active infestation of the old house borer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:332 (April 1985), amended LR 35:1470 (August 2009).

Mike Strain, DVM
Commissioner

0908#101

RULE

Board of Elementary and Secondary Education

Board Tenure Hearings (LAC 28:I.725)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education (BESE) approved for advertisement revisions to the LAC 28:I.725.Rules for Board Tenure Hearings. This Rule, previously adopted as internal operating procedures in

December 2008, is now being formally promulgated as a part of the Louisiana Administrative Code. This Rule adds a new section to the BESE Administrative Code, setting forth the procedural rules governing BESE's tenure hearings. Those hearings determine the outcome of charges brought against tenured employees of the BESE Special Schools. While BESE has followed certain practices in the past during its tenure hearings, those practices had not been reduced to writing until December 2008. At that time, BESE adopted a set of Internal Operating Procedures for its tenure hearings, to make those practices more transparent. After adopting those procedures internally, BESE Board has now taken official action as a board to promulgate its rules of procedure under the Administrative Procedures Act.

Title 28
EDUCATION
Part I. Board of Elementary and Secondary Education
Chapter 7. Operations
§725. Rules for Board Tenure Hearings

A. The board shall hold its tenure hearings in accordance with the state statute entitled "Tenure for Certified Teachers in Special Schools" (R.S. 17:45), and with all state and federal law that may be applicable. One statute that may be applicable is the federal Family Educational Rights and Privacy Act (20 USC § 1232g; 34 CFR Part 99).

B. Each tenure case comes into existence when the board receives a written request for a tenure hearing and written charges. At least 15 days in advance of the hearing, the board shall furnish the teacher with notice that it has received a request for a tenure hearing and with a copy of the written charges.

C. The board may provide that an impartial hearing officer of its selection assist it by scheduling and conducting the tenure hearing. Such hearing officer has no vote on the charges or the disposition of the case overall.

D. All tenure hearings shall be held at Special Called Board Meetings.

E. The teacher shall have the right to appear before the board, with witnesses on his or her behalf and counsel of his or her own choosing, all of whom shall be heard by the board at the hearing. The teacher has the right to choose that the tenure hearing be public or private.

F. Subsequent to the board's receiving the request for hearing and the written charges, any submissions should be prepared on letter-sized paper, and signed by the attorney of record, if any. If a party has no attorney of record, the submissions should be signed by the person submitting them.

G. At the tenure hearing, the burden of proof of the facts is on the Department of Education, and the standard of proof is a preponderance of the evidence.

H. At the tenure hearing, the Department of Education shall present its case first. At the conclusion of the department's case, the teacher may present such case as the teacher deems appropriate. If the teacher does present evidence, at the conclusion of that presentation, the department has the right to present a case in rebuttal. Each side shall have the opportunity to offer closing arguments.

I. At the tenure hearing, six members of the board shall constitute a quorum.

J. During the tenure hearing, board members and the hearing officer may pose questions of any witness. Board members' questions shall each be submitted in writing to the hearing officer, who shall review them. Unless the hearing officer finds a board member's question not relevant, the hearing officer shall ask the question of the witness.

K. At the conclusion of the presentation of evidence and argument by the parties:

1. the board may vote to go into executive session to deliberate, unless the teacher requests that the board conduct any deliberations without an executive session;

2. if the board goes into executive session, no votes may be taken until it concludes its deliberations and returns to the hearing.

L. The board shall vote upon each charge separately, with a majority of the total membership of the board required to decide each charge. The board shall also vote upon the ultimate disposition of the case, with a majority of the total membership required to decide that question.

M. Following the board's vote, or votes, on the separate charges, and its vote on the ultimate disposition of the case, the hearing officer shall compile a written report of the board's findings and its ultimate disposition of the case.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 3(A); R.S. 17:43, 17:45; 42:6.1.A.; and 49:950, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:1471 (August 2009).

Jeanette B. Vosburg
Acting Executive Director

0908#066

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—Graduation Index; Alternative Education; Pre-GED/Skills Option
(LAC 28:LXXXIII.613, and Chapter 35)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC 28, Part LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an Accountability System for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's Accountability System is an evolving system with different components that are required to change in response to state and federal laws and regulations. The changes in Bulletin 111, Chapter 35 address the school district and BESE member concerns about alternative schools and students in accountability. These changes were submitted to BESE upon the recommendation of the Accountability Advisory Commission.

Title 28
EDUCATION
Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System

Chapter 6. Graduation Index

§613. Calculating a Graduation Index

A. Points shall be assigned for each member of a cohort during the cohort's fourth year of high school according to the following table.

1. Students who do not dropout and do not earn a diploma, a GED, a Skills Certificate, or a Certificate of Achievement after four years of high school are defined as attendees.

Student Result	Points
Academic OR Career/Technical Endorsement	180
TOPS Opportunity Award	160
BESE Approved Industry Based Certification OR TOPS Tech and Dual Enrollment OR TOPS Tech and Articulated Credit	140
Regular HS Diploma	120
GED	90
Skills Certificate/Certificate of Achievement	60
Attendee	30
Dropout	0

B. - C. …

D. Students who complete/exit high school in more than four years may earn incentive points for their school provided they are no older than 21 at the beginning of the academic year in which they exit.

1. The incentive points earned is the difference between those a student earned in the fourth year of high school and the points corresponding to the higher level at which the student exits high school in a subsequent year.

a. Students eligible for incentive points shall not be considered dropouts for graduation cohort calculations.

b. Incentive points shall not be awarded to students who are not enrolled in the school where they completed their fourth year of high school except in cases where the only obstacle to a diploma is passing a GEE exam.

i. The diploma must be earned no later than the third administration of the summer retest following the fourth year of high school of the students' cohort. For example, a student who finishes the fourth year of high school in 2009 must complete the GEE requirements before or during the 2011 summer test administration.

ii. When related to awarding incentive points, the enrollment must be continuous and consist of at least 45 calendar days.

c. Incentive points shall not be routed from alternative programs.

E. Schools that re-enroll students who dropped out of school will earn incentive points if the "reclaimed" students:

1. were considered dropouts and were included as such in the schools' accountability scores; and

2. are no older than 21 at the beginning of the academic year in which they are re-enrolled; and

3. complete/exit a second time with a GED or higher:

a. these "reclaimed" students shall not be considered dropouts a second time for graduation cohort calculations.

F. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:2031 (October 2007), LR 33:2594 (December 2007), LR 35:1472 (August 2009).

Chapter 35. Inclusion of Alternative Education Schools and Students in Accountability

§3501. Alternative Schools

A. For the purposes of school accountability, alternative schools are those schools established to meet the specific needs of students with special challenges that require educational environments that are alternatives to the regular classroom. They house one or more programs designed to address discipline, dropout prevention and recovery, the pre-GED/skills option program, credit recovery, etc. Schools are not considered alternative schools in accountability if created to provide programs for students who are academically advanced, gifted, talented, or pursuing specific areas of study (arts, engineering, medical, technical, etc.).

B. Beginning in 2008-09, each alternative school operated by an LEA shall receive annual accountability decisions provided the school has a statistically reliable aggregation of data—at least 40 testing units taken by students who are enrolled for a Full Academic Year.

C. Alternative schools with sufficient data shall receive School Performance Scores based on the assessment data of FAY students and any other data appropriate to the school's grade configuration.

D. Alternative schools with sufficient data shall also be evaluated in the Subgroup Component in the same manner as are regular schools.

E. School Performance Scores and subgroup evaluations for alternative school students shall consist of:

1. the assessment data of all eligible FAY student;

2. the attendance data of all enrollees (K-8 only);

3. the dropout data of all students who have been enrolled for a FAY prior to exiting;

4. graduation data of students who:

a. were enrolled at the alternative school for the FAY in their second year of high school;

b. entered the alternative school after their fourth year of high school and completed at a higher level. The alternative school earns the incentive points.

F. All eligible accountability data that is not included in the School Performance Score of the alternative school shall be routed to the sending school when the data collection and aggregation processes can produce accurate results except in the following instances.

1. Students transferring from outside the LEA must be enrolled at a non-alternative school for a FAY to be considered a sending school.

2. Accountability data shall not be routed across district lines except as described in Subsection H.

G. All eligible accountability data from an alternative school with insufficient data to be included in accountability shall be routed to the sending schools.

H. The Louisiana School for Math, Science, and the Arts shall be included in accountability according to its configuration, but its assessment data shall also be routed to the sending schools provided the sending schools have the same assessed grades as the routed data.

I. For routing purposes, a sending school is the school the student last attended.

J. In those cases where a particular grade-level assessment score must be routed from an alternative school to a sending school where the grade does not exist, scores shall be included as follows.

1. *i*LEAP results will be aggregated with the *i*LEAP grade closest in number or 1 grade-level lower.

2. LEAP/GEE results will be aggregated with the LEAP/GEE grade closest in number with consideration for subject area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended 31:423 (February 2005), LR 34:868 (May 2008), LR 35:1472 (August 2009).

§3503. Pre-GED/Skills Option Students

A. The assessment and exit data of a pre-GED/Skills Option student shall be routed to the sending school if the student is enrolled at a traditional (non-alternative) high school that would otherwise not be the student's home school.

B. GED/Skills Option students' iLEAP, LAA 1, and LAA 2 assessment results shall be included in accountability no more than three times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 30:2446 (November 2004), LR 32:1028 (June 2006), LR 33:2600 (December 2007), LR 34:868 (May 2008), LR 35:1473 (August 2009).

§3505. Alternative Schools for Adjudicated Youth

A. Any child who is in the custody of the office of juvenile services, Department of Public Safety and Corrections, as a result of being an adjudicated delinquent or in need of supervision by a court and assigned by the office of juvenile services to a community-based program or facility, as provided for in R.S. 17:100.1, shall be provided educational services pursuant to R.S. 17:100.1.

1. For those LEAs providing educational services directly to students in these programs/facilities, the facility shall be considered a district alternative school for accountability purposes and all data shall be included in the district accountability results regardless of FAY.

2. Subject to the requirements of R.S. 17:100.1(B), any city or parish school board may contract for the provision of educational services for children described in Subparagraph b.

a. If an LEA does satisfy its educational obligations by contract, the program/facility shall receive its own SPS.

b. The data for these students shall not be included in the local school district's data for district accountability purposes.

c. The assessment, dropout/exit and attendance results for these students shall be included in a "R.S. 17:100.1 school district" for accountability purposes. The department shall have the discretion to create multiple "R.S. 17:100.1 school districts" so that the accountability data accurately reflects the operation of the various programs/facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 34:868 (May 2008), LR 35:1473 (August 2009).

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0908#067

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Criminal Background Checks
(LAC 28:CXV.501)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §501, Criminal Background Checks. This revision revises the requirements for criminal background checks. The 10 year reporting limitation has been removed and now all criminal history information is being released. No additional criminal background checks are being required. The revision also requires a teacher or other school employee upon conviction or a plea of guilty to any criminal offense to report the fact to his employer within 48 hours of the conviction. The revision to §501 is required by Act 649 of the 2008 Louisiana Legislature.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 5. Personnel
§501. Criminal Background Checks

A. Each public LEA shall request in writing that the Louisiana Bureau of Criminal Identification and Information supply information to ascertain whether an applicant for employment as a teacher, substitute teacher, bus driver, substitute bus driver, or janitor, or as a temporary, part-time, or permanent employee of any kind, including any person employed to provide cafeteria, transportation, or janitorial or maintenance services by any person or entity that contracts with a school or school system to pervade such services, has been arrested for, convicted of, or pled nolo contendere to, any criminal offense.

1. The request must be on a form prepared by the bureau and signed by a responsible officer or official of the LEA making the request.

2. It must include a statement signed by the person about whom the request is made which gives his or her permission for such information to be released and must include the person's fingerprints in a form acceptable to the bureau.

3. A person who has submitted his or her fingerprints to the bureau may be temporarily hired pending the report from the bureau as to any convictions of, or pleas of nolo contendere to, by the person to a crime listed in R.S. 15:5871.

B. No person who has been convicted of or has pled nolo contendere to a crime listed in R.S. 15:5871.1 shall be hired by a public elementary or secondary school as a teacher, substitute teacher, bus driver, substitute bus driver, janitor, or as a temporary, part-time, or permanent employee of any kind, including any person employed to provide cafeteria, transportation, or janitorial or maintenance services by any person or entity that contracts with a school or school system to pervade such services unless approved in writing by a district judge of the parish and the district attorney or, if employed on an emergency basis, unless approved in writing by the superintendent of the school system.

1. This statement of approval shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer.

2. Not later than 30 days after its being placed on file by the school, the school principal shall submit a copy of the statement of approval to the State Superintendent of Education.

C. The LEA shall dismiss any permanent teacher or any other school employee having supervisory or disciplinary authority over school children, if such teacher or other employee is convicted of, or pled nolo contendere to, any crime listed in R.S. 15:587.1(c) except R.S. 14:74.

D. An LEA may reemploy a teacher or other school employee who has been convicted of, or pled nolo contendere to, a crime listed in R.S. 15:587.1(c), except R.S. 14:74, only upon written approval of the district judge of the parish and the district attorney or upon written documentation from the court in which the conviction occurred stating that the conviction has been reversed, set aside, or vacated.

1. Any such statement of approval of the judge and the district attorney and any such written documentation from the court shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer.

2. Not later that 30 days after its being placed on file by the school, the school principal shall submit a copy of any such statement of approval or written documentation from the court to the state superintendent of education.

E. A teacher or other school employee, upon final conviction or a plea of guilty or a plea of nolo contendere to any criminal offense, shall report the fact of the conviction or the plea of to his employer within 48 hours of the conviction or plea of guilty or nolo contendere.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:15; R.S. 15:587.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1265 (June 2005), amended LR 33:431 (March 2007), LR 34:607 (April 2008), repromulgated LR 35:443 (March 2009), amended LR 35:1473 (August 2009).

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0908#068

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—General Powers of Local Educational Governing Authorities (LAC 28:CXV.303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §303, General Powers of Local Educational Governing Authorities. This revision changes the requirements regarding the number of hours of training local school board must have from six total to four annually. The revision also changes the topics to be covered, who may provide the training, who should report the attendance and who should be responsible for verifying that the instruction meets the necessary requirements. The revision to §303 is required by Act 380 of the 2008 Louisiana Legislature.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 3. Operation and Administration
§303. General Powers of Local Educational Governing Authorities

A. Each city and parish school board shall determine the number and location of schools to be opened, and the number and selection of teachers and other certified personnel from recommendations made by the local superintendent.

B. Each city, parish, and other local school board is authorized to adopt rules and regulations for its own governance that are consistent with law and with the regulations of BESE.

1. Each member of a city and parish school board shall receive a minimum of four hours of training and instruction annually in the school laws of this state, in the laws governing the school boards, and in educational trends, research, and policy. In an LEA that has one or more schools identified as an academically unacceptable school or a school in need of academic assistance as defined by BESE, at least two of the required hours shall focus on the improvement of schools identified as failing schools as defined by BESE. The remaining hours shall focus on education policy issues, including but not limited to literacy and numeracy, leadership development, dropout prevention, career and technical education, redesigning high schools, early childhood education, school discipline, and harassment, intimidation, and bullying. Training shall also include instruction in Louisiana Open Meeting Laws and the Louisiana Public Bid Law.

2. The training may be received from a postsecondary education institution, the DOE, or the local school board central office staff, or the Louisiana School Board Association provided that the instruction and the method for

demonstrating attendance are pre-approved by the Louisiana School Board Association.

3. Each school board member's attendance must be reported by the instructor to the Louisiana School Board Association. Each school board member who completes required instruction shall receive a certificate of completion and a copy of such certificate shall be entered into the minutes of the school board on which the member serves.

4. The superintendent of the school system on which the school board member serves shall be responsible for verifying that the instruction meets the necessary requirements.

C. - K. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:53; R.S. 17:81; 17:81.2 17:81.4-8; R.S. 17:100.2; R.S. 17:104; R.S. 17:151.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1257 (June 2005), amended LR 35:1474 (August 2009).

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0908#069

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Professional Staff Development, and Student Services
(LAC 28:CXV.513, 1103, 1117, 1121 and 1129)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §513. Professional Staff Development, §1103. Compulsory Attendance, §1117. Child Welfare and Attendance, §1121. Immunizations, and §1129. Administration of Medication.

The changes are the result of legislation passed during the 2008 Regular Legislative Session.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 5. Personnel

§513. Professional Staff Development

A. - D. ...

E. Teachers, school counselors, principals and certain other school administrators in public elementary and secondary schools shall receive two hours of annual in-service training in suicide prevention.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.2; R.S. 17:3881 et seq., R.S. 17:437.1

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1267 (June 2005), amended LR 35:1475 (August 2009).

Chapter 11. Student Services

§1103. Compulsory Attendance

A. - G.1. ...

H. Each LEA shall develop and implement a system whereby the principal of a school, or his designee, shall notify the parent or legal guardian in writing upon a student's third unexcused absence or unexcused occurrence of being tardy, and shall hold a conference with such student's parent or legal guardian. The student's parent or legal guardian shall sign a receipt for such notification.

I. Tardy shall include but not be limited to leaving or checking out of school unexcused prior to the regularly scheduled dismissal time at the end of the school day but shall not include reporting late to class when transferring from one class to another during the school day.

J. The only exception to the attendance regulation shall be the enumerated extenuating circumstances that are verified by the Supervisor of Child Welfare and Attendance. Students shall be temporarily excused from the attendance regulation for the following reasons:

1. extended personal physical or emotional illness. Each LEA shall adopt policies regarding the requirement of a certificate from a physician or nurse practitioner licensed in the state in substantiation of the absence;

2. extended hospital stay as verified by a physician or dentist;

3. extended recuperation from an accident as verified by a physician, dentist, or nurse practitioner;

4. extended contagious disease within a family as verified by a physician or dentist; or

5. observance of special and recognized holidays of the student's own faith.

K. For any other extenuating circumstances, the student's parents or legal guardian must make a formal appeal in accordance with the due process procedures established by the LEA.

L. The only other exception to the attendance regulations shall be absences that are verified by the principal or his/her designee as stated below:

1. prior school system approved travel for education;
2. death in the family (not to exceed one week); or
3. natural catastrophe and/or disaster.

M. Students who are verified as meeting extenuating circumstances, and therefore eligible to receive grades, shall not receive those grades if they are unable to complete makeup work or pass the course.

N. Students participating in school-approved field trips or other instructional activities that necessitate their being away from school shall be considered to be present and shall be given the opportunity to make up work.

NOTE: Refer to §1117.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:221; R.S. 17:226; R.S 17:233.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1273 (June 2005), amended LR 32:546 (April 2006), LR 32:1030 (June 2006), LR 33:2351 (November 2007), LR 35:1475 (August 2009).

§1117. Child Welfare and Attendance

A. - D. ...

E. A student shall be considered habitually absent or habitually tardy when either condition continues to exist after all reasonable efforts by any school personnel, truancy officer, or other law enforcement personnel have failed to correct the condition after the fifth unexcused absence or fifth unexcused occurrence of being tardy within any school semester. The parent or legal guardian of a student shall enforce the attendance of the student at the school to which the student is assigned.

NOTE: Refer to§1103.h.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:232, R. S. 17:235, R.S. 17:233

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1276 (June 2005), amended LR 34:608 (April 2008), LR 35:1475 (August 2009).

§1121. Immunizations

A. Each person entering any school within the state for the first time, at the time of registration or entry, shall present satisfactory evidence of immunity to or immunization against vaccine-preventable diseases according to a schedule approved by the office of public health, Department of Health and Hospitals, or shall present evidence of an immunization program in progress. Beginning with the 2009-2010 school year and thereafter, each person entering the sixth grade in any school within the state shall present satisfactory evidence of immunity to or immunization against vaccine preventable diseases according to a schedule approved by the Office of Public Health, Department of Health and Hospitals, or shall present evidence of an immunization program in progress.

A.1. - C. ...

D. School principals shall be responsible for checking students' records to see that the provisions of this Section are enforced.

1. Chief Administrators of all public elementary and secondary schools, kindergartens, and pre-schools shall be responsible for checking students' records to see that the following provision is enforced: electronic transmission of immunization compliance reports when the public or private school has an existing student-specific electronic data system.

E. - G. ...

H. Each LEA that provides information relative to immunizations shall provide to the parent or legal guardian of each student in grades 6 through 12 information relative to the risks associated with human papillomavirus and the availability, effectiveness and known contraindications of immunization against human papillomavirus. Information shall describe the link between human papillomavirus and cervical cancer, the means by which human papillomavirus is spread and where a person may be immunized. Such information shall include a form on which such student's parent or legal guardian may grant written permission for the student to receive such information directly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:170; R.S. 17:170.3

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1277 (June 2005), amended LR 33:429 (March 2007), LR 35:1476 (August 2009).

§1129. Administration of Medication

A. - F.2.e. ...

3. No employee other than a registered nurse, licensed medical physician, an appropriate licensed health professional, or hired and trained unlicensed nursing personnel or unlicensed assistive personnel as defined by the Louisiana State Board of Nursing shall be required to perform an outside tracheotomy suctioning procedure on any child in an education setting. However, nothing shall prohibit an employee who volunteers to perform such procedure and who complies with the training and demonstration requirement from being allowed to perform such procedure on a child in an educational setting.

G. - H.1.NOTE: ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436.1, R.S. 17:437.1

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1278 (June 2005), amended LR 35:1476 (August 2009).

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0908#070

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Science Education (LAC 28:CXV.2304)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741—*Louisiana Handbook for School Administrators*: §2304, Science Education. Section 2304 specifies that BESE, at the request of the local school district, shall allow and assist educators in promoting critical thinking skills and objective discussion of scientific theories. It allows teachers, after teaching the content in the Louisiana Comprehensive Curriculum and the approved textbook, to use supplemental textbooks and materials in science classes with the permission of the local school board except for materials prohibited by BESE. The addition of Section 2304 is required by Act 473 of the 2008 Louisiana Legislature.

Title 28

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2304. Science Education

A. BESE shall, upon request of an LEA, allow and assist teachers and school administrators to create and foster an environment that promotes critical thinking skills, logical analysis, and open and objective discussion of concepts, laws, principles, and scientific theories.

1. Such assistance shall include support and guidance for teachers regarding effective ways to understand, analyze, critique, and objectively review concepts, laws, principles, and scientific theories.

2. Any LEA may request such assistance by contacting the Division of Curriculum Standards of the DOE.

B. Teachers shall teach the content presented in the Louisiana Comprehensive Curriculum or other curriculum developed by the LEA that is based on the Louisiana Science Content Standards and Grade-Level Expectations, and the standard textbook supplied by the LEA.

1. The teacher may then use supplemental textbooks and other instructional materials as permitted by the LEA unless otherwise prohibited by BESE.

C. Classroom instruction and materials shall not promote any religious doctrine, promote discrimination for or against a particular set of religious beliefs, or promote discrimination for or against religion or nonreligion

D. BESE shall determine which supplemental materials shall be prohibited from use in science classes in public schools according the procedure below.

1. Any Louisiana citizen may challenge materials used by an LEA by submitting a complaint to the Division of Curriculum Standards of the DOE for consideration by BESE. The complaint should contain the reasons for the challenge and cite evidence to substantiate the challenge.

2. The DOE will notify the LEA using the supplementary material that the complaint has been filed.

3. The DOE will conduct a meeting allowing the complainant, the LEA, and any interested parties adequate time to present their arguments and information and to offer rebuttals.

4. The DOE will make a recommendation to BESE based on the following criteria.

a. The supplemental materials must be grade-level appropriate.

b. The information contained in the supplemental materials must be scientifically sound and supported by empirical evidence.

c. The materials shall not promote any religious doctrine, promote discrimination for or against a particular set of religious beliefs, or promote discrimination for or against religion or nonreligion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:285.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:1476 (August 2009).

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0908#071

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Alternate Teacher Preparation Programs
(LAC 28:CXXXI.233 and 235)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, Board of Elementary and Secondary Education amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel:* §233, The Practitioner Teacher Program Alternative Path to Certification (Minimum Requirements) and §235. The Master's Degree program Alternative Path to Certification (Minimum Requirements). This revised policy will align with the undergraduate General/Special Education Mild/Moderate: An Integrated to Merged Approach program grade level and certification structure. Currently, the alternate programs offer certification in Mild/Moderate 1-12. The move to the integrated/merged programs will result in better prepared special education and regular education teachers to meet the needs of all children.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 2. Louisiana Teacher Preparation Programs
Subchapter B. Alternate Teacher Preparation Programs
§233. The Practitioner Teacher Program Alternative Path to Certification (Minimum Requirements)

A. State-approved private providers and Louisiana colleges or universities with an approved teacher education program may choose to offer a Practitioner Teacher Program for certification in Grades PK-3, 1-5, 4-8, 6-12, All-Level K-12 (art, dance, foreign language, health and physical education, and music), or General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 1-5, Grades 4-8 and Grades 6-12. The Practitioner Teacher Program is a streamlined certification path that combines intensive coursework and full-time teaching.

B. Admission to the Program. Program providers work with district personnel to identify Practitioner Teacher Program candidates who will be employed by districts during the fall and spring semesters for candidates admitted in a summer preparation session and during the spring semester and successive fall semester for candidates admitted in a fall preparation session. For admission, candidates must:

1. possess a non-education baccalaureate degree from a regionally accredited university;

2. have 2.50 or higher grade point average (GPA) on a 4.00 scale to enter a private provider program;

3. have 2.20 or higher grade point average (GPA) on a 4.00 scale to enter a college or university program;

4. pass the Praxis Pre-Professional Skills Tests (PPSTs) in reading, writing, and mathematics. Candidates who already possess a graduate degree will be exempted from this requirement;

5. pass the Praxis content specific examinations:

a. candidates for grades PK-3: pass Elementary Education: Content Knowledge (#0014);

b. candidates for grades 1-5 (regular education and mild/moderate): pass Elementary Education: Content Knowledge (#0014);

c. candidates for grades 4-8 (regular education and mild/moderate): pass the middle school subject-specific licensing examination(s) for the content area(s) to be certified;

d. candidates for grades 6-12 (regular education and mild/moderate): pass the secondary subject-specific examination(s) for the content area(s) to be certified. General-Special Education Mild/Moderate candidates seeking admission to an alternate program must pass a Praxis core subject area exam (English/language arts, foreign language, mathematics, the sciences, or social studies). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;

e. candidates for all-level K-12 areas of art, dance, foreign language, health and physical education, and music: pass the subject-specific examination for content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program. The provider must develop a process to ensure that candidates demonstrate necessary performance skills in the all-level certification area;

6. meet other non-course requirements established by college or university.

C. Teaching Preparation (Summer Preparation Session or Fall Preparation Session)

1. All teachers will participate in field-based experiences in school settings while completing the summer/fall courses (or equivalent contact hours).

2. Grades PK-3 practitioner teachers will successfully complete courses or equivalent contact hours that focus on child development or psychology, family and community relationships, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching internships. (12 credit hours or equivalent 180 contact hours)

3. Grades 1-5, 4-8, and 6-12 practitioner teachers will successfully complete courses or equivalent contact hours that focus on child or adolescent development or psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching internships. (9 credit hours or equivalent 135 contact hours)

4. General-Special Education Mild/Moderate. An Integrated to Merged Approach for Grades 1-5 practitioner teachers will successfully complete courses or equivalent contact hours that focus on methodology, behavior management (classroom management of students with disabilities), curriculum based assessment/IEP, vocational transition, foundation of reading, foundations of special education, and child psychology before starting their teaching internships. (12 credit hours or equivalent 180 contact hours)

5. General-Special Education Mild/Moderate. An Integrated to Merged Approach for Grades 4-8 practitioner teachers will successfully complete courses or equivalent contact hours that focus on methodology, behavior management (classroom management of students with disabilities), curriculum based assessment/IEP, vocational transition, reading and literacy, foundations of special education, child and adolescent psychology before starting their internships. (12 credit hours or equivalent 180 contact hours)

6. General-Special Education Mild/Moderate. An integrated to Merged Approach for Grades 6-12 practitioner teachers will successfully complete courses or equivalent contact hours that focus on methodology, behavior management (classroom management of students with disabilities), curriculum based assessment/IEP, vocational transition, reading and literacy, foundations of special education, adolescent psychology before starting their internships. (12 credit hours or equivalent 180 contact hours)

7. All-Level K-12 practitioner teachers will successfully complete courses or equivalent contact hours that focus on child and adolescent psychology, the diverse learner, classroom management and organization, assessment, instructional design, and instructional strategies across grade levels K-12 before starting their teaching internships. (9 credit hours or equivalent 135 contact hours)

D. Teaching Internship and First-Year Support (12 credit hours or equivalent 180 contact hours)

1. Practitioner teachers assume full-time teaching positions in districts. During the school year, candidates participate in two seminars (during the fall and during the spring or the spring and fall, depending on entry point) that address immediate needs of the Practitioner Teacher Program teachers, and receive one-on-one supervision through an internship provided by the program providers.

2. Practitioner teachers participating in the LaTAAP will receive support from school-based mentor teachers provided by the Louisiana Teacher Assistance and Assessment Program (LaTAAP) and principals. Practitioner teachers who are not participating in the LaTAAP or who have successfully completed the LaTAAP will be provided a mentor by the program provider.

3. For all-level areas (art, dance, foreign language, health and physical education, and music), field experiences should be provided across grades K-12.

4. For General-Special Education Mild/Moderate Grades 1-5, Grades 4-8 and Grades 6-12 seminars will cover instructional strategies in core content areas, state reading competencies with alignment to state literacy plan; numeracy strategies; classroom management; lesson plans—development and implementation; assessment; collaboration between special education and general education (e.g., co-planning, co-teaching, behavior intervention, accommodations, services/support); collaboration with parents; and data-driven decision making or any other identified needs. Technology will be addressed in all grade levels.

E. Teaching Performance Review (End of First Year)

1. Program providers, principals, mentors, and practitioner teachers form teams to review first-year teaching performance of practitioner teachers and determine the extent to which the practitioner teachers have demonstrated teaching proficiency.

2. Grades PK-3, Grades 1-5, Grades 4-8, Grades 6-12 and All-Level K-12: If weaknesses are cited, teams will identify additional types of instruction to address areas of need. Prescriptive plans that require from one to nine credit hours of instruction, or 15 to 135 equivalent contact hours, will be developed for practitioner teachers.

3. General-Special Education Mild/Moderate Special Education Candidates. If weaknesses are cited, teams will identify additional types of instruction to address areas of need. Prescriptive plans that require from three to nine credit hours of instruction, or 45 to 135 equivalent contact hours, will be developed for practitioner teachers.

F. Prescriptive Plan Implementation (Second Year)

1. Grades PK-3, Grades 1-5, Grades 4-8, Grades 6-12 and All-Level K-12—One to nine credit hours, or 15 to 135 contact hours. Candidates who demonstrate areas of need will complete prescriptive plans.

2. General-Special Education Mild/Moderate Special Education. (Three to nine credit hours, or 45 to 135 contact hours) Candidates who demonstrate area of need will

complete prescriptive plans. Practitioner teachers will use prescriptive hours to meet the reading competency requirements by completing the same number of semester hours in reading as required for undergraduate teacher preparation programs: (1) elementary 1-5 programs, nine hours; middle grades 4-8 programs, six hours; secondary grades 6-12 programs, three hours or (2) pass a reading competency assessment.

G. Total Hours Required in the Program

1. Grades PK-3 Program—24-33 credit hours (or equivalent 360-495 contact hours).

2. Grades 1-5, 4-8, 6-12, All-Level (K-12) Programs—21-30 credit hours (or equivalent 315-450 contact hours).

3. General-Special Education Mild/Moderate Grades 1-5, Grades 4-8, and Grades 6-12 Programs—27-33 credit hours (or equivalent 405-495 contact hours).

H. Praxis Review (Second Year). Program providers will offer review sessions to prepare practitioner teachers to pass remaining components of the Praxis.

I. Program requirements must be met within a three year time period. For certification purposes, private providers and colleges or universities will submit signed statements to the Department of Education indicating that the student completing the Practitioner Teacher Program alternative certification path met the following requirements:

1. passed the PPST components of the Praxis (Note: This test was required for admission);

2. completed all program requirements including the internship with a 2.50 or higher GPA (this applies to candidates in a university program);

3. completed prescriptive plans (if weaknesses were demonstrated);

4. passed the Praxis specialty examination for the area(s) of certification. (Note: This test was required for admission):

a. grades PK-3: Elementary Education: Content Knowledge (#0014);

b. grades 1-5 (regular and special education): Elementary Education: Content Knowledge (#0014);

c. grades 4-8 (regular and special education): Middle school subject-specific licensing examination(s) for the content area(s) to be certified;

d. grades 6-12 (regular and special education): Secondary subject-specific examination(s) for the content area(s) to be certified. General-Special Education Mild/Moderate candidates must pass a Praxis core subject area exam (English/language arts, foreign language, mathematics, the sciences, or social studies). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

e. all-level K-12 areas (art, dance, foreign language, health and physical education, and music): Subject-specific examination(s) for content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

5. passed the pedagogy examination (Praxis):

a. grades PK-3: Principles of Learning and Teaching Early Childhood (#0521)

b. grades 1-5: Principles of Learning and Teaching K-6 (#0522);

c. grades 4-8: Principles of Learning and Teaching 5-9 (#0523);

d. grades 6-12: Principles of Learning and Teaching 7-12 (#0524);

e. all-level K-12 Certification: Principles of Learning and Teaching K-6, 5-9, or 7-12;

f. general-special education mild/moderate: Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild to Moderate Disabilities (#0542); In addition to one of the following aligned to candidates grade level:

i. grades 1-5: Principles of Learning and Teaching K-6 (#0522);

ii. grades 4-8: Principles of Learning and Teaching 5-9 (#0523);

iii. grades 6-12: Principles of Learning and Teaching 6-12 (#0524);

6. all candidates entering an alternate certification program after May 1, 2004, must demonstrate proficiency in the Reading Competencies as adopted by the BESE through either of the following:

a. successfully complete the same number of semester hours in reading as required for undergraduate teacher preparation programs:

i. early childhood PK-3, elementary 1-5 or general-special education mild/moderate 1-5 programs, nine hours;

ii. middle grades 4-8 programs or general-special education mild/moderate 4-8, six hours;

iii. secondary 6-12 all-level K-12 or general-special education mild/moderate 6-12 programs, three hours;

iv. special education areas (Early Interventionist, Hearing Impaired, Significant Disabilities, or Visually Impaired), nine hours; or

b. pass a reading competency assessment.

J. Ongoing Support (Second and Third Year) Program providers will give support services to practitioner teachers during their second and third years of teaching. Support types may include online support, internet resources, special seminars, etc.

K. Professional License. A practitioner teacher will be issued a practitioner license in a specific level and area upon entrance to the program completion of the summer of fall teacher preparation session. The practitioner teacher is restricted to the specific level and area as designated on the practitioner license. He/she will be issued a Level 1 professional license upon successful completion of all program requirements. After three years of teaching in the area of certification and successful completion of the Louisiana Teacher Assistance and Assessment Program, he/she will be eligible for a Level 2 license.

L. Undergraduate, Graduate Courses; Graduate Programs. Universities may offer the Practitioner Teacher Program courses at the undergraduate or graduate level. Efforts should be made to allow students to use graduate hours as electives if they are pursuing a graduate degree.

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 32:1790 (October 2006), amended LR 34:1387 (July 2008), LR 35:1477 (August 2009).

§235. The Master's Degree Program Alternative Path to Certification (Minimum Requirements)

A. A Louisiana college or university with an approved teacher education program may choose to offer an alternative certification program that leads to a master's degree. The college or university may offer the master's degree program as either a Master of Education or a Master of Arts in Teaching. Master's Degree Programs may offer certification in Grades PK-3, 1-5, 4-8, 6-12, All-Level K-12 (art, dance, foreign language, health and physical education, music), Early Interventionist Birth to Five Years, General-Special Education Mild Moderate: An Integrated to Merged Approach for Grades 1-5, Grades 4-8, and Grades 6-12, Significant Disabilities 1-12, Hearing Impaired K-12, and Visual Impairments/Blind K-12.

B. For all special education programs, the Council for Exceptional Children (CEC) performance-based standards for accreditation and licensure must be met.

C. Admission to the Program. To be admitted, candidates must:

1. possess a non-education baccalaureate degree from a regionally accredited university;

2. have a 2.50 or higher grade point average (GPA) on a 4.00 scale;

3. pass the Praxis Pre-Professional Skills Tests (PPSTs) in reading, writing, and mathematics (individuals who already possess a graduate degree will be exempted from this requirement);

4. pass the Praxis content-specific subject area examination:

a. candidates for PK-3 (regular education)—Elementary Education: Content Knowledge (#0014);

b. candidates for Grades 1-5 (regular education and mild/moderate)—Elementary Education: Content Knowledge (#0014);

c. candidates for Grades 4-8 (regular education and mild/moderate)—the middle school subject-specific licensing examination(s) for the content area(s) to be certified;

d. candidates for Grades 6-12 (regular education and mild/moderate)—the secondary subject-specific examination(s) for the content area(s) to be certified. General-Special Education Mild/Moderate candidates seeking admission to an alternate program must pass a Praxis core subject area exam (English/language arts, foreign language, mathematics, the sciences, or social studies). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;

e. candidates for All-Level K-12 areas of art, dance, foreign language, health and physical education, and music—the subject-specific examination(s) for the content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program. The provider must develop a process to ensure that candidates demonstrate necessary performance skills in the all-level certification area;

f. candidates for special education Early Interventionist Birth to Five Years, Significant Disabilities 1-12, Hearing Impaired K-12, Visual Impairments/Blind K-12—Elementary Education: Content Knowledge (#0014);

5. meet other non-course requirements established by the college/university.

D. Program Requirements

1. Knowledge of Learner and the Learning Environment (15 credit hours)

a. Grades PK-3, 1-5, 4-8, 6-12—Child or adolescent development or psychology; the diverse learner; classroom management/organization; assessment; instructional design and instructional strategies.

b. General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 1-5—Behavior management (classroom management of students with disabilities), curriculum based assessment/IEP, vocational transition, foundations of special education and child psychology.

c. General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 4-8—Behavior management (classroom management of students with disabilities), curriculum based assessment/IEP, vocational transition, foundation of special education, child/adolescent psychology.

d. General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 6-12—Behavior management (classroom management of students with disabilities), curriculum based assessment/IEP, vocational transition, foundation of special education, adolescent psychology.

e. All-Level (grades K-12)—Coursework across grade levels K-12, as follows: Child and adolescent psychology; the diverse learner; classroom management/organization; assessment; instructional design and instructional strategies.

f. Special Education Early Interventionist Birth to Five Years (coursework specific to infants, toddlers, and preschoolers)—Child development or psychology; learning environment and behavior analysis; motor, sensory, and communication differences; teaming, physical, and medical management; understanding and working with families; communication and literacy in early intervention.

g. Special Education Significant Disabilities 1-12 (coursework specific to needs of children with significant disabilities)—Assessment and evaluation, including IEP and ESYP; communication strategies; behavior support; collaborative techniques and family partnerships; physical support, health and safety; special education law; characteristics of individuals with significant disabilities.

h. Special Education Hearing Impaired K-12 (coursework specific to the needs of hearing impaired students)—Assessment and evaluation; special needs of students with disabilities; transition; instructional strategies and planning in the content areas; instructional strategies in literacy; education law, special education law, school structure; technology in schools; diversity in schools.

i. Special Education Visual Impairments/Blind K-12 (coursework specific to the needs of visually impaired

students)—Educational implications of low vision and blindness; orientation and mobility for the classroom teacher; assessment/evaluation techniques, including functional vision evaluation and reading media assessment; assistive technology for the visually impaired; education law, special education law, school structure; transition.

2. Reading

a. General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 1-5: foundations of reading, reading and literacy (9 credit hours)

b. General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 4-8 and Grades 6-12: reading and literacy (6 credit hours)

3. Methodology and Teaching

a. For Grades PK-3, 1-5, 4-8, 6-12, All-Level K-12 (art, dance, foreign language, health and physical education, and music): Methods courses and field experiences. (12 to 15 credit hours)

b. For General-Special Education Mild/Moderate: Grades 1-5: methodology, instructional strategies in core content areas (3 to 6 hours)

c. For General-Special Education Mild/Moderate: Grades 4-8 and Grades 6-12: methodology, instructional strategies in specific core content area (6 hours)

NOTE: For All-Level K-12 areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

d. For special education Early Interventionist Birth to Five Years (coursework specific to needs of infants, toddlers, and preschoolers)—Curriculum; assessment; early intervention methods; understanding and facilitating play; teaching of reading and mathematics.

e. For special education Significant Disabilities 1-12 (coursework specific to needs of children with significant disabilities, across grades 1-12)—Curriculum development and modifications; transition planning; instructional strategies; inclusive education practices.

f. For special education Hearing Impaired K-12 (coursework specific to needs of children with hearing impairments across grades K-12)—Language development and linguistic principles in language acquisition; speech development, speech reading, audition training; assessment and evaluation; instructional strategies; audiology, and audiology training; anatomy and physiology of the hearing mechanism; auditory assistive devices; history and psychology of deafness; assistive devices and technology; proficiency in either signed, cued, or oral communication.

g. For special education Visual Impairments/Blind K-12 (coursework specific to needs of visually impaired students, across grades K-12)—Instructional strategies; Braille code, teaching Braille reading (with proficiency as defined in LA State Competencies); Nemeth code, teaching Braille mathematics; using slate and stylus.

4. Student Teaching or Internship—6-9 credit hours

NOTE: For all-level K-12 areas of art, dance, foreign language, health and physical education, and music, experiences should be provided across grades K-12.

5. Total hours required in the Grades PK-3, Grades 1-5, Grades 4-8, Grades 6-12, All-Level K-12, Early Interventionist Birth to Five Years, Significant Disabilities 1-12, Hearing Impaired, K-12, and Visual Impairments/Blind K-12 programs—33-39 credit hours

a. Total hours required in the General-Special Education Mild/Moderate: An Integrated to Merged Approach for Grades 1-5, Grades 4-8 and Grades 6-12 programs – 33-42 credit hours (Electives 0-3 credit hours)

E. Certification Requirements. Colleges/universities will submit signed statements to the Louisiana Department of Education indicating that the student completing the Master's Degree Program alternative certification path met the following requirements:

1. passed PPST components of Praxis (as required for admission);

2. completed all coursework in the Master's Degree alternate certification program with a 2.50 or higher grade point average (GPA);

3. passed the specialty examination (Praxis) for the area of certification (this test was required for admission):

a. grades PK-3 (regular education)—Elementary Education: Content Knowledge (#0014);

b. grades 1-5 (regular education and mild/moderate)—Elementary Education: Content Knowledge (#0014);

c. grades 4-8 (regular education and mild/moderate)—Middle school subject-specific licensing examination for content area to be certified;

d. grades 6-12 (regular education and mild/moderate)—Secondary subject-specific examination for content area(s) to be certified. General-Special Education Mild/Moderate candidates must pass a Praxis core subject area exam (English/language arts, foreign language, mathematics, the sciences, or social studies). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

e. all-level K-12 Certification—Subject-specific examination for content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

f. Special Education Early Interventionist (Birth to Five Years), Significant Disabilities 1-12, Hearing Impaired K-12, and Visual Impairments/Blind K-12—Elementary Education: Content Knowledge (#0014) specialty examination;

4. passed the pedagogy examination (Praxis):

a. grades PK-3 Principles of Learning and Teaching Early Childhood (#0521);

b. grades 1-5—Principles of Learning and Teaching K-6 (#0522);

c. grades 4-8—Principles of Learning and Teaching 5-9 (#0523);

d. grades 6-12—Principles of Learning and Teaching 7-12 (#0524);

e. all-level K-12 Certification—Principles of Learning and Teaching K-6, 5-9, or 7-12;

f. General-Special Education Mild/Moderate—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild to Moderate Disabilities (#0542); In addition to one of the following aligned to candidates grade level:

i. grades 1-5: Principles of Learning and Teaching K-6 (#0522);

ii. grades 4-8: Principles of Learning and Teaching 5-9 (#0523);

iii. grades 6-12: Principles of Learning and Teaching 6-12 (#0524);

g. Special Education Early Interventionist Birth to Five Years—Education of Exceptional Students: Core Content Knowledge (#0353) and Principles of Learning and Teaching: Early Childhood (#0521)

h. Special Education Significant Disabilities 1-12—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Severe to Profound Disabilities (#0544);

i. Special Education Hearing Impaired K-12—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Hearing Impairment (#0271);

j. Special Education Visual Impairments/Blind K-12—Education of Exceptional Students: Core Content Knowledge (#0353);

5. prior to receiving a Level 1 or higher professional teaching certificate, a candidate who entered an alternate certification program after May 1, 2004, is required to demonstrate proficiency in the Reading Competencies as adopted by the BESE through either of the following:

a. successfully complete the same number of semester hours in reading as required for undergraduate teacher preparation programs:

i. early childhood PK-3 or Elementary 1-5 programs, 9 hours;

ii. middle grades 4-8 programs, 6 hours;

iii. secondary 6-12 or All-Level K-12 programs, 3 hours;

iv. special Education areas (Early Interventionist, Hearing Impaired, Significant Disabilities, or Visually Impaired), 9 hours; or

b. pass a reading competency assessment.

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 32:1792 (October 2006), amended LR 35:1480 (August 2009).

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0908#072

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Certification-Only Program Alternative Path to Certification (LAC 28:CXXXI.237)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel:* §237. Certification-Only Program Alternative Path to Certification. This policy revision will allow state approved private providers as well as Louisiana colleges or universities to offer a certification only program. In addition, this policy will allow increased flexibility of delivery and expanded alternate certification options for individuals holding baccalaureate degrees to become certified in Louisiana. Currently, the non-masters/certification-only program can only be offered by Louisiana colleges or universities with an approved teacher education program.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 2. Louisiana Teacher Preparation Programs
Subchapter B. Alternate Teacher Preparation Programs
§237. Certification-Only Program Alternative Path to Certification

A. State approved private providers and Louisiana colleges or universities with an approved teacher education program may choose to offer a Certification-Only Program for certification in Grades PK-3, 1-5, 4-8, 6-12, All-Level K-12 (art, dance, foreign language, health and physical education, and music), Early Interventionist Birth to Five Years, Hearing Impaired K-12, Significant Disabilities 1-12, and Visual Impairments/Blind K-12. This program offers flexibility in delivery (e.g., face to face and/or online) and is designed to serve candidates who may not elect participation in or be eligible for certification under either the Practitioner Teacher Alternate Certification Program or the Master's Degree Alternate Certification Program.

B. All programs must address the state and national standards, including the performance-based standards for accreditation and licensure (e.g., CEC, NCTE, NCTM, NCSS, NAEYC, etc.).

C. Admission to the Program

1. Screening. The selection process will identify candidates that possess critical thinking skills, proven track records of achievement, a belief that all students can achieve, and a strong desire to teach in schools that educate under-served children.

2. Degree Requirements. Possess a non-education baccalaureate degree from a regionally accredited university.

3. GPA Requirements. The GPA may be calculated using the last 60 hours of coursework earned from a regionally accredited university:

a. have 2.50 or higher grade point average (GPA) on a 4.00 scale to enter a private provider program;

b. have 2.20 or higher grade point average (GPA) on a 4.00 scale to enter a college or university program;

4. Testing Requirements

a. Pass the Praxis Pre-Professional Skills Tests (PPSTs). Candidates who already possess a graduate degree will be exempted from this requirement. An ACT composite score of 22 or a SAT combined verbal/critical reading and math score of 1030 may be used in lieu of Praxis I PPST exams.

b. Pass the Praxis content-specific subject area examination:

i. candidates for PK-3 (regular education)—Elementary Education: Content Knowledge (#0014);

ii. candidates for Grades 1-5—Elementary Education: Content Knowledge (#0014);

iii. candidates for Grades 4-8—Pass the middle school subject-specific examination for the content area(s) to be certified;

iv. candidates for Grades 6-12—Pass the secondary subject-specific examination for the content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;

v. candidates for All-Level K-12 areas of art, dance, foreign language, health and physical education, and music—Pass the subject-specific examination for the content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program. Provider must develop a process to ensure that candidates demonstrate necessary performance skills in the all-level certification area;

vi. candidates for special education Early Interventionist Birth to Five Years, Significant Disabilities 1-12, Hearing Impaired K-12, and Visual Impairments/Blind K-12—Elementary Education: Content Knowledge (#0014).

D. Program Requirements and Structure

1. Eighty contact hours of classroom readiness training will focus on instructional design and delivery as well as classroom environment and classroom management. Candidates will be provided with professional guidance, support and opportunities to observe classroom teachers.

2. Knowledge of the Learner and the Learning Environment—12 hours or equivalent contact hours. All courses/contact hours for regular and special education will integrate effective teaching components, content standards, technology, reading, and portfolio development. Field-based experiences will be embedded in each course or contact hour. Courses/contact hours must address the following:

a. Grades PK-3, 1-5, 4-8, 6-12—child/adolescent development or psychology, the diverse learner, classroom management/organization/ environment, assessment, instructional design, and reading/ instructional strategies that are content and level appropriate;

b. All-Level K-12 areas—child psychology and adolescent psychology; the diverse learner; classroom management/organization/environment; assessment; instructional design; and reading/instructional strategies (all coursework/contact hours should address grade levels K-12);

c. Special Education Early Interventionist birth to five years (coursework/contact hours specific to infants, toddlers, and preschoolers)—child development or psychology; foundations in early childhood education; teaming, physical, and medical management; understanding and working with families; communication and literacy in early intervention;

d. Special Education Significant Disabilities 1-12 (coursework/contact hours specific to needs of children with significant disabilities)—assessment and evaluation; communication strategies; behavior support; collaborative techniques and family partnerships; physical support, health and safety; special education law; characteristics of individuals with significant disabilities;

e. Special Education Hearing Impaired K-12 (coursework/contact hours specific to the needs of hearing impaired students)—assessment and evaluation; special needs of students with disabilities; transition; instructional strategies and planning in the content areas; instructional strategies in literacy; education law, special education law, school structure; technology in schools; diversity in schools;

f. Special Education Visual Impairments/Blind K-12 (coursework/contact hours specific to the needs of visually impaired students)—educational implications of low vision and blindness; orientation and mobility for the classroom teacher; assessment/evaluation techniques, including functional vision evaluation and reading media assessment; assistive technology for the visually impaired; education law, special education law, school structure; transition.

3. Methodology and Teaching: Six semester hours or equivalent contact hours of content-specific methods courses and field/clinical experiences.

a. For Grades PK-3, 1-5, 4-8, 6-12, All-Level K-12 (art, dance, foreign language, health and physical education, and music), -methods courses/contact hours to include case studies and field experiences.

NOTE: For All-Level K-12 areas (Art, Dance, Foreign Language, Health and Physical Education, and Music), experiences should be provided across grades K-12.

b. For Special Education Early Interventionist Birth to Five Years (coursework/contact hours specific to needs of infants, toddlers, and preschoolers)—curriculum; assessment; early intervention methods (including understanding and facilitating play); teaching of reading and mathematics.

c. For Special Education Significant Disabilities 1-12 (coursework/contact hours specific to the needs of children with significant disabilities)—curriculum development and modifications; transition planning; instructional strategies; inclusive education practices.

d. For Special Education Hearing Impaired K-12 (coursework/contact hours specific to needs of children with hearing impairments, across grades K-12)—language development and linguistic principles in language acquisition; speech development, speech reading, audition training; assessment and evaluation; instructional strategies; audiology and audiology training; anatomy and physiology of the hearing mechanism; auditory assistive devices; history and psychology of deafness; assistive devices and technology; proficiency in either signed, cued, or oral communication.

e. For Special Education Visual Impairments/Blind K-12 (coursework/contact hours specific to needs of visually impaired students, across grades K-12)—instructional strategies; Braille code, teaching Braille reading (with proficiency as defined in LA State Competencies); Nemeth code, teaching Braille mathematics; using slate and stylus.

4. Reading Requirements. Candidates completing an alternate certification program after May 1, 2004, are required to demonstrate proficiency in the reading competencies as adopted by BESE through one of the following options:

a. successfully complete same number of semester hours in reading as required for undergraduate teacher preparation programs:

i. early childhood PK-3 or elementary 1-5 programs, nine hours;

ii. middle grades 4-8 programs, six hours;

iii. secondary 6-12 or all-level K-12 programs, three hours;

iv. special education areas (Early Interventionist, Hearing Impaired, Significant Disabilities, or Visually Impaired), nine hours; or

b. pass a reading competency assessment.

5. Internship or Student Teaching—six hours, to include participant-oriented methodology seminars.

a. For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), internship or student teaching experiences should be provided across grades K-12.

b. If the candidate has accumulated three years of successful teaching experience in an approved Louisiana school in the area(s) of certification, the private provider/university may substitute the three years of successful teaching experience for the required internship or student teaching portion of the program. Experience accumulated by elementary education certification candidates must be in core content areas at appropriate grade levels.

6. Mentoring and Support. Participants will receive content and/or pedagogy support during the school year through small group seminar meetings. The support will be provided by a master teacher who has experience teaching in the same or similar content area and grade level. The master teacher should focus on student achievement and instructional strategies with the program candidate. The master teacher can give the candidate one-on-one support and offer specific ways that the teacher can improve instruction techniques.

7. Total hours required in the program—27-33 credit hours or equivalent contact hours (405-495). Program requirements must be met within three years.

E. Licensure Requirements

1. Practitioner License (PL2)—a program candidate that is hired as a full-time teacher in an approved Louisiana school will be issued a Practitioner License 2. This license is issued at the request of the Louisiana employing school system for a specific grade level and content area once successful completion of the classroom readiness component has been verified. The teacher is restricted to the specific grade level and content area as designated on the Practitioner License 2.

2. Standard Professional License—a standard Level certificate may be issued after the applicant has:

a. completed all program requirements with a 2.50 or higher GPA (this applies to candidates in a university program); and

b. passed the pedagogy examination (Praxis):

i. grades PK-3—Principles of Learning and Teaching Early Childhood (#0521);

ii. grades 1-5—Principles of Learning and Teaching K-6 (#0522);

iii. grades 4-8—Principles of Learning and Teaching 5-9 (#0523);

iv. grades 6-12—Principles of Learning and Teaching 7-12 (#0524);

v. all-level K-12 certification—Principles of Learning and Teaching K-6, 5-9, or 7-12;

vi. Special Education Early Interventionist Birth to Five Years—Education of Exceptional Students: Core Content Knowledge (#0353) and Principles of Learning and Teaching Early Childhood (#0521);

vii. Special Education Significant Disabilities 1-12—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Severe to Profound Disabilities (#0544);

viii. Special Education Hearing Impaired K-12—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Hearing Impairment (#0271);

ix. Special Education Visual Impairments/Blind K-12—Education of Exceptional Students: Core Content Knowledge (#0353);

c. completed all requirements of the Certification-Only alternative certification path as verified to the Louisiana Department of Education by the program provider.

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 32:1794 (October 2006), amended LR 35:1482 (August 2009).

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0908#073

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Mild/Moderate Requirements
(LAC 28:CXXXI.629 and 630)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel:* §629. Requirements to add Mild/Moderate and §630. Requirements to add Mild/Moderate (1-5), (4-8), and (6-12)—Mandatory 7/1/2010. This revision in the Mild/Moderate add-on policy will allow an individual to become certified to teach special education at the specific grade levels of 1-5, 4-8, and 6-12. This change in policy is directly aligned to the undergraduate and alternate General/Special Education Mild/Moderate Integrated to Merged programs. The Blended General/Special Education Mild Moderate certification policy has been under review since September 2006. This review of the undergraduate program included university and district teams that attended three Mild/Moderate Special Education Licensure and Teacher Education Institutes hosted by the Department, Board of Elementary and Secondary Education, and Board of Regents between April-November 2007. Subcommittees were formed from these institutes to develop General/Special Education Mild-Moderate Integrated to Merged add-on certification policy. This is the policy that resulted from the subcommittee meetings.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 6. Endorsements to Existing Certificates
Subchapter B. Special Education Level and Area Endorsements

§629. Requirements to Add Mild/Moderate

A. Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary certificate (e.g., 6-12, 7-12, 9-12), special education certificate, or an All-Level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, and music) must achieve the following:

1. 15 semester hours of special education coursework, as follows:

a. methods/materials for mild/moderate exceptional children;

b. assessment and evaluation of exceptional learners;

c. behavioral management of mild/moderate exceptional children;

d. vocational and transition services for students with disabilities;

e. practicum in assessment and evaluation of M/M exceptional learners; or three years of successful teaching experience in Mild/Moderate.

2. Passing Score for Praxis Exams. Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild Moderate Disabilities (#0542).

3. Individuals who have completed all stipulations listed above will have until 7/1/2010 to have this endorsement added to their standard teaching certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1817 (October 2006), amended LR 35:1485 (August 2009).

§630. Requirements to add Mild/Moderate (1-5), (4-8) and (6-12)—Mandatory 7/1/2010

A. Mild/Moderate: 1-5—Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), or Early Interventionist certificate must achieve the following.

1. Eighteen Semester Hours to Include the Following Coursework

a. Assessment and Evaluation of Students with Disabilities—three semester hours. This course is designed for teachers to learn how to select, adapt, and use instructional interventions and behavioral strategies with students in a variety of settings. Students are required to apply knowledge and skills in a 45-hour field-based experience. Theoretical approaches, screening/ identification, educational placement considerations, and assessment and evaluation issues will be addressed.

b. Fundamentals of Instructional Technology—three semester hours- Instructional, utility, and management software applications for school use. Development of instructional materials, incorporation of commercially available software into lesson and unit structure. Addresses the use of technology as it relates to UDL (Universal Design for Learning) and how UDL can be used to meet the needs of all students with language development issues.

c. Behavior Support and Intervention—three semester hours. This course should address the knowledge, skills and dispositions necessary for teachers to proactively and systematically address student needs that underlie the presence of problem behaviors in schools and class rooms.

d. Collaborative Teaming—three semester hours. This course should focus on developing effective partnerships with parents, family members, general educators and related service providers.

e. Instructional Practices in Special Education—three semester hours. This course should provide teachers with the ability to select and utilize appropriate instructional strategies, assistive technologies, and instructional materials to address the strengths and needs of diverse learners in grades 1-5.

f. Reading and Literacy—three semester hours. This course should cover all aspects of state reading competencies at the elementary level, to include literacy intervention for students with disabilities.

2. Passing Score for Praxis exams—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild Moderate Disabilities (#0542).

B. Mild/Moderate: 1-5—Individuals holding a valid upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary certificate (e.g., 6-12, 7-12, 9-12), all-level special education certificate (Significant Disabilities, Visually Impaired or Hearing Impaired), or an all-level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, and music) must achieve the following.

1. Eighteen Semester Hours to Include the Following Coursework

a. Assessment and Evaluation of Students with Disabilities—three semester hours. This course is designed for teachers to learn how to select, adapt, and use instructional interventions and behavioral strategies with students in a variety of settings. Students are required to apply knowledge and skills in a 45-hour field-based experience. Theoretical approaches, screening/ identification, educational placement considerations, and assessment and evaluation issues will be addressed.

b. Fundamentals of Instructional Technology—three semester hours. Instructional, utility, and management software applications for school use. Development of instructional materials, incorporation of commercially available software into lesson and unit structure. Addresses the use of technology as it relates to UDL (Universal Design for Learning) and how UDL can be used to meet the needs of all students with language development issues.

c. Behavior Support and Intervention—three semester hours. This course should address the knowledge, skills and dispositions necessary for teachers to proactively and systematically address student needs that underlie the presence of problem behaviors in schools and class rooms.

d. Collaborative Teaming—three semester hours. This course should focus on developing effective

partnerships with parents, family members, general educators and related service providers.

e. Instructional Practices in Special Education—three semester hours. This course should provide teachers with the ability to select and utilize appropriate instructional strategies, assistive technologies, and instructional materials to address the strengths and needs of diverse learners in grades 1-5.

f. Reading and Literacy—three semester hours. This course should cover all aspects of state reading competencies at the elementary level, to include literacy intervention for students with disabilities.

2. Passing Score for Praxis Exams—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild Moderate Disabilities (#0542), Principles of Learning and Teaching (PLT): K-6, and Elementary Content Knowledge Exam (0014).

C. Mild/Moderate: Middle Grades 4-8 and Secondary 6-12. Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), or Early Interventionist certificate must achieve the following.

1. Eighteen Semester Hours to Include the Following Coursework

a. Assessment and Evaluation of Students with Disabilities—three semester hours. This course is designed for teachers to learn how to select, adapt, and use instructional interventions and behavioral strategies with students in a variety of settings. Students are required to apply knowledge and skills in a 45-hour field-based experience. Theoretical approaches, screening/ identification, educational placement considerations, and assessment and evaluation issues will be addressed.

b. Fundamentals of Instructional Technology—three semester hours. Instructional, utility, and management software applications for school use. Development of instructional materials, incorporation of commercially available software into lesson and unit structure. Addresses the use of technology as it relates to UDL (Universal Design for Learning) and how UDL can be used to meet the needs of all students with language development issues.

c. Self-Determination and Transition—three semester hours. This course presents self-determination and development, implementation, and evaluation of self-management instructional programs for students. Emphasis is upon using self-management and learning strategies to facilitate self-determination. Provides the teacher with an understanding of the special education transition process as specified by federal and state guidelines and the focus on the design and implementation of transition planning that meets students' physical, affective, cognitive and communicative needs across the contexts of school, community, family life, career and vocation and recreation/leisure.

d. Behavior Support and Intervention—three semester hours. This course should address the knowledge, skills and dispositions necessary for teachers to proactively and systematically address student needs that underlie the presence of problem behaviors in schools and class rooms.

e. Collaborative Teaming—three semester hours. This course should focus on developing effective partnerships with parents, family members, general educators and related service providers.

f. Instructional Practices in Special Education—three semester hours. This course should provide teachers with the ability to select and utilize appropriate instructional strategies, assistive technologies, and instructional materials to address strengths and needs of diverse learners in grades 6-12 with concentration in areas of literacy and numeracy.

2. Passing Score for Praxis Exams

a. Mild/Moderate (4-8) and (6-12)—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild Moderate Disabilities (#0542); and

b. Mild/Moderate (4-8)—Principles of Learning and Teaching (PLT): 5-9 and Middle School Content Exam(s); or

c. Mild/Moderate (6-12)—Principles of Learning and Teaching (PLT): 7-12 and High School Content Exam(s).

D. Mild/Moderate: Middle Grades 4-8 and Secondary 6-12. Individuals holding a valid upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8) must achieve the following.

1. Eighteen Semester Hours to Include the Following Coursework

a. Assessment and Evaluation of Students with Disabilities—three semester hours. This course is designed for teachers to learn how to select, adapt, and use instructional interventions and behavioral strategies with students in a variety of settings. Students are required to apply knowledge and skills in a 45-hour field-based experience. Theoretical approaches, screening/ identification, educational placement considerations, and assessment and evaluation issues will be addressed.

b. Fundamentals of Instructional Technology—three semester hours. Instructional, utility, and management software applications for school use. Development of instructional materials, incorporation of commercially available software into lesson and unit structure. Addresses the use of technology as it relates to UDL (Universal Design for Learning) and how UDL can be used to meet the needs of all students with language development issues.

c. Self-Determination and Transition—three semester hours. This course presents self-determination and development, implementation, and evaluation of self-management instructional programs for students. Emphasis is upon using self-management and learning strategies to facilitate self-determination. Provides the teacher with an understanding of the Special Education transition process as specified by federal and state guidelines and the focus on the design and implementation of transition planning that meets students' physical, affective, cognitive and communicative needs across the contexts of school, community, family life, career and vocation and recreation/leisure.

d. Behavior Support and Intervention—three semester hours. This course should address the knowledge, skills and dispositions necessary for teachers to proactively and systematically address student needs that underlie the presence of problem behaviors in schools and class rooms.

e. Collaborative Teaming—three semester hours. This course should focus on developing effective

partnerships with parents, family members, general educators and related service providers.

f. Instructional Practices in Special Education—three semester hours. This course should provide teachers with the ability to select and utilize appropriate instructional strategies, assistive technologies, and instructional materials to address strengths and needs of diverse learners in grades 6-12 with concentration in areas of literacy and numeracy.

2. Passing Score for Praxis Exams

a. Mild/Moderate (4-8) and (6-12)—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild Moderate Disabilities (#0542); and/or

b. Mild/Moderate (6-12)—Principles of Learning and Teaching (PLT): 7-12 and High School Content Exam(s).

E. Mild/Moderate: Middle Grades 4-8 and Secondary 6-12. Individuals holding a valid secondary certificate (e.g., 6-12, 7-12, 9-12), all-level special education certificate (Significant Disabilities, Visually Impaired, or Hearing Impaired), or an all-level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, and music) must achieve the following.

1. Eighteen Semester Hours to Include the Following Coursework

a. Assessment and Evaluation of Students with Disabilities—three semester hours. This course is designed for teachers to learn how to select, adapt, and use instructional interventions and behavioral strategies with students in a variety of settings. Students are required to apply knowledge and skills in a 45-hour field-based experience. Theoretical approaches, screening/identification, educational placement considerations, and assessment and evaluation issues will be addressed.

b. Fundamentals of Instructional Technology—three semester hours. Instructional, utility, and management software applications for school use. Development of instructional materials, incorporation of commercially available software into lesson and unit structure. Addresses the use of technology as it relates to UDL (Universal Design for Learning) and how UDL can be used to meet the needs of all students with language development issues.

c. Self-Determination and Transition—three semester hours. This course presents self-determination and development, implementation, and evaluation of self-management instructional programs for students. Emphasis is upon using self-management and learning strategies to facilitate self-determination. Provides the teacher with an understanding of the Special Education transition process as specified by federal and state guidelines and the focus on the design and implementation of transition planning that meets students' physical, affective, cognitive and communicative needs across the contexts of school, community, family life, career and vocation and recreation/leisure.

d. Behavior Support and Intervention—three semester hours. This course should address the knowledge, skills and dispositions necessary for teachers to proactively and systematically address student needs that underlie the presence of problem behaviors in schools and class rooms.

e. Collaborative Teaming—three semester hours. This course should focus on developing effective partnerships with parents, family members, general educators and related service providers.

f. Instructional Practices in Special Education—three semester hours. This course should provide teachers with the ability to select and utilize appropriate instructional strategies, assistive technologies, and instructional materials to address strengths and needs of diverse learners in grades 6-12 with concentration in areas of literacy and numeracy.

2. Passing Score for Praxis Exams

a. Mild/Moderate (4-8) and (6-12)—Education of Exceptional Students: Core Content Knowledge (#0353) and Education of Exceptional Students: Mild Moderate Disabilities (#0542); and/or

b. Mild/Moderate (4-8)—Principles of Learning and Teaching (PLT): 5-9 and Middle School Content Exam(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1817 (October 2006), amended LR 35:1485 (August 2009).

Jeanette B. Vosburg
Acting Executive Director

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-Field Authorization to Teach (OFAT)(LAC 28:CXXXI.325)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel:* §325, Out-of-Field Authorization to Teach (OFAT). This revision in policy will allow the OFAT certificate to be issued for one three year period. Pursuant to current policy, applicants pursuing certification in the areas of Academically Gifted, Significant Disabilities, Early Interventionists, Hearing Impaired, and Visually Impaired may be granted two additional years on an OFAT. Applicants pursuing certification in the area of Mild/Moderate may be granted one additional year on an OFAT. This action came about from continued requests from Louisiana employing school districts. This change will help decrease the amount of paperwork that has to be submitted annually for the renewals of OFAT certificates.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 3. Teaching Authorizations and Certifications
Subchapter B. Nonstandard Teaching Authorizations
§325. Out-of-Field Authorization to Teach (OFAT)

A. Out-of-Field Authorization to Teach (OFAT)—issued for one three-year period while the holder pursues endorsement (add-on) certification requirements. If the teacher is actively pursuing certification in the field and the

Louisiana Department of Education has designated the area as an area that requires extensive hours for completion, up to two additional years of renewal may be granted.

B. Eligibility Requirements: Issued to an applicant who holds a valid Louisiana Out-of-State Certificate; Temporary Employment Permit; or a Type C, Type B, Type A, Level 1, Level 2, or Level 3 teaching certificate but is teaching outside of the certified area(s).

C. OFAT Stipulations

1. Districts must submit the application and provide an affidavit signed by the local superintendent verifying that good faith efforts for recruiting certified personnel have been made, including consulting the Teach Louisiana website; that "there is no regularly certified, competent, and suitable person available for the position;" and that the applicant is the best-qualified person for the position.

2. If the teacher is actively pursuing certification in the field and the Louisiana Department of Education designates the area as an area that requires extensive hours for completion, up to two additional years of renewal may be granted. Designated areas are as follows:

a. applicants pursuing certification in Academically Gifted, Significant Disabilities, Early Interventionist, Hearing Impaired, and Visual Impairments/Blind may be granted two additional years of renewal;

b. applicants pursuing certification in Mild/Moderate may be granted one additional year of renewal.

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 32:1804 (October 2006), amended LR 33:2355 (November 2007), LR 35:1487 (August 2009).

Jeanette B. Vosburg
Acting Executive Director

0908#075

RULE

Board of Elementary and Secondary Education

Bulletin 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools
(LAC 28:XXXI.503 and 507)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools*: §503. Driver Education and Training Program for Children and §507. Driver Education; Required. The proposed policies require that (1) the Department of Education now work in consultation with the Department of Public Safety and Corrections to develop and operate a driver education course; (2) replace "children of secondary school age" with "children who are 15 years of age or older" for participation in a driver education course; and (3) increase actual driving experience from six hours to eight hours in a driver education course. The proposed policy changes are the result of SB 465 passed during the 2008 Regular Legislative Session.

Title 28

Part XXXI. Bulletin 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools

Chapter 5. Administrative Policies

§503. Driver Education and Training Program for Children (R.S.17:270)

A. The State Board of Education and the State Department of Education, in consultation with the Department of Public Safety and Corrections, shall establish and operate a driver education and training program in each parish of this state for children who are 15 years of age or older. The program shall consist of a course of not less than eight hours of actual driving experience and 30 hours of classroom instruction. The State Board of Elementary and Secondary Education shall provide written notice to each city, parish, and local school board of the requirements of the provisions of this Subsection.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(5).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1219 (July 1999), amended LR 35:1488 (August 2009).

§507. Driver Education; Required (R.S.32:402.1)

A. No application for a license for the operation of a motor vehicle shall be received from any person 17 years or older making application for the first time unless there is also submitted with the application, on a form approved by the secretary of the Department of Public Safety and Corrections, written evidence of the successful completion by the applicant of:

1. a "driver education course", which shall consist of not less than eight hours of actual driving experience and 30 hours of classroom instruction, including but not limited to training of railroad and highway grade crossing safety, approved by the Department of Public Safety and Corrections or the Department of Education.

A.2. - B. ...

C. Beginning one year after the appropriation of funds by the legislature to the State Department of Education for the implementation of a driver education and training program for all children of secondary school age in each parish of this state, and upon the certification by the state superintendent of education to the secretary of public safety that such program is operating in each parish of this state, no application for the operation of a motor vehicle shall be received from a minor 16 years of age or older unless there is also submitted with the application, on a form approved by the secretary of public safety, written evidence of successful completion by the applicant of a "driver education course" approved by the State Board of Elementary and Secondary Education or the Department of Public Safety and Corrections.

D. No person under the age of 15 shall be allowed to enroll or participate in any driver education course or driver training program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(5).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1220 (July 1999), amended LR 35:1488 (August 2009).

Jeanette B. Vosburg.
Acting Executive Director

0908#076

RULE

Student Financial Assistance Commission
Office of Student Finanical Assistance

Cosmetology and Proprietary Schools
(LAC 28:IV.301, 805, 1901, and 1903)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6). (SG09105R)

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

* * *

Average Award Amount (TOPS-Tech)—is applicable to those students awarded the TOPS-Tech and TOPS Opportunity, Performance, and Honors Awards who attend LAICU colleges and universities and to those students awarded the TOPS-Tech Award who attend an eligible cosmetology or proprietary school and are enrolled in a vocational, technical education certificate or diploma program or non-academic undergraduate degree program, and is determined by dividing the total dollar value of awards, which are made to students enrolled in the same types of programs in the prior program year (non-academic program) at eligible public colleges and universities that do not offer academic degrees at the baccalaureate level, by the total number of students that received the awards. To ensure that the average award amount (TOPS Tech) is not reduced for students during program year (non-academic program) 2006-2007 because of the adverse affects of Hurricanes Katrina and Rita on student enrollment, the average award amount (TOPS Tech) for program year (non-academic program) 2006-2007 shall be the same as calculated for program year (non-academic program) 2005-2006.

* * *

Eligible Cosmetology or Proprietary School—a cosmetology or proprietary school that is included as an eligible college or university in this Section.

* * *

Full-Time Student—

a. - f. …

g. a student enrolled in an eligible cosmetology or proprietary school who is considered by the school to be enrolled full time on a billing date as provided in §1903.B.2.b.

* * *

Steady Academic Progress—the maintenance of a minimum cumulative grade point average of 2.00 on a 4.00 scale, except at eligible cosmetology or proprietary schools, where it is meeting the federal grant aid requirement for steady academic progress at that school.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:1489 (August 2009).

Chapter 8. TOPS-Tech Award

§805. Maintaining Eligibility

A. - A.6. …

7. maintain, by the end of the spring term, a cumulative college grade point average of at least 2.50 on a 4.00 maximum scale, provided that this requirement does not apply to a student who is enrolled in a cosmetology or proprietary school that is an eligible college or university and the student has met the federal grant aid steady academic progress requirement at that school; and

8. earn a total of at least 24 college credit hours as determined by totaling the earned hours reported by the institution for each semester or term in the program year (non-academic program). Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility. provided that this requirement does not apply to a student who is enrolled in a cosmetology or proprietary school that is an eligible college or university and the student has met the federal grant aid steady academic progress requirement at that school.

B. - D.3. …

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) amended LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), repromulgated LR 27:1856 (November 2001), amended LR 28:774 (April 2002), LR 28:2332 (November 2002), LR 29:880 (June 2003), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1165 (June 2004), LR 30:2019 (September 2004), LR 31:3115 (December 2005), LR 33:438 (March 2007), LR 35:1489 (August 2009).

Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions

§1901. Eligibility of Post-Secondary Institutions to Participate

A. - E. …

F. Eligible cosmetology and proprietary schools may participate in TOPS, but only for the TOPS Tech Award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 30:784 (April 2004), LR 31:3111 and 3114 (December 2005), LR 35:1490 (August 2009).

§1903. Responsibilities of Post-Secondary Institutions

A. - B.1. …

2. institutions will bill LASFAC based on their certification that the recipient of a TOPS Award or a GO-Youth ChalleNGe Program Grant is enrolled full-time, as defined in §301:

a. at eligible colleges and universities, except cosmetology and proprietary schools, at the end of the fourteenth class day or later for semester schools and the ninth class day or later for quarter and term schools, and for any qualifying summer sessions at the end of the last day to drop and receive a full refund for the full summer session. Institutions shall not bill for students who are enrolled less than full-time at the end of the fourteenth class day for semester schools or the ninth class day for quarter and term schools, and for any qualifying summer sessions at the end of the last day to drop and receive a full refund for the summer session, unless the student qualifies for payment for less than full-time enrollment as defined in §2103.C. Students failing to meet the full-time enrollment requirement are responsible for reimbursing the institution for any awards received. Refunds of awards to students who are not receiving federal Title IV aid, for less than full-time enrollment after the fourteenth or ninth class day, as applicable, shall be returned to the state. Refunds to students who are receiving federal Title IV aid shall be refunded to the state in accordance with the institution's federal Title IV aid refund procedures;

b. at eligible cosmetology or proprietary schools, on a billing date for students who were enrolled full time on that date. The billing dates are September 1, December 1, March 1 and June 1. Institutions shall not bill for students who are enrolled less than full-time on a billing date, unless the student qualifies for payment for less than full-time enrollment as provided in §2103.C. Students failing to meet the full-time enrollment requirement are responsible for reimbursing the institution for any awards received. Refunds of awards to students who are not receiving federal Title IV aid, for less than full-time enrollment shall be returned to the state. Refunds to students who are receiving federal Title IV aid shall be refunded to the state in accordance with the institution's federal Title IV aid refund procedures;

B.3. - 7.a. …

b. all other eligible colleges and universities, except eligible cosmetology or proprietary schools, may bill for an amount up to the *average award amount (TOPS-Tech)*, as defined in §301;

c. eligible cosmetology and proprietary schools may bill for an amount of up to one quarter of the annual *average award amount (TOPS-Tech)*, as defined in §301;

B.8. - D.5.a. …

b. verify the student is in good standing;

6. for TOPS-Tech Awards at cosmetology or proprietary schools:

a. verify the student has continued to make steady academic progress; and

b. verify the student is enrolled full time on the billing date.

E. - G. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, 17:3041.10-3041.15, 17:3041.21-3041.26 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998, 2002 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333 (November 2002), LR 30:784 (April 2004), LR 30:1166 (June 2004), LR 31:40 (January 2005), LR 31:3111, 3114 (December 2005), LR 33:1340 (July 2007), LR 35:1490 (August 2009).

George Badge Eldredge
General Counsel

0908#054

RULE

Student Financial Assistance Commission
Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.301, 1303, and 1903)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6). (SG09107R)

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

* * *

Qualified Summer Session—those summer sessions (includes terms and semesters conducted during the summer) for which the student's institution certifies that:

a. - e. …

f. beginning with the summer of 2010, prior to the beginning of the summer session, the student:

i. has at least 60 academic college credit hours;

ii. has enrolled as a full time student for the summer session; and

iii. has signed a form provided by LOSFA:

(a). requesting payment for the summer session from the student's remaining TOPS eligibility;

(b). stating the student understands that the use of the TOPS award for the summer session reduces the student's TOPS eligibility by one semester or term;

(c). stating the student understands that the hours earned cannot be used to meet the TOPS requirement to earn at least 24 hours each academic year; and

(d) stating the student understands that the grades earned during the summer session will be included in the student's cumulative grade point average.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:228 (February 2009), LR 35:1490 (August 2009).

Chapter 13. Leveraging Educational Assistance Partnership (LEAP)

§1303. Establishing Eligibility

A. - 3. …

4. have a high school diploma with at least a 2.00 cumulative grade point average, or a minimum average score of 450 on the General Educational Development (GED) test, or an ACT composite score of at least 20, or a post-secondary grade point average of at least 2.00 from the most recent term; and

5. - 12. …

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:641 (April 1998), amended LR 24:1910 (October 1998), LR 25:1459 (August 1999), repromulgated LR 27:1861 (November 2001), amended LR 28:448 (March 2002), LR 35:1491 (August 2009).

Chapter 19. Eligibility and Responsibilities of Post-Secondary Institutions

§1903. Responsibilities of Post-Secondary Institutions

A. - F. …

G. Certification of Qualified Summer Session

1. Each student requesting payment must sign a form provided by LOSFA:

i. requesting payment for the summer session from the student's remaining TOPS eligibility;

ii.. stating the student understands that the use of the TOPS award for the summer session reduces the student's TOPS eligibility by one semester or term;

iii. stating the student understands that the hours earned cannot be used to meet the TOPS requirement to earn at least 24 hours each academic year; and

iv. stating the student understands that the grades earned during the summer session will be included in the student's cumulative grade point average.

2. The institution's submission of a payment request for tuition for a student's enrollment in a summer session will constitute certification of: the student's eligibility for tuition payment for the summer session; receipt from the student of a signed written acknowledgment and consent that each payment will consume one semester of eligibility; and the student's enrollment in the summer session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, 17:3041.10-3041.15, 17:3041.21-3041.26 and R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:645 (April 1998), amended LR 24:1914 (October 1998), LR 25:1459 (August 1999), LR 26:1998 and 2002 (September 2000), repromulgated LR 27:1864 (November 2001), amended LR 28:448 (March 2002), LR 28:775 (April 2002), LR 28:1760 (August 2002), LR 28:2333 (November 2002), LR 30:784 (April 2004), LR 30:1166 (June 2004), LR 31:40 (January 2005), LR 31:3111, 3114 (December 2005), LR 33:1340 (July 2007), LR 35:1491 (August 2009).

George Badge Eldredge
General Counsel

0908#055

RULE

Tuition Trust Authority
Office of Student Financial Assistance

Interest Rates—2008 (LAC 28:VI.107 and 315)

The Louisiana Tuition Trust Authority has amended its START Saving Program rules (R.S. 17:3091 et seq.) (SG09106R).

Title 28
EDUCATION
Part VI. Student Financial Assistance—Higher Education Savings

Chapter 1. General Provisions

Subchapter A. Tuition Trust Authority

§107. Applicable Definitions

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa:

* * *

Qualified Higher Education Expenses—

a. tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution; and

b. room and board; and

c. expenses for special needs services in the case of a special needs beneficiary, which are incurred in connection with such enrollment or attendance; and

d. for the calendar years 2009 and 2010 only, expenses paid or incurred for the purchase of any computer technology or equipment or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is enrolled at an eligible educational institution, but shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominately educational in nature.

* * *

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November 2002), LR 29:556 (April 2003), LR 30:786 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 31:639 (March 2005), LR 32:1433 (August 2006), LR 32:2240 (December 2006), LR 33:443 (March 2007), LR 34:1885 (September 2008), LR 35:1491 (August 2009).

Chapter 3. Education Savings Account

§315. Miscellaneous Provisions

A. - B.18. …

19. For the year ending December 31, 2008, the Louisiana Education Tuition and Savings Fund earned an interest rate of 4.65 percent.

20. For the year ending December 31, 2008, the Savings Enhancement Fund earned an interest rate of 4.39 percent.

C. - S.2. …

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:2359 (November 2007), LR 34:1886 (September 2008), LR 35:1492 (August 2009).

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General Counsel

0908#053

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Interstitial Monitoring Requirement for Emergency Power Generator UST Systems (LAC 33:XI.101 and 303)(UT016)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Underground Storage Tanks regulations, LAC 33:XI.101 and 303 (Log #UT016).

This rule requires underground storage tank (UST) owners and/or operators that install emergency power generator UST systems to conduct interstitial monitoring on all underground storage tanks and associated pressurized piping installed after the effective date of this regulation. The rule also corrects two typographical errors in the regulations. The 2005 Federal Underground Storage Tank Compliance Act, which amends Section 9003 of Subtitle I of the Solid Waste Disposal Act, mandates states authorized to administer the Underground Storage Tank Program to take certain actions to reduce the incidence of leaking USTs. One such action is to require that USTs installed in the state have secondary containment and interstitial monitoring for emergency power generator UST systems. This action must be implemented in order to maintain federal funding and federal delegation of the UST program, and will further enhance the state's effort to maintain protection of human health and the environment. Prior rulemaking promulgated the secondary containment requirement for all emergency generator tank systems installed after December 20, 2008, but the interstitial monitoring requirement was inadvertently left out of that regulation. The basis and rationale for this rule are to comply with the federal guidelines required by the 2005 Underground Storage Tank Compliance Act. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part XI. Underground Storage Tanks

Chapter 1. Program Applicability and Definitions

§101. Applicability

A. - C.2.a.v. …

b. LAC 33:XI.701-705 does not apply to any UST system that stores fuel solely for use by emergency power generator UST systems installed prior to August 20, 2009. Emergency power generator UST systems installed or replaced on or after August 20, 2009, are subject to all requirements of LAC 33:XI, including the interstitial monitoring release detection requirements of LAC 33:XI.701-705.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:1467 (August 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:1492 (August 2009).

Chapter 3. Registration Requirements, Standards, and Fee Schedule

§303. Standards for UST Systems

A. - D.2.f. …

i. any of the accepted piping designs listed in Subparagraphs D.2.a-e of this Section shall be fabricated with double-walled or jacketed construction in accordance with Subsection A of this Section, shall be capable of containing a release from the inner wall of the piping, and shall be designed with release detection in accordance with LAC 33:XI.701.B.4; or

ii. …

g. if 25 percent or more of the piping to any one UST is replaced after December 20, 2008, it shall comply with Clause D.2.f.i or ii of this Section. If a new motor fuel dispenser is installed at an existing UST facility and new piping is added to the UST system to connect the new dispenser to the existing system, then the new piping shall comply with Clause D.2.f.i or ii of this Section. Suction piping that meets the requirements of LAC 33:XI.703.B.2.b.i-v and suction piping that manifolds two or more tanks together are not required to meet the secondary containment requirements outlined in this Paragraph.

D.3. - E.6.b. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2171 (October 2007), LR 34:2116 (October 2008), LR 35:1493 (August 2009).

Herman Robinson, CPM
Executive Counsel

0908#046

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Water Pollution Control Fee System Regulation
(LAC 33:IX.1309, 1311, 1313,
1315, 1317, and 1319)(WQ070)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.1309, 1311, 1313, 1315, 1317, and 1319 (Log #WQ070).

This rule changes the name of the annual fee rating worksheets for the water program fees, and updates the complexity designation tables (alphabetical and numerical) to conform with OSHA's updates to the SIC codes. The name of the Municipal Facility Fee Rating Worksheet is being changed to reflect its use for all treatment works treating domestic sewage. The Industrial Facility Fee Rating Worksheet will be utilized for all non-treatment works treating domestic sewage. There is no change in the definitions or facility status of the terms "municipal" or "industrial" as related to fees charged. The complexity designation tables are amended to conform with OSHA's updated SIC codes. The basis and rationale for this rule are to provide for clarity in the utilization of fee rating worksheets for LPDES permitted facilities and for updates of SIC codes as necessary. This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality
Subpart 1. Water Pollution Control

Chapter 13. Louisiana Water Pollution Control Fee System Regulation

§1309. Fee System

A. - K. …

L. Facility Complexity Designation

1. The facility complexity designation shall be based on the SIC code as established in the tables in LAC 33:IX.1319.

2. …

3. When it is demonstrated that factors associated with processes and waste generation are fundamentally different from those considered in assignment of a complexity designation, the administrative authority, on a case-by-case basis, may assign a minor facility a different complexity designation than that indicated in LAC 33:IX.1319. In making such a reassignment the administrative authority shall consider:

L.3.a. - N.Table. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:626 (September 1988), LR 18:731 (July 1992), LR 21:798 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), amended by the Office of Water Resources, LR 24:326 (February 1998), amended by the Office of Management and Finance, Fiscal Services Division, LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:689 (May 2003), LR 29:2052 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:1493 (August 2009).

§1311. Instructions for Completing Treatment Works Treating Domestic Sewage Annual Fee Rating Worksheet

A. - C.4. …

D. Potential Public Health Points

1. Determine if the receiving water is used for a municipal water supply.

2. Review the complexity designation assigned in LAC 33:IX.1311.A. If groups I or II were assigned, check the first complexity designation blank, record 0 points in the public health points blank and go to the next instruction.

3. If a higher complexity designation (III, IV, V, or VI) was assigned, then a determination if the receiving water is used as a drinking water supply source must be made. To qualify for points under this criterion, either the receiving water to which wastewater is discharged or a water body to which the receiving water is tributary must be used as a drinking water supply source within 50 miles downstream.

4. Check the appropriate complexity designation blank and record associated points in the public health points blank.

E. Major/Minor Facility Designation

1. Determine if the facility has been designated a major facility by the administrative authority. If the answer is YES, then check the appropriate blank and assign 25 points. If the answer is NO, then proceed to the next part.

2. Determine if the permitted effluent limitations assigned were based on water quality factors in the receiving water. Check the appropriate answer and assign the points required.

F. Total Rating Points. Sum the rating points assigned to each of the six sections and record the total in the total rating points blank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:627 (September 1988), LR 18:732 (July 1992), LR 24:327 (February 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2549 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 35:1493 (August 2009).

§1313. Treatment Works Treating Domestic Sewage Annual Fee Rating Worksheet

Invoice No._____

ANNUAL FEE RATING WORKSHEET

PERMIT NO._____

1. – 3.C. …

4. POTENTIAL PUBLIC HEALTH IMPACTS

Is the receiving water to which the wastewater is discharged or a water body to which it is a tributary used as a drinking water supply source within 50 miles downstream?

_____No (0 points)

_____Yes, then … Complexity Designation

_____I, II (0 points)

_____III (5 points)

_____IV (10 points)

_____V (20 points)

_____VI (30 points)

POTENTIAL PUBLIC HEALTH IMPACT POINTS_____

5. MAJOR/MINOR FACILITY DESIGNATION

Has your facility been designated a major facility by the administrative authority?

_____Yes, then Points = 25

_____No, then

Were effluent limitations assigned to the discharge based on water quality factors in the receiving stream?

_____No, then Points = 0

_____Yes, then Points = 5

TOTAL MAJOR/MINOR POINTS _____

TOTAL RATING POINTS ASSIGNED _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:628 (September 1988) LR 18:732 (July 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 35:1494 (August 2009).

§1315. Instructions for Completing Industrial Facility (all non-Treatment Works Treating Domestic Sewage) Annual Fee Rating Worksheet

A. - G. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 18:733 (July 1992), amended LR 24:327 (February 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2550 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 35:1494 (August 2009).

§1317. Industrial Facility (all non-Treatment Works Treating Domestic Sewage) Annual Fee Rating Worksheet

Invoice No._____

ANNUAL FEE RATING WORKSHEET

PERMIT NO._____

1. - 6. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 18:734 (July 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 35:1494 (August 2009).

§1319. SIC Code Complexity Tables

Table 1. Numerical Listing Complexity Groups for SIC Codes

SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
1011	Iron Ores	Ore Mining and Dressing	Iron Ore	IV
1021	Copper Ores	Ore Mining and Dressing	Base and Precious Metals	V
1031	Lead and Zinc Ores	Ore Mining and Dressing	Base and Precious Metals	V
1041	Gold Ores	Ore Mining and Dressing	Base and Precious Metals	V
1044	Silver Ores	Ore Mining and Dressing	Base and Precious Metals	V
1061	Ferroalloy Ores, Except Vanadium	Ore Mining and Dressing	Ferroalloy	V
1094	Uranium-Radium-Vanadium Ores	Ore Mining and Dressing	Uranium	VI
1099	Miscellaneous Metal Ores NEC	Ore Mining and Dressing	Aluminum	IV
1099	Mercury Ores	Ore Mining and Dressing	Mercury	V
1099	Miscellaneous Metal Ores NEC	Ore Mining and Dressing	Metal Ore, NEC	V

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
1221	Bituminous Coal and Lignite	Coal Mining	Acid or Ferruginous Mines	IV
1221	Bituminous Coal and Lignite	Coal Mining	Alkaline Mines	IV
1221	Bituminous Coal and Lignite	Coal Mining	Coal Preparation Plants	IV
1221	Bituminous Coal and Lignite	Coal Mining	Regrade/Revegetation	III
1231	Anthracite Mining	Coal Mining	Acid or Ferruginous Mines	IV
1231	Anthracite Mining	Coal Mining	Alkaline Mines	IV
1231	Anthracite Mining	Coal Mining	Anthracite Segment of Acid Mine Subcategory	III
1231	Anthracite Mining	Coal Mining	Coal Preparation Plants	IV
1231	Anthracite Mining	Coal Mining	Regrade/Revegetation	III
1311	Oil and Gas Extraction	Crude Petroleum and Natural Gas	Exploration and Production, Except Storm Water Only	III
1321	Natural Gas Liquids	Recovering/Fractioning	Natural Gas	II
1389	Oil and Gas Field Services	Miscellaneous	Reserve Pit Treaters	IV
1389	Oil and Gas Field Services	Miscellaneous	Oilfield Waste Disposal	V
1389	Oil and Gas Field Services	Miscellaneous	Treatment of Oilfield Waste	IV
1389	Oil and Gas Field Services	Miscellaneous	External Cleaning of Equipment	II
1389	Oil and Gas Field Services	Miscellaneous	Internal Cleaning of Equipment	III
1440	Mining of Nonmetallic Minerals	Sand and Gravel	All	II
1475	Phosphate Rock	Phosphate Mining	Phosphate Mining	IV
1479	Chemical and Fertilizer Mineral Mining NEC	Rock Salt	All	III
1479	Chemical and Fertilizer Mineral Mining NEC	Sulfur	All	V
2000	Food and Kindred Products	Processing Food and Beverages	All	II
2211	Broad Woven Fabric Mills, Cotton	Textile Mills	Greige Mills	II
2211	Broad Woven Fabric Mills, Cotton	Textile Mills	Woven Fabric Finishing	V
2221	Broad Woven Fabric Mills, Man-Made Fiber and Silk	Textile Mills	Greige Mills	II
2231	Broad Woven Fabric Mills, Wool	Textile Mills	Greige Mills	II
2231	Broad Woven Fabric Mills, Wool	Textile Mills	Wool Finishing	V
2241	Narrow Fabrics and Other Smallwares Mills	Textile Mills	Greige Mills	II
2241	Narrow Fabrics and Other Smallwares Mills	Textile Mills	Woven Fabric Finishing	V
2251	Women's Full Length and Knee Length Hosiery	Textile Mills	Hosiery	V
2252	Hosiery, Except Women's Full Length and Knee Length	Textile Mills	Hosiery	V
2253	Knit Outerwear Mills	Textile Mills	Greige Mills	II
2253	Knit Outerwear Mills	Textile Mills	Knit Fabric Finishing	V
2254	Knit Underwear Mills	Textile Mills	Knit Fabric Finishing	V
2255	Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2256	Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2257	Circular Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2258	Lace and Warp Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2259	Knitting Mills, NEC	Textile Mills	Knit Fabric Finishing	V
2261	Finishers of Broad Woven Fabrics of Cotton	Textile Mills	Woven Fabric Finishing	V
2262	Finishers of Broad Woven Fabrics/Man-Made Fiber	Textile Mills	Woven Fabric Finishing	V
2269	Finishers of Textiles, NEC	Textile Mills	Woven Fabric Finishing	V
2273	Carpets and Rugs	Textile Mills	Carpet Finishing	V
2273	Carpets and Rugs	Textile Mills	Greige Mills	II
2281	Yarn Spinning Mills	Textile Mills	Greige Mills	II
2281	Yarn Spinning Mills	Textile Mills	Stock and Yarn Dyeing	V
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	Textile Mills	Greige Mills	II
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	Textile Mills	Stock and Yarn Dyeing	V
2284	Thread Mills	Textile Mills	Stock and Yarn Dyeing	V
2293	Textile Goods NEC	Textile Mills	Padding and Upholstery	II
2294	Textile Goods NEC	Textile Mills	Processed Textile Wastes	II
2297	Nonwoven Fabrics	Textile Mills	Nonwoven Manufacturing	V
2299	Textile Goods NEC	Textile Mills	Wool Scouring and Felt Manufacturing	V
2300	Apparel and Other Finished Products/From Fabrics	Textile Mills	Apparel	II

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2410	Logging Camps and Logging Contractors	Timber Products Processing	All	II
2421	Sawmills and Planing Mills, General	Timber Products Processing	Sawmills and Planing Mills	II
2426	Hardwood Dimension and Flooring Mills	Timber Products Processing	Hardwood Dimension and Flooring Mills	II
2429	Special Product Sawmills, NEC	Timber Products Processing	Special Products Sawmills, NEC	II
2431	Millwork	Timber Products Processing	Millwork	II
2434	Wood Kitchen Cabinets	Timber Products Processing	Wood Kitchen Cabinets	II
2435	Hardwood Veneer and Plywood	Timber Products Processing	Plywood	IV
2435	Hardwood Veneer and Plywood	Timber Products Processing	Veneer	II
2436	Softwood Veneer and Plywood	Timber Products Processing	Plywood	IV
2436	Softwood Veneer and Plywood	Timber Products Processing	Veneer	II
2439	Structural Wood Members, NEC	Timber Products Processing	Millwork, Veneer, Plywood and Structural Wood Members	II
2440	Wood Containers	Timber Products Processing	All	II
2450	Wooden Buildings and Mobile Homes	Timber Products Processing	All	II
2491	Wood Preserving	Timber Products Processing	Wood Preserving—Steam	IV
2491	Wood Preserving	Timber Products Processing	Wood Preserving—Boulton	IV
2491	Wood Preserving	Timber Products Processing	Wood Preserving—Inorganic	II
2493	Reconstituted Wood Products	Timber Products Processing	Particleboard	II
2493	Wood Products NEC	Timber Products Processing	Hardboard—Dry Process	II
2493	Wood Products NEC	Timber Products Processing	Wet Process Hardboard (Two Subcategories)	IV
2493	Wood Products NEC	Timber Products Processing	Wood Products, NEC	II
2500	Furniture and Fixtures	Household and Office Furniture	All	II
2611	Pulp Mills	Pulp, Paper and Paperboard	All	III
2621	Paper Mills	Pulp, Paper and Paperboard	All	III
2621	Building Paper and Buildingboard Mills	Pulp, Paper and Paperboard	Waste Paper—Construction	III
2621	Building Paper and Buildingboard Mills	Pulp, Paper and Paperboard	Waste Paper—Board	III
2631	Paperboard Mills	Pulp, Paper and Paperboard	All	III
2640	Converted Paper and Paperboard Products	Pulp, Paper and Paperboard	All, Except Containers and Boxes	II
2650	Paperboard Containers and Boxes	Pulp, Paper and Paperboard	All	II
2661	Building Paper and Buildingboard Mills	Timber Products Processing	Barking	II
2679	Building Paper and Buildingboard Mills	Timber Products Processing	Insulation Board (Two Subcategories)	IV
2700	Printing, Publishing and Allied Industries	Printing and Publishing	All	II
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Chlorine	V
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Diaphragm Cell	V
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Mercury Cell	V
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Potassium Carbonate	IV
2812	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Bicarbonate	II
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Sodium Carbonate	IV
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Carbon Dioxide	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Carbon Monoxide	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Hydrogen	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Gases, Industrial Compressed Liquid/Solid	IV
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Nitrous Oxide	IV
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Oxygen and Nitrogen	II
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Barium Sulfate	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Byrytes Pigments	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Chloride Process	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Chrome Pigments	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Colors	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Oxide, Black	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Oxide, Magnetic	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Oxide, Yellow	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Lead Dioxide, Brown ($Pb0_2$)	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Lead Oxide, Red (Pb_30_4)	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Ochers	IV

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Satin White Pigment	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Siennas	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Sulfate Process	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Titanium Dioxide	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Ultramarine Pigment	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Umbers	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	White Lead Pigment $(Pb(OH)_2+PbCO)_3$	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Whiting	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Fluoride	V
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Hydroxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Alums	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonia Alum	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Chloride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Hydroxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Molybdate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Perchlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Thiosulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Barium Carbonate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Barium Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Beryllium Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Bleaching Powder	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Borax	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Boric Acid	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Boron Compounds (Not Produced at Mines)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Borosilicate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Brine	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Bromine	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Carbide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Carbonate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Compounds (Inorganic)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Hypochlorite	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cerium Salts	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chlorosulfuric Acid	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chromic Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chromium Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chromium Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cobalt Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cobalt Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cobalt 60 (Radioactive)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Copper Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Copper Iodide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Copper Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cuprous Oxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ferric Chloride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ferrous Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Fissionable Materials Production	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Fluorine	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Heavy Water	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrated Alumina Silicate Powder	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrochloric Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrofluoric Acid	V
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrogen Cyanide	V
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrogen Peroxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrogen Sulfide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrophosphites	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Indium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Inorganic Acids (Except HNO_2 or H_2PO_4)	IV

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Iodides	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Iodine	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Isotopes Radioactive	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lead Arsenate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lead Monoxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lead Silicate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lithium Carbonate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lithium Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Luminous Compounds (Radium)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Magnesium Compounds (Inorganic)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Manganese Dioxide (Powder Synthetic)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Manganese Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Mercury Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Mercury Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Ammonium Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Carbonate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Fluoroborate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Nitrate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nitric Acid (Strong)	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nitric Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nuclear Fuel Reactor Cases, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nuclear Fuel Scrap Reprocessing	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Oleum (Fuming Sulfuric Acid)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Oxidation Catalyst from Porcelain	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Percloric Acid	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Peroxides, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potash Alum	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potash Magnesia	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Aluminum Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Bromide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Chloride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Cyanide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Chlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Compounds Inorganic (Except KOH-K_2CO_3)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Dichromate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Hypochlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Iodide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Metal	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Nitrate and Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Permanganate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Radium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Radium Luminous Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Rare Earth Metal Salts	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Reagent Grade Chemicals (Inorganic: Refined From Technical Grades)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Salts of Rare Earth Metals	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silica Amorphous	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silica Gel	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Bromide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Carbonate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Cyanide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Iodide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Nitrate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Soda Alum	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Antimoniate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Bisulfite	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Chlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Compounds, Inorganic	IV

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Cyanide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Dichromate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Fluoride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Hydrosulfite	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Hydrosulfide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Metal	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Silicate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Silicofluoride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Sulfite	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Thiosulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Stannic and Stannous Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Stannic Oxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Strontium Carbonate (Precipitated and Oxide)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Strontium Nitrate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfides and Sulfites	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfocyanides	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur (Recovered or Refined, Including From Sour Natural Gas)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur Dioxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur Hexafluoride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfuric Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Thiocyanates, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Tin Compounds, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Uranium Slug, Radioactive	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Uranium Recovery from Phosphoric Acid Production	VI
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Oxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Sulfide	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Defluorinated Rock	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Defluorinated Acid	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Elemental Phosphorus	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Phosphorus Derived Chemicals	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Phosphates	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Sodium Phosphates	IV
2821	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	Gum and Wood Chemicals	Rosin Based Derivatives	III
2821	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	Plastics and Synthetics	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	VI
2821	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	Plastics and Synthetics	Melamine Crystals	III
2822	Synthetic Rubber (Vulcanizable Elastomers)	Rubber	All	V
2823	Cellulosic Man-Made Fibers	Plastics and Synthetics	Cellulosic Man-Made Fibers	VI
2824	Synthetic Organic Fibers, Except Cellulosic	Plastics and Synthetics	Synthetic Organic Fibers, Except Cellulosic	VI
2833	Medicinal Chemicals and Botanical Products	Pharmaceutical Manufacturing	All	VI
2834	Pharmaceutical Preparations	Pharmaceutical Manufacturing	Mising and Formulation (Pharmaceutical Preparations)	VI
2836	Biological Products	Pharmaceutical Manufacturing	Extraction (Biological Products)	VI
2841	Soaps and Other Detergents, Except Specialty Cleaners	Soaps and Detergents	All	III
2842	Specialty Cleaning, Polishing and Sanitary Preperation	Soaps and Detergents	All	III
2843	Surface Active Agents, Finishing Agents, Etc.	Soaps and Detergents	All	III
2844	Perfumes, Cosmetics and Other Toilet Preparations	Soaps and Detergents	Manufacturing of Liquid Soaps	III
2851	Paints/Varnishes/Lacquers/Enamels and Allied Products	Paint and Ink	Caustic or Water Washed Paint	II
2851	Paints/Varnishes/Lacquers/Enamels and Allied Products	Paint and Ink	Solvent Wash Paint	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Char and Charcoal Briquettes	II

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Essential Oil	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Gum Rosin	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Rosin Based Derivatives	IV
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Sulfate Turpentine	IV
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Tall Oil	IV
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Wood Rosin	IV
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	Organic Chemicals	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	VI
2869	Industrial Organic Chemicals NEC	Organic Chemicals	Industrial Organic Chemicals, NEC	VI
2869	Industrial Organic Chemicals NEC	Organic Chemicals	Ethanol by Fermentation, Food Additives	III
2873	Nitrogenous Fertilizers	Agricultural Chemicals	All	VI
2874	Phosphatic Fertilizers	Agricultural Chemicals	Phosphatic Fertilizing Materials Including Phosphoric Acid	VI
2875	Fertilizers, Mixing Only	Agricultural Chemicals	All	II
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Amides	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Formulation and Packaging of Agricultural Chemicals	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Halogenated Organics	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Heterocyclic Nitrogens	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Metallo Organic	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Miscellaneous	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Organophosphorus	VI
2891	Adhesives and Sealants	Adhesives and Sealants	Adhesives and Sealants	V
2892	Explosives	Explosives (Commercial Sector)	All	IV
2892	Explosives	Explosives (Military Sector)	All	IV
2893	Printing Ink	Paint and Ink	Caustic or Water Washed Ink	V
2893	Printing Ink	Paint and Ink	Solvent Wash Ink	II
2895	Carbon Black	Carbon Black	Channel Process	II
2895	Carbon Black	Carbon Black	Furnace Process	III
2895	Carbon Black	Carbon Black	Lamp Process	II
2895	Carbon Black	Carbon Black	Thermal Process	II
2899	Chemicals and Chemical Preparations, NEC	Chemicals	Miscellaneous Chemicals	I-VI* *Shall be determined on a case-by-case basis.
2911	Petroleum Refining	Petroleum Refining	Petroleum Refining	V
2950	Paving and Roofing Materials	Products of Petroleum and Coal	All Except 2951	III
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	Rerefining of Oils or Greases	IV
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	Waste Oil Reclamation	IV
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	Crude Oil Reclamation	III
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	All Lubricating Oils, Blended	III
2999	Petroleum and Coal Products, NEC	Miscellaneous Products of Petroleum and Coal	All	V
3011	Tires and Inner Tubes	Rubber	Tire and Inner Tube Production	IV
3052	Rubber and Plastic Hose and Belting	Rubber	Large-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3052	Rubber and Plastic Hose and Belting	Rubber	Medium-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3052	Rubber and Plastic Hose and Belting	Rubber	Small-Sized General Molded, Extruded and Fabricated Rubber Plants	III
3069	Fabricated Rubber Products, NEC	Rubber	Large-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3069	Fabricated Rubber Products, NEC	Rubber	Latex Foam	III

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3069	Fabricated Rubber Products, NEC	Rubber	Latex-Dipped, Latex-Extruded and Latex Molded Goods	III
3069	Fabricated Rubber Products, NEC	Rubber	Medium-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3069	Fabricated Rubber Products, NEC	Rubber	Small-Sized General Molded, Extruded and Fabricated Rubber Plants	III
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Miscellaneous Plastics Products	V
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Plastics Processing Without Contact Process Water	II
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Solution Casting	III
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Water Slurry Preforming Processes	III
3111	Leather Tanning and Finishing	Leather Tanning and Finishing	All	V
3131	Boot and Shoe Cut Stock and Findings	Leather Tanning and Finishing	Boot and Shoe Cut Stock and Findings	II
3142	House Slippers	Leather Tanning and Finishing	House Slippers	II
3143	Men's Footwear, Except Athletic	Leather Tanning and Finishing	Men's Footwear, Except Athletic	II
3144	Women's Footwear, Except Athletic	Leather Tanning and Finishing	Women's Footwear, Except Athletic	II
3149	Footwear, Except Rubber NEC	Leather Tanning and Finishing	Footwear, Except Rubber, NEC	II
3151	Leather Goods and Mittens	Leather Tanning and Finishing	Leather Gloves and Mittens	II
3161	Luggage	Leather Tanning and Finishing	Luggage	II
3171	Women's Handbags and Purses	Leather Tanning and Finishing	Women's Handbags and Purses	II
3172	Personal Leather Goods, Except Women's Handbags	Leather Tanning and Finishing	Personal Leather Goods Except Women's Handbags	II
3199	Leather Goods NEC	Leather Tanning and Finishing	Leather Goods, NEC	II
3200	Stone, Clay, Shell, Glass and Concrete Products	Stone, Clay, Shell, Glass, and Concrete Products	All Except Abrasive, Asbestos, Etc. in 3290	II
3290	Abrasive, Asbestos, and Miscellaneous Nonmetallic Mineral Products	Abrasives, Asbestos, Mineral Wool, Etc.	All Except 3295	IV
3295	Stone, Clay, Glass and Concrete Products	Minerals, Earths, Grinding	Barite	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Basic Oxygen Furnace (Wet Air Pollution Control Methods)	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Basic Oxygen Furnace; Semi-Wet Air Pollution Control Methods	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Beehive Coke	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Blast Furnace (Ferromanganese)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Blast Furnace (Iron)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Byproduct Coke	V
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Cold Rolling	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Combination Acid Pickling (Batch and Continuous)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Continuous Alkaline Cleaning	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Continuous Casting and Pressure Slab Molding	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Electric Arc Furnace (Wet Air Pollution Control Methods)	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Electric Arc Furnace; Semi-Wet Air Pollution Control Methods	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Coatings—Galvanizing	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Coatings—Terne	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Forming—Flat	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Forming—Primary	III

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Forming—Section	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Open Hearth Furnace	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Pickling—Hydrochloric Acid—Batch and Continuous	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Pickling—Sulfuric Acid—Batch and Continuous	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Pipe and Tube	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Scale Removal (Kolene and Hydride)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Sintering	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Vacuum Degassing	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Wire Pickling and Coating	III
3313	Electrometallurgical Products	Iron and Steel	Continuous Casting and Pressure Slab Molding	III
3313	Electrometallurgical Products	Iron and Steel	Electric Arc Furnace (Wet Air Pollution Control Methods)	III
3313	Electrometallurgical Products	Iron and Steel	Electric Arc Furnace: Semi-Wet Air Pollution Control Methods	II
3313	Electrometallurgical Products	Iron and Steel	Vacuum Degassing	III
3315	Steel Wire Drawing and Steel Nails and Spikes	Iron and Steel	Hot Forming—Section	III
3316	Cold Rolled Steel Sheet	Iron and Steel	Cold Rolling	III
3317	Steel Pipe and Tubes	Iron and Steel	Pipe and Tube	III
3321	Gray Iron Foundries	Foundry	Iron and Steel	III
3322	Malleable Iron Foundries	Foundry	Iron and Steel	III
3324	Steel Investment Foundries	Foundry	Iron and Steel	III
3325	Steel Foundries, NEC	Foundry	Iron and Steel	III
3331	Primary Smelting and Refining of Copper	Nonferrous Metals	Primary Copper	VI
3334	Primary Production of Aluminum	Nonferrous Metals	Primary Aluminum	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Bauxite	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Indium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Antimony	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Arsenic	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Barium	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Beryllium	IV
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Bismuth	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Boron	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Cadmium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Calcium	III

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Cesium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Cobalt	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Columbium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Gallium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Germanium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Gold	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Hafnium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Lead	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Lithium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Magnesium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Mercury	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Molybdenum	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Nickel	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Platinum Group	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Rare Earths	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Rhenium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Rubidium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Selenium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Silver	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tantalum	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tellurium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tin	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Titanium	V

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tungsten	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Uranium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Zinc	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Zirconium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Rhenium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Aluminum	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Babbitt	III
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Beryllium	III
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Boron	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Cobalt	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Columbian	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Copper	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Lead	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Magnesium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Mercury	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Nickel	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Plutonium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Precious Metals	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Silver	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Tantalum	III
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Tin	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Titanium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Tungsten	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Uranium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Zinc	V
3351	Rolling, Drawing and Extruding of Copper	Copper Forming	All	III
3353	Aluminum Sheet, Plate and Foil	Aluminum Forming	All	V
3354	Aluminum Extruded Products	Aluminum Forming	All	V

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3355	Aluminum Rolling and Drawing NEC	Aluminum Forming	All	V
3356	Rolling, Drawing and Extraction of Other Nonferrous Metals	Primary Metals Forming	All, Except Copper and Aluminum	IV
3357	Drawing and Insulating of Nonferrous Wire	Aluminum Forming	All	V
3363	Aluminum Foundries (Casting)	Foundry	Aluminum Casting	III
3366	Copper Foundries	Foundry	Copper Casting	III
3369	Nonferrous Foundries (Castings) NEC	Foundry	All	III
3398	Metal Heat Treating	Aluminum Forming	Heat Treating	V
3410	Metal Cans and Shipping Containers	Fabricated Metal Products	All	V
3420	Cutlery, Hand Tools and General Hardware	Fabricated Metal Products	All	II
3431	Enameled Iron and Metal Sanitary Ware	Fabricated Metal Products	Iron	III
3433	Heating Equipment Except Electric and Warm Air Furnaces	Fabricated Metal Products	All	II
3440	Fabricated Structural Metal Products	Fabricated Metal Products	All	II
3450	Screw Machine Products	Fabricated Metal Products	All, Including Bolts, Nuts, Screws, Rivets and Washers	II
3463	Nonferrous Forgings	Aluminum Forming	Forging	III
3463	Nonferrous Forgings	Copper Forming	Forging	III
3469	Metal Stampings	Fabricated Metal Products	All	II
3471	Electroplating, Plating, Polishing, Anodizing	Aluminum Forming	All	III
3479	Coating, Engraving and Allied Services	Coil Coating	All	III
3479	Coating, Engraving and Allied Services	Electroplating	Job Shops	III
3479	Coating, Engraving and Allied Services	Iron and Steel	Hot Coatings—Galvanizing	III
3490	Miscellaneous Fabricated Metal Products	Fabricated Metal Products	All Except 3497	II
3497	Metal Foil and Leaf	Coal Coating	Aluminum and Aluminized Steel	III
3500	Machinery	Engines and Farm Equipment	All	II
3600	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	Electronic Production, Battery Manufacturing, Etc.	All	III
3612	Power, Distribution and Specialty Transformers	Electronic Production, Battery Manufacturing, Etc.	All	III
3613	Switchgear and Switchboard Apparatus	Electronic Production, Battery Manufacturing, Etc.	Switchgear	III
3621	Motors and Generators	Electronic Production, Battery Manufacturing, Etc.	Motors, Generators and Alternators	III
3624	Carbon and Graphite Products	Electronic Production, Battery Manufacturing, Etc.	All	III
3629	Electrical Industrial Apparatus, NEC	Electronic Production, Battery Manufacturing, Etc.	Capacitors	III
3631	Household Cooking Equipment	Electronic Production, Battery Manufacturing, Etc.	All	III
3632	Household Refrigerators and Home and Farm Freezers	Electronic Production, Battery Manufacturing, Etc.	All	III
3633	Household Laundry Equipment	Electronic Production, Battery Manufacturing, Etc.	All	III
3639	Household Appliances, NEC	Electronic Production, Battery Manufacturing, Etc.	All	III
3641	Electric Lamps	Electronic Production, Battery Manufacturing, Etc.	Electric Lamps	III
3644	Non-Current-Carrying Wiring Devices	Electronic Production, Battery Manufacturing, Etc.	Insulating Devices	III
3671	Electron Tubes	Electronic Production, Battery Manufacturing, Etc.	All	III
3672	Printed Circuit Boards	Electronic Production, Battery Manufacturing, Etc.	All	III

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3674	Semiconductors and Related Devices	Electronic Production, Battery Manufacturing, Etc.	Semiconductors	III
3675	Electronic Capacitors	Electronic Production, Battery Manufacturing, Etc.	Capacitors	III
3677	Electronic Coils, Transformers and Other Inductors	Electronic Production, Battery Manufacturing, Etc.	All	III
3679	Electronic Components, NEC	Electronic Production, Battery Manufacturing, Etc.	All	III
3691	Storage Batteries	Electronic Production, Battery Manufacturing, Etc.	All	III
3692	Primary Batteries, Dry and Wet	Electronic Production, Battery Manufacturing, Etc.	All	III
3693	Radiographic X-Ray, Fluoroscopic X-Ray, Etc.	Electronic Production, Battery Manufacturing, Etc.	Electric and Electronic Components	III
3694	Electrical Equipment For Internal Combustion Engines	Electronic Production, Battery Manufacturing, Etc.	Motors, Generators and Alternators	III
3699	Electrical Machinery, Equipment and Supplies, NEC	Electronic Production, Battery Manufacturing, Etc.	Electric and Electronic Components	III
3710	Motor Vehicles and Motor Vehicle Equipment	Transportation Equipment	All	III
3731	Ship Building and Repairing	Transportation Equipment	Ship Building and Repairing	I – IV* *Shall be determined on a case-by-case basis.
3732	Boat Building and Repairing, Pleasure Craft	Transportation Equipment	All	II
3743	Railroad Equipment	Transportation Equipment	All	IV
3751	Motorcycles, Bicycles and Parts	Transportation Equipment	All	II
3764	Guided Missiles and Space Vehicle Propulsion Units	Transportation Equipment	All	V
3790	Miscellaneous Transportation Equipment	Transportation Equipment	All, Including Travel Trailers, Campers, Tanks, ATV	III
3800	Measuring, Analyzing and Controlling Instruments	Instrument Manufacturing	All Except 3844, 3845, and 3861	II
3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus	Instrument Manufacturing	All	III
3845	Electromedical and Electrotherapeutic Apparatus	Instrument Manufacturing	All	III
3861	Photographic Equipment and Supplies	Instrument Manufacturing	All	III
3900	Miscellaneous Manufacturing Industries	Toys, Musical Instruments, Caskets	All Except 3911	II
3911	Jewelry, Precious Metal	Miscellaneous Manufacturing Industries	All	III
4013	Railroad Transportation	Railroads	Switching and Terminal Establishments	III
4200	Motor Freight Transportation and Warehousing	Trucking, Courier Services, and Warehousing	All	II
4491	Water Transportation	Barge Cleaning	Petroleum and Chemical Products	III
4491	Water Transportation	Barge Cleaning	Grain Products	II
4491	Water Transportation	Bulk Terminals	Coal and Coke Terminals	II
4499	Water Transportation NEC	Transportation Services	All	II
4612	Pipelines, Except Natural Gas	Crude Petroleum Pipelines	Crude Oil with Storage	II
4613	Pipelines, Except Natural Gas	Refined Petroleum Pipelines	Refined Oil with Storage	II
4911	Electric Services	Steam Electric	Cooling Tower Blowdown (Fossil Fuel Plants)	IV
4911	Electric Services	Steam Electric	Nuclear Plants	V
4911	Electric Services	Steam Electric	Once-Through Cooling Water (Fossil Fuel Plants)	III
4922	Natural Gas Transmission	Transmission and Storage	Natural Gas, Compressors only	II
4931	Electric and Other Services Combined	Steam Electric	Cooling Tower Blowdown (Fossil Fuel Plants)	IV
4931	Electric and Other Services Combined	Steam Electric	Nuclear Plants	V
4931	Electric and Other Services Combined	Steam Electric	Once-Through Cooling Water (Fossil Fuel Plants)	III
4952	Sanitary Services	Sewerage Systems	Sewerage Systems	I

Table 1. Numerical Listing Complexity Groups for SIC Codes				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
4953	Sanitary Services	Refuse Systems	Construction and Demolition Debris Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Municipal Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Commercial Municipal Waste Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Private Nonhazardous Industrial Waste Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Commercial Nonhazardous Industrial Waste Landfills and Landfarms	IV
4953	Sanitary Services	Refuse Systems	Hazardous Waste Disposal	VI
5093	Miscellaneous Durable Goods	Scrap and Waste Materials	Waste Oil Only	(Refer to SIC 2992)
5169	Chemicals and Allied Products NEC	Chemical Storage	Chemical Bulk Storage and Distribution	II
5171	Petroleum and Petroleum Products	Petroleum Bulk Stations and Terminals	Petroleum Bulk Stations and Terminals	II
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals	Distribution of Petroleum and Petroleum Products	All	II
5191	Miscellaneous Nondurable Goods	Farm Supplies	Pesticides, Insecticides and Fertilizers	IV
7211	Power Laundries, Family and Commercial	Auto and Other Laundries	Power Laundries	II
7213	Linen Supply	Auto and Other Laundries	Linen Supply	III
7214	Diaper Service	Auto and Other Laundries	Diaper Service	II
7215	Coin-Operated Laundries and Dry Cleaning	Auto and Other Laundries	Coin-Operated Laundries	I
7216	Dry Cleaning Plants, Except Rug Cleaning	Auto and Other Laundries	All Dry Cleaning Except Coin Operated Laundries	II
7217	Carpet and Upholstery Cleaning	Auto and Other Laundries	Carpet and Upholstery Cleaning	II
7218	Industrial Launderers	Auto and Other Laundries	Industrial Laundry	III
7218	Industrial Launderers	Auto and Other Laundries	External Cleaning of Equipment	II
7218	Industrial Launderers	Auto and Other Laundries	Internal Cleaning of Equipment	III
7542	Car Washes	Auto and Other Laundries	Car Wash	I
7542	Car Washes	Auto and Other Laundries	All Exterior Cleaning of Equipment (Trucks, Trailers, Etc.), Except Car Washes	II
7699	Repair Shops and Related Services NEC	Repair Services	All Except Tank Truck Cleaning	II
7699	Repair Shops and Related Services NEC	Repair Services	Internal Tank Truck Cleaning	III
8071	Medical Laboratories	Medical Laboratories	All	III
8072	Dental Laboratories	Dental Laboratories	All	III
8731	Commercial Physical and Biological Research	Commercial Physical and Biological Research	Only Chemical and Industrial Laboratories	III
8734	Testing Laboratories	Analytical Laboratories	All	III

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3290	Abrasive, Asbestos, and Miscellaneous Nonmetallic Mineral Products	Abrasives, Asbestos, Mineral Wool, Etc.	All Except 3295	IV
2891	Adhesives and Sealants	Adhesives and Sealants	Adhesives and Sealants	V
2873	Nitrogenous Fertilizers	Agricultural Chemicals	All	VI
2874	Phosphatic Fertilizers	Agricultural Chemicals	Phosphatic Fertilizing Materials Including Phosphoric Acid	VI
3353	Aluminum Sheet, Plate and Foil	Aluminum Forming	All	V
3354	Aluminum Extruded Products	Aluminum Forming	All	V
3355	Aluminum Rolling and Drawing NEC	Aluminum Forming	All	V
3357	Drawing and Insulating of Nonferrous Wire	Aluminum Forming	All	V
3398	Metal Heat Treating	Aluminum Forming	Heat Treating	V
3463	Nonferrous Forgings	Aluminum Forming	Forging	III
3471	Electroplating, Plating, Polishing, Anodizing	Aluminum Forming	All	III
8734	Testing Laboratories	Analytical Laboratories	All	III

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
7211	Power Laundries, Family and Commercial	Auto and Other Laundries	Power Laundries	II
7213	Linen Supply	Auto and Other Laundries	Linen Supply	III
7214	Diaper Service	Auto and Other Laundries	Diaper Service	II
7215	Coin-Operated Laundries and Dry Cleaning	Auto and Other Laundries	Coin-Operated Laundries	I
7216	Dry Cleaning Plants, Except Rug Cleaning	Auto and Other Laundries	All Dry Cleaning Except Coin Operated Laundries	II
7217	Carpet and Upholstery Cleaning	Auto and Other Laundries	Carpet and Upholstery Cleaning	II
7218	Industrial Launderers	Auto and Other Laundries	Industrial Laundry	III
7218	Industrial Launderers	Auto and Other Laundries	External Cleaning of Equipment	II
7218	Industrial Launderers	Auto and Other Laundries	Internal Cleaning of Equipment	III
7542	Car Washes	Auto and Other Laundries	Car Wash	I
7542	Car Washes	Auto and Other Laundries	All Exterior Cleaning of Equipment (Trucks, Trailers, Etc.), Except Car Washes	II
4491	Water Transportation	Barge Cleaning	Petroleum and Chemical Products	III
4491	Water Transportation	Barge Cleaning	Grain Products	II
4491	Water Transportation	Bulk Terminals	Coal and Coke Terminals	II
2895	Carbon Black	Carbon Black	Channel Process	II
2895	Carbon Black	Carbon Black	Furnace Process	III
2895	Carbon Black	Carbon Black	Lamp Process	II
2895	Carbon Black	Carbon Black	Thermal Process	II
5169	Chemicals and Allied Products NEC	Chemical Storage	Chemical Bulk Storage and Distribution	II
2899	Chemicals and Chemical Preparations, NEC	Chemicals	Miscellaneous Chemicals	I-VI* *Shall be determined on a case-by-case basis.
3497	Metal Foil and Leaf	Coal Coating	Aluminum and Aluminized Steel	III
1221	Bituminous Coal and Lignite	Coal Mining	Acid or Ferruginous Mines	IV
1221	Bituminous Coal and Lignite	Coal Mining	Alkaline Mines	IV
1221	Bituminous Coal and Lignite	Coal Mining	Coal Preparation Plants	IV
1221	Bituminous Coal and Lignite	Coal Mining	Regrade/Revegetation	III
1231	Anthracite Mining	Coal Mining	Acid or Ferruginous Mines	IV
1231	Anthracite Mining	Coal Mining	Alkaline Mines	IV
1231	Anthracite Mining	Coal Mining	Anthracite Segment of Acid Mine Subcategory	III
1231	Anthracite Mining	Coal Mining	Coal Preparation Plants	IV
1231	Anthracite Mining	Coal Mining	Regrade/Revegetation	III
3479	Coating, Engraving and Allied Services	Coil Coating	All	III
8731	Commercial Physical and Biological Research	Commercial Physical and Biological Research	Only Chemical and Industrial Laboratories	III
3351	Rolling, Drawing and Extruding of Copper	Copper Forming	All	III
3463	Nonferrous Forgings	Copper Forming	Forging	III
4612	Pipelines, Except Natural Gas	Crude Petroleum Pipelines	Crude Oil with Storage	II
1311	Oil and Gas Extraction	Crude Petroleum and Natural Gas	Exploration and Production, Except Storm Water Only	III
8072	Dental Laboratories	Dental Laboratories	All	III
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals	Distribution of Petroleum and Petroleum Products	All	II
3600	Electronic and Other Electrical Equipment and Components, Except Computer Equipment	Electronic Production, Battery Manufacturing, Etc.	All	III
3612	Power, Distribution and Specialty Transformers	Electronic Production, Battery Manufacturing, Etc.	All	III
3613	Switchgear and Switchboard Apparatus	Electronic Production, Battery Manufacturing, Etc.	Switchgear	III
3621	Motors and Generators	Electronic Production, Battery Manufacturing, Etc.	Motors, Generators and Alternators	III
3624	Carbon and Graphite Products	Electronic Production, Battery Manufacturing, Etc.	All	III
3629	Electrical Industrial Apparatus, NEC	Electronic Production, Battery Manufacturing, Etc.	Capacitors	III

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3631	Household Cooking Equipment	Electronic Production, Battery Manufacturing, Etc.	All	III
3632	Household Refrigerators and Home and Farm Freezers	Electronic Production, Battery Manufacturing, Etc.	All	III
3633	Household Laundry Equipment	Electronic Production, Battery Manufacturing, Etc.	All	III
3639	Household Appliances, NEC	Electronic Production, Battery Manufacturing, Etc.	All	III
3641	Electric Lamps	Electronic Production, Battery Manufacturing, Etc.	Electric Lamps	III
3671	Electron Tubes	Electronic Production, Battery Manufacturing, Etc.	All	III
3672	Printed Circuit Boards	Electronic Production, Battery Manufacturing, Etc.	All	III
3674	Semiconductors and Related Devices	Electronic Production, Battery Manufacturing, Etc.	Semiconductors	III
3675	Electronic Capacitors	Electronic Production, Battery Manufacturing, Etc.	Capacitors	III
3677	Electronic Coils, Transformers and Other Inductors	Electronic Production, Battery Manufacturing, Etc.	All	III
3679	Electronic Components, NEC	Electronic Production, Battery Manufacturing, Etc.	All	III
3691	Storage Batteries	Electronic Production, Battery Manufacturing, Etc.	All	III
3692	Primary Batteries, Dry and Wet	Electronic Production, Battery Manufacturing, Etc.	All	III
3693	Radiographic X-Ray, Fluoroscopic X-Ray, Etc.	Electronic Production, Battery Manufacturing, Etc.	Electric and Electronic Components	III
3694	Electrical Equipment For Internal Combustion Engines	Electronic Production, Battery Manufacturing, Etc.	Motors, Generators and Alternators	III
3699	Electrical Machinery, Equipment and Supplies, NEC	Electronic Production, Battery Manufacturing, Etc.	Electric and Electronic Components	III
3500	Machinery Engines and Farm	Equipment	All	II
2892	Explosives	Explosives (Commercial Sector)	All	IV
2892	Explosives	Explosives (Military Sector)	All	IV
3410	Metal Cans and Shipping Containers	Fabricated Metal Products	All	V
3420	Cutlery, Hand Tools and General Hardware	Fabricated Metal Products	All	II
3431	Enameled Iron and Metal Sanitary Ware	Fabricated Metal Products	Iron	III
3433	Heating Equipment Except Electric and Warm Air Furnaces	Fabricated Metal Products	All	II
3440	Fabricated Structural Metal Products	Fabricated Metal Products	All	II
3450	Screw Machine Products	Fabricated Metal Products	All, Including Bolts, Nuts, Screws, Rivets and Washers	II
3469	Metal Stampings	Fabricated Metal Products	All	II
3490	Miscellaneous Fabricated Metal Products	Fabricated Metal Products	All Except 3497	II
5191	Miscellaneous Nondurable Goods	Farm Supplies	Pesticides, Insecticides and Fertilizers	IV
3321	Gray Iron Foundries	Foundry	Iron and Steel	III
3322	Malleable Iron Foundries	Foundry	Iron and Steel	III
3324	Steel Investment Foundries	Foundry	Iron and Steel	III
3325	Steel Foundries, NEC	Foundry	Iron and Steel	III
3363	Aluminum Foundries (Casting)	Foundry	Aluminum Casting	III
3366	Copper Foundries	Foundry	Copper Casting	III
3369	Nonferrous Foundries (Castings) NEC	Foundry	All	III
2821	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	Gum and Wood Chemicals	Rosin Based Derivatives	III
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Char and Charcoal Briquettes	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Essential Oil	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Gum Rosin	II
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Rosin Based Derivatives	IV
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Sulfate Turpentine	IV
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Tall Oil	IV
2861	Gum and Wood Chemicals	Gum and Wood Chemicals	Wood Rosin	IV
2500	Furniture and Fixtures	Household and Office Furniture	All	II
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Chlorine	V

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Diaphragm Cell	V
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Mercury Cell	V
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Potassium Carbonate	IV
2812	Alkalies and Chlorine	Inorganic Chemicals Manufacturing	Sodium Carbonate	IV
2812	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Bicarbonate	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Carbon Dioxide	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Carbon Monoxide	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Gases, Industrial Compressed Liquid/Solid	IV
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Hydrogen	II
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Nitrous Oxide	IV
2813	Industrial Gases	Inorganic Chemicals Manufacturing	Oxygen and Nitrogen	II
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Barium Sulfate	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Byrytes Pigments	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Chloride Process	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Chrome Pigments	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Colors	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Oxide, Black	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Oxide, Magnetic	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Iron Oxide, Yellow	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Lead Dioxide, Brown ($Pb0_2$)	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Lead Oxide, Red (Pb_30_4)	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Ochers	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Satin White Pigment	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Siennas	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Sulfate Process	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Titanium Dioxide	V
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Ultramarine Pigment	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Umbers	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	White Lead Pigment ($Pb(OH)_2+PbCO)_3$	IV
2816	Inorganic Pigments	Inorganic Chemicals Manufacturing	Whiting	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Fluoride	V
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Hydroxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Aluminum Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Alums	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonia Alum	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Chloride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Hydroxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Molybdate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Perchlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ammonium Thiosulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Barium Carbonate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Barium Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Beryllium Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Bleaching Powder	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Borax	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Boric Acid	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Boron Compounds (Not Produced at Mines)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Borosilicate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Brine	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Bromine	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Carbide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Carbonate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Compounds (Inorganic)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Hypochlorite	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Calcium Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cerium Salts	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chlorosulfuric Acid	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chromic Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chromium Oxide	IV

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Chromium Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cobalt 60 (Radioactive)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cobalt Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cobalt Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Copper Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Copper Iodide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Copper Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Cuprous Oxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ferric Chloride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Ferrous Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Fissionable Materials Production	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Fluorine	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Heavy Water	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrated Alumina Silicate Powder	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrochloric Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrofluoric Acid	V
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrogen Cyanide	V
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrogen Peroxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrogen Sulfide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Hydrophosphites	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Indium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Inorganic Acids (Except HNO_2 or H_2PO_4)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Iodides	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Iodine	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Isotopes Radioactive	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lead Arsenate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lead Monoxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lead Silicate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lithium Carbonate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Lithium Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Luminous Compounds (Radium)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Magnesium Compounds (Inorganic)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Manganese Dioxide (Powder Synthetic)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Manganese Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Mercury Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Mercury Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Ammonium Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Carbonate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Fluoroborate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Nitrate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nickel Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nitric Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nitric Acid (Strong)	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nuclear Fuel Reactor Cases, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Nuclear Fuel Scrap Reprocessing	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Oleum (Fuming Sulfuric Acid)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Oxidation Catalyst from Porcelain	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Percloric Acid	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Peroxides, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potash Alum	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potash Magnesia	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Aluminum Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Bromide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Chlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Chloride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Compounds Inorganic (Except KOH-K_2CO_3)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Cyanide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Dichromate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Hypochlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Iodide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Metal	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Nitrate and Sulfate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Permanganate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Potassium Sulfate	IV

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Radium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Radium Luminous Compounds	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Rare Earth Metal Salts	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Reagent Grade Chemicals (Inorganic: Refined From Technical Grades)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Salts of Rare Earth Metals	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silica Amorphous	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silica Gel	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Bromide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Carbonate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Cyanide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Iodide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Nitrate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Silver Oxide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Soda Alum	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Antimoniate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Bisulfite	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Chlorate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Compounds, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Cyanide	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Dichromate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Fluoride	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Hydrosulfide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Hydrosulfite	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Metal	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Silicate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Silicofluoride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Sulfite	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sodium Thiosulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Stannic and Stannous Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Stannic Oxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Strontium Carbonate (Precipitated and Oxide)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Strontium Nitrate	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfides and Sulfites	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfocyanides	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur (Recovered or Refined, Including From Sour Natural Gas)	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur Dioxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfur Hexafluoride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Sulfuric Acid	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Thiocyanates, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Tin Compounds, Inorganic	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Uranium Slug, Radioactive	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Uranium Recovery from Phosphoric Acid Production	VI
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Chloride	IV
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Oxide	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Sulfate	II
2819	Industrial Inorganic Chemicals NEC	Inorganic Chemicals Manufacturing	Zinc Sulfide	IV
3800	Measuring, Analyzing and Controlling Instruments	Instrument Manufacturing	All Except 3844, 3845, and 3861	II
3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus	Instrument Manufacturing	All	III
3845	Electromedical and Electrotherapeutic Apparatus	Instrument Manufacturing	All	III
3861	Photographic Equipment and Supplies	Instrument Manufacturing	All	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Basic Oxygen Furnace (Wet Air Pollution Control Methods)	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Basic Oxygen Furnace; Semi-Wet Air Pollution Control Methods	II

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Beehive Coke	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Blast Furnace (Ferromanganese)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Blast Furnace (Iron)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Byproduct Coke	V
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Cold Rolling	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Combination Acid Pickling (Batch and Continuous)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Continuous Alkaline Cleaning	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Continuous Casting and Pressure Slab Molding	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Electric Arc Furnace (Wet Air Pollution Control Methods)	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Electric Arc Furnace; Semi-Wet Air Pollution Control Methods	II
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Coatings—Galvanizing	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Coatings—Terne	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Forming—Flat	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Forming—Primary	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Hot Forming—Section	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Open Hearth Furnace	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Pickling—Hydrochloric Acid—Batch and Continuous	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Pickling—Sulfuric Acid—Batch and Continuous	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Pipe and Tube	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Scale Removal (Kolene and Hydride)	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Sintering	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Vacuum Degassing	III
3312	Blast Furnaces, Steel Works and Rolling Mills	Iron and Steel	Wire Pickling and Coating	III
3313	Electrometallurgical Products	Iron and Steel	Continuous Casting and Pressure Slab Molding	III
3313	Electrometallurgical Products	Iron and Steel	Electric Arc Furnace (Wet Air Pollution Control Methods)	III
3313	Electrometallurgical Products	Iron and Steel	Electric Arc Furnace: Semi-Wet Air Pollution Control Methods	II
3313	Electrometallurgical Products	Iron and Steel	Vacuum Degassing	III
3315	Steel Wire Drawing and Steel Nails and Spikes	Iron and Steel	Hot Forming—Section	III
3316	Cold Rolled Steel Sheet	Iron and Steel	Cold Rolling	III
3317	Steel Pipe and Tubes	Iron and Steel	Pipe and Tube	III
3479	Coating, Engraving and Allied Services	Iron and Steel	Hot Coatings—Galvanizing	III
3111	Leather Tanning and Finishing	Leather Tanning and Finishing	All	V
3131	Boot and Shoe Cut Stock and Findings	Leather Tanning and Finishing	Boot and Shoe Cut Stock and Findings	II
3142	House Slippers	Leather Tanning and Finishing	House Slippers	II
3143	Men's Footwear, Except Athletic	Leather Tanning and Finishing	Men's Footwear, Except Athletic	II
3144	Women's Footwear, Except Athletic	Leather Tanning and Finishing	Women's Footwear, Except Athletic	II
3149	Footwear, Except Rubber NEC	Leather Tanning and Finishing	Footwear, Except Rubber, NEC	II
3151	Leather Goods and Mittens	Leather Tanning and Finishing	Leather Gloves and Mittens	II
3161	Luggage	Leather Tanning and Finishing	Luggage	II

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3171	Women's Handbags and Purses	Leather Tanning and Finishing	Women's Handbags and Purses	II
3172	Personal Leather Goods, Except Women's Handbags	Leather Tanning and Finishing	Personal Leather Goods Except Women's Handbags	II
3199	Leather Goods NEC	Leather Tanning and Finishing	Leather Goods, NEC	II
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	Rerefining of Oils or Greases	IV
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	Waste Oil Reclamation	IV
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	Crude Oil Reclamation	III
2992	Miscellaneous Products of Petroleum and Coal	Lubricating Oils and Greases	All Lubricating Oils, Blended	III
8071	Medical Laboratories	Medical Laboratories	All	III
3295	Stone, Clay, Glass and Concrete Products	Minerals, Earths, Grinding	Barite	II
1389	Oil and Gas Field Services	Miscellaneous	Reserve Pit Treaters	IV
1389	Oil and Gas Field Services	Miscellaneous	Oilfield Waste Disposal	V
1389	Oil and Gas Field Services	Miscellaneous	Treatment of Oilfield Waste	IV
1389	Oil and Gas Field Services	Miscellaneous	External Cleaning of Equipment	II
1389	Oil and Gas Field Services	Miscellaneous	Internal Cleaning of Equipment	III
3911	Jewelry, Precious Metal	Miscellaneous Manufacturing Industries	All	III
2999	Petroleum and Coal Products, NEC	Miscellaneous Products of Petroleum and Coal	All	V
3331	Primary Smelting and Refining of Copper	Nonferrous Metals	Primary Copper	VI
3334	Primary Production of Aluminum	Nonferrous Metals	Primary Aluminum	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Bauxite	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Indium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Antimony	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Arsenic	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Barium	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Beryllium	IV
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Bismuth	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Boron	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Cadmium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Calcium	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Cesium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Cobalt	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Columbium	VI

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Gallium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Germanium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Gold	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Hafnium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Lead	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Lithium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Magnesium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Mercury	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Molybdenum	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Nickel	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Platinum Group	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Rare Earths	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Rhenium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Rubidium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Selenium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Silver	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tantalum	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tellurium	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tin	III
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Titanium	V
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Tungsten	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Uranium	V

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Zinc	VI
3339	Primary Smelting and Refining of Nonferrous Metals Except Aluminum and Copper	Nonferrous Metals	Primary Zirconium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Rhenium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Aluminum	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Babbitt	III
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Beryllium	III
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Boron	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Cobalt	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Columbian	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Copper	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Lead	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Magnesium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Mercury	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Nickel	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Plutonium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Precious Metals	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Silver	VI
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Tantalum	III
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Tin	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Titanium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Tungsten	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Uranium	V
3341	Secondary Smelting and Refining of Nonferrous Metals	Nonferrous Metals	Secondary Zinc	V
1011	Iron Ores	Ore Mining and Dressing	Iron Ore	IV
1021	Copper Ores	Ore Mining and Dressing	Base and Precious Metals	V
1031	Lead and Zinc Ores	Ore Mining and Dressing	Base and Precious Metals	V
1041	Gold Ores	Ore Mining and Dressing	Base and Precious Metals	V
1044	Silver Ores	Ore Mining and Dressing	Base and Precious Metals	V
1061	Ferroalloy Ores, Except Vanadium	Ore Mining and Dressing	Ferroalloy	V
1094	Uranium-Radium-Vanadium Ores	Ore Mining and Dressing	Uranium	VI
1099	Mercury Ores	Ore Mining and Dressing	Mercury	V
1099	Miscellaneous Metal Ores NEC	Ore Mining and Dressing	Aluminum	IV
1099	Miscellaneous Metal Ores NEC	Ore Mining and Dressing	Metal Ore, NEC	V

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	Organic Chemicals	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	VI
2869	Industrial Organic Chemicals NEC	Organic Chemicals	Industrial Organic Chemicals, NEC	VI
2869	Industrial Organic Chemicals NEC	Organic Chemicals	Ethanol by Fermentation, Food Additives	III
2851	Paints/Varnishes/Lacquers/Enamels and Allied Products	Paint and Ink	Caustic or Water Washed Paint	V
2851	Paints/Varnishes/Lacquers/Enamels and Allied Products	Paint and Ink	Solvent Wash Paint	II
2893	Printing Ink	Paint and Ink	Caustic or Water Washed Ink	V
2893	Printing Ink	Paint and Ink	Solvent Wash Ink	II
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Amides	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Formulation and Packaging of Agricultural Chemicals	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Halogenated Organics	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Heterocyclic Nitrogens	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Metallo Organic	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Miscellaneous	VI
2879	Pesticides and Agricultural Chemicals, NEC	Pesticides	Organophosphorus	VI
5171	Petroleum and Petroleum Products	Petroleum Bulk Stations and Terminals	Petroleum Bulk Stations and Terminals	II
2911	Petroleum Refining	Petroleum Refining	Petroleum Refining	V
2833	Medicinal Chemicals and Botanical Products	Pharmaceutical Manufacturing	All	VI
2834	Pharmaceutical Preparations	Pharmaceutical Manufacturing	Mising and Formulation (Pharmaceutical Preparations)	VI
2836	Biological Products	Pharmaceutical Manufacturing	Extraction (Biological Products)	VI
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Defluorinated Rock	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Defluorinated Acid	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Elemental Phosphorus	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Phosphorus Derived Chemicals	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Phosphates	IV
2819	Industrial Inorganic Chemicals NEC	Phosphate Manufacturing	Sodium Phosphates	IV
1475	Phosphate Rock	Phosphate Mining	Phosphate Mining	IV
2821	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	Plastics and Synthetics	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	VI
2821	Plastic Materials, Synthetic Resins and Nonvulcanizable Elastomers	Plastics and Synthetics	Melamine Crystals	III
2823	Cellulosic Man-Made Fibers	Plastics and Synthetics	Cellulosic Man-Made Fibers	VI
2824	Synthetic Organic Fibers, Except Cellulosic	Plastics and Synthetics	Synthetic Organic Fibers, Except Cellulosic	VI
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Plastics Processing Without Contact Process Water	II
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Solution Casting	III
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Miscellaneous Plastics Products	V
3089	Miscellaneous Plastics Products, NEC	Plastics Processing	Water Slurry Preforming Processes	III
3356	Rolling, Drawing and Extraction of Other Nonferrous Metals	Primary Metals Forming	All, Except Copper and Aluminum	IV
2700	Printing, Publishing and Allied Industries	Printing and Publishing	All	II
2000	Food and Kindred Products	Processing Food and Beverages	All	II
2950	Paving and Roofing Materials	Products of Petroleum and Coal	All except 2951	III
2611	Pulp Mills	Pulp, Paper and Paperboard	All	III
2621	Building Paper and Buildingboard Mills	Pulp, Paper and Paperboard	Waste Paper—Construction	III
2621	Building Paper and Buildingboard Mills	Pulp, Paper and Paperboard	Waste Paper—Board	III
2621	Paper Mills	Pulp, Paper and Paperboard	All	III
2631	Paperboard Mills	Pulp, Paper and Paperboard	All	III

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2640	Converted Paper and Paperboard Products	Pulp, Paper and Paperboard	All, Except Containers and Boxes	II
2650	Paperboard Containers and Boxes	Pulp, Paper and Paperboard	All	II
4013	Railroad Transportation	Railroads	Switching and Terminal Establishments	III
1321	Natural Gas Liquids	Recovering/Fractioning	Natural Gas	II
4613	Pipelines, Except Natural Gas	Refined Petroleum Pipelines	Refined Oil with Storage	II
4953	Sanitary Services	Refuse Systems	Construction and Demolition Debris Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Municipal Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Commercial Municipal Waste Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Private Nonhazardous Industrial Waste Landfills and Landfarms	II
4953	Sanitary Services	Refuse Systems	Commercial Nonhazardous Industrial Waste Landfills and Landfarms	IV
4953	Sanitary Services	Refuse Systems	Hazardous Waste Disposal	VI
7699	Repair Shops and Related Services NEC	Repair Services	All Except Tank Truck Cleaning	II
7699	Repair Shops and Related Services NEC	Repair Services	Internal Tank Truck Cleaning	III
1479	Chemical and Fertilizer Mineral Mining NEC	Rock Salt	All	III
2822	Synthetic Rubber (Vulcanizable Elastomers)	Rubber	All	V
3011	Tires and Inner Tubes	Rubber	Tire and Inner Tube Production	IV
3052	Rubber and Plastic Hose and Belting	Rubber	Large-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3052	Rubber and Plastic Hose and Belting	Rubber	Medium-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3052	Rubber and Plastic Hose and Belting	Rubber	Small-Sized General Molded, Extruded and Fabricated Rubber Plants	III
3069	Fabricated Rubber Products, NEC	Rubber	Large-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3069	Fabricated Rubber Products, NEC	Rubber	Latex Foam	III
3069	Fabricated Rubber Products, NEC	Rubber	Latex-Dipped, Latex-Extruded and Latex Molded Goods	III
3069	Fabricated Rubber Products, NEC	Rubber	Medium-Sized General Molded, Extruded and Fabricated Rubber Plants	IV
3069	Fabricated Rubber Products, NEC	Rubber	Small-Sized General Molded, Extruded and Fabricated Rubber Plants	III
1440	Mining of Nonmetallic Minerals	Sand and Gravel	All	II
5093	Miscellaneous Durable Goods	Scrap and Waste Materials	Waste Oil Only	(Refer to SIC 2992)
4952	Sanitary Services	Sewerage Systems	Sewerage Systems	I
2841	Soaps and Other Detergents, Except Specialty Cleaners	Soaps and Detergents	All	III
2842	Specialty Cleaning, Polishing and Sanitary Preparation	Soaps and Detergents	All	III
2843	Surface Active Agents, Finishing Agents, Etc.	Soaps and Detergents	All	III
2844	Perfumes, Cosmetics and Other Toilet Preparations	Soaps and Detergents	Manufacturing of Liquid Soaps	III
4911	Electric Services	Steam Electric	Cooling Tower Blowdown (Fossil Fuel Plants)	IV
4911	Electric Services	Steam Electric	Nuclear Plants	V
4911	Electric Services	Steam Electric	Once-Through Cooling Water (Fossil Fuel Plants)	III
4931	Electric and Other Services Combined	Steam Electric	Cooling Tower Blowdown (Fossil Fuel Plants)	IV
4931	Electric and Other Services Combined	Steam Electric	Nuclear Plants	V
4931	Electric and Other Services Combined	Steam Electric	Once-Through Cooling Water (Fossil Fuel Plants)	III
3200	Stone, Clay, Shell, Glass and Concrete Products	Stone, Clay, Shell, Glass, and Concrete Products	All Except Abrasive, Asbestos, Etc. in 3290	II
1479	Chemical and Fertilizer Mineral Mining NEC	Sulfur	All	V
2211	Broad Woven Fabric Mills, Cotton	Textile Mills	Greige Mills	II

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2211	Broad Woven Fabric Mills, Cotton	Textile Mills	Woven Fabric Finishing	V
2221	Broad Woven Fabric Mills, Man-Made Fiber and Silk	Textile Mills	Greige Mills	II
2231	Broad Woven Fabric Mills, Wool	Textile Mills	Greige Mills	II
2231	Broad Woven Fabric Mills, Wool	Textile Mills	Wool Finishing	V
2241	Narrow Fabrics and Other Smallwares Mills	Textile Mills	Greige Mills	II
2241	Narrow Fabrics and Other Smallwares Mills	Textile Mills	Woven Fabric Finishing	V
2251	Women's Full Length and Knee Length Hosiery	Textile Mills	Hosiery	V
2252	Hosiery, Except Women's Full Length and Knee Length	Textile Mills	Hosiery	V
2253	Knit Outerwear Mills	Textile Mills	Greige Mills	II
2253	Knit Outerwear Mills	Textile Mills	Knit Fabric Finishing	V
2254	Knit Underwear Mills	Textile Mills	Knit Fabric Finishing	V
2255	Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2256	Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2257	Circular Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2258	Lace and Warp Knit Fabric Mills	Textile Mills	Knit Fabric Finishing	V
2259	Knitting Mills, NEC	Textile Mills	Knit Fabric Finishing	V
2261	Finishers of Broad Woven Fabrics of Cotton	Textile Mills	Woven Fabric Finishing	V
2262	Finishers of Broad Woven Fabrics/Man-Made Fiber	Textile Mills	Woven Fabric Finishing	V
2269	Finishers of Textiles, NEC	Textile Mills	Woven Fabric Finishing	V
2273	Carpets and Rugs	Textile Mills	Carpet Finishing	V
2273	Carpets and Rugs	Textile Mills	Greige Mills	II
2281	Yarn Spinning Mills	Textile Mills	Greige Mills	II
2281	Yarn Spinning Mills	Textile Mills	Stock and Yarn Dyeing	V
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	Textile Mills	Greige Mills	II
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills	Textile Mills	Stock and Yarn Dyeing	V
2284	Thread Mills	Textile Mills	Stock and Yarn Dyeing	V
2293	Textile Goods NEC	Textile Mills	Padding and Upholstery	II
2294	Textile Goods NEC	Textile Mills	Processed Textile Wastes	II
2297	Nonwoven Fabrics	Textile Mills	Nonwoven Manufacturing	V
2299	Textile Goods NEC	Textile Mills	Wool Scouring and Felt Manufacturing	V
2300	Apparel and Other Finished Products/From Fabrics	Textile Mills	Apparel	II
2410	Logging Camps and Logging Contractors	Timber Products Processing	All	II
2421	Sawmills and Planing Mills, General	Timber Products Processing	Sawmills and Planing Mills	II
2426	Hardwood Dimension and Flooring Mills	Timber Products Processing	Hardwood Dimension and Flooring Mills	II
2429	Special Product Sawmills, NEC	Timber Products Processing	Special Products Sawmills, NEC	II
2431	Millwork	Timber Products Processing	Millwork	II
2434	Wood Kitchen Cabinets	Timber Products Processing	Wood Kitchen Cabinets	II
2435	Hardwood Veneer and Plywood	Timber Products Processing	Plywood	IV
2435	Hardwood Veneer and Plywood	Timber Products Processing	Veneer	II
2436	Softwood Veneer and Plywood	Timber Products Processing	Plywood	IV
2436	Softwood Veneer and Plywood	Timber Products Processing	Veneer	II
2439	Structural Wood Members, NEC	Timber Products Processing	Millwork, Veneer, Plywood and Structural Wood Members	II
2440	Wood Containers	Timber Products Processing	All	II
2450	Wooden Buildings and Mobile Homes	Timber Products Processing	All	II
2491	Wood Preserving	Timber Products Processing	Wood Preserving—Steam	IV
2491	Wood Preserving	Timber Products Processing	Wood Preserving—Boulton	IV
2491	Wood Preserving	Timber Products Processing	Wood Preserving—Inorganic	II
2493	Reconstituted Wood Products	Timber Products Processing	Particleboard	II
2493	Wood Products NEC	Timber Products Processing	Hardboard—Dry Process	II
2493	Wood Products NEC	Timber Products Processing	Wet Process Hardboard (Two Subcategories)	IV
2493	Wood Products NEC	Timber Products Processing	Wood Products, NEC	II

Table 2. Alphabetical Listing (Major Industry Type Column) Complexity Group for Effluent Guideline Industrial Subcategories				
SIC Code		Effluent Guidelines Division Designations		Complexity Designation
No.	SIC Title	Major Industry	Industrial Subcategory	
2661	Building Paper and Buildingboard Mills	Timber Products Processing	Barking	II
2679	Building Paper and Buildingboard Mills	Timber Products Processing	Insulation Board (Two Subcategories)	IV
3900	Miscellaneous Manufacturing Industries	Toys, Musical Instruments, Caskets	All Except 3911	II
4922	Natural Gas Transmission	Transmission and Storage	Natural Gas, Compressors only	II
3710	Motor Vehicles and Motor Vehicle Equipment	Transportation Equipment	All	III
3731	Ship Building and Repairing	Transportation Equipment	Ship Building and Repairing	I – IV* *Shall be determined on a case-by-case basis.
3732	Boat Building and Repairing, Pleasure Craft	Transportation Equipment	All	II
3743	Railroad Equipment	Transportation Equipment	All	IV
3751	Motorcycles, Bicycles and Parts	Transportation Equipment	All	II
3764	Guided Missiles and Space Vehicle Propulsion Units	Transportation Equipment	All	V
3790	Miscellaneous Transportation Equipment	Transportation Equipment	All, Including Travel Trailers, Campers, Tanks, ATV	III
4499	Water Transportation NEC	Transportation Services	All	II
4200	Motor Freight Transportation and Warehousing	Trucking, Courier Services, and Warehousing	All	II

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:628 (September 1988), LR 18:735 (July 1992), amended LR 21:798 (August 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 35:1494 (August 2009).

Herman Robinson, CPM
Executive Counsel

RULE

Office of the Governor
Board of Home Inspectors

Training, Testing, and Licensure
(LAC 46:XL.119 and 120)

The Board of Home Inspectors has amended LAC 46:XL.119, 120, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana home Inspector Licensing Law, R.S. 37:1471 et seq. The text is being amended and adopted to revise infield training requirements and to revise qualifications for trainers and education providers.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XL. Home inspectors

§119. Education/Training and Testing; Initial Licensure; Waiver

A. Beginning January 1, 2000, initial applicants for licensure must pass an LSBHI approved licensing examination, regarding home inspection information, techniques, standards of practice, and code of ethics, except as provided under §119.F.

B. Beginning July 1, 2001, any person filing an initial application for licensure shall present evidence to the board that they have satisfactorily completed at least 120 hours of required home inspection instruction and training by training providers and instructors approved by the board.

1. Ninety hours of the required instruction and training shall be classroom hours of home inspection course work approved by the board. Satisfactory completion of course work includes attendance of the required 90 hours of classroom instruction and passage of all examinations on course contents.

2. Thirty hours of the required instruction and training shall be obtained in the field from a certified infield trainer approved by the board. The applicant shall be given credit hours for each hour of infield training attended in accordance with §120.

3. Prior to licensure, the applicant shall also attend 10 live home inspections with a qualified infield trainer at a residential structure where a fee is paid and a report is provided to a client. No more that two applicants may be trained during a live home inspection.

C.1. The 90 classroom hours of home inspection class work as set forth in §119.B.1 above, may only include a combination of any of the following methods of instruction:

a. live lectures by a certified home inspector instructor;

b. DVD, CD ROM, videotape, or other electronic means of video lecture, with a certified home inspector available during classroom hours for questioning and discussion;

c. in-classroom or remote demonstration of techniques; or

d. periodic, in-classroom testing.

2. No credit towards the 90 classroom hours shall be given for:

a. in-classroom study;

b. instruction received from an education provider not duly qualified by the board;

c. time spent listening to audiotapes; or

d. classroom time devoted to non-approved course materials.

D. Upon registering trainees for a 90 hour course, all qualified education providers shall:

1. notify the board of the date of the commencement of each 90 hour course of instruction of each trainee;

2. provide the names, addresses, and telephone numbers of all trainees enrolled for that course;

3. keep records of attendance of each trainee enrolled in the 90 hour course to confirm satisfactory completion of the 90 required classroom hours of instruction;

4. provide the trainee with an education provider evaluation form approved by the board prior to final testing and completion of the 90 required classroom hours of instruction;

5. provide a final examination and/or multiple periodic examinations to the trainee covering course contents; and

6. provide a copy of certificates of completion to the board of only those trainees who have successfully completed the full 90 hours of classroom instruction.

E. Before the trainee can be certified as having completed the required 90 hours of classroom instruction, the trainee must have:

1. completed the 90 hours of classroom instruction within 180 days of commencement;

2. passed the final examination and/or all periodic examinations given by the educational provider; and

3. mailed a completed LHI Application Form to the board.

F. For initial licensure only, the above training and licensing examination requirements for initial licensure may be waived by the board through accumulated home inspection field experience as follows.

1. If an applicant demonstrates that he has been actively engaged in the business of conducting home inspections after January 1, 1995 for any consecutive 12 month period before January 1, 2000, a license can be issued without meeting the education/training and testing requirements. To be considered actively engaged, the applicant must provide proof of performing an average of five inspections per month during this 12 month period, which inspections meet or exceed the standards established in the law and in these rules. To be eligible, the following requirements must be met.

a. Application must be received before July 1, 2001.

b. A copy of a completed inspection report form for an inspection performed after January 1, 1995 and prior to January 1, 2000, bearing the signature of the applicant as the inspector of the home, to serve as proof that the applicant is entitled to the examination waiver, must be submitted with the application.

c. Upon request by the board, a list of inspections referred to in Paragraph C.1 and/or a list of the clients served, which lists must be certified under oath as performed by the applicant, must be submitted for examination by the board. The list(s) shall be considered confidential and not subject to disclosure.

d. All other requirements including continuing education for license renewal listed in §119 must be met.

2. For home inspectors beginning their business after January 1, 2000:

a. if initial application is received before July 1, 2001, all requirements of § 119.A above will apply;

b. if initial application is received after July 1, 2001, all requirements of § 119.A and B will apply;

c. all other requirements, including continuing education for license renewal listed in § 119 must be met.

3. The board shall publish notice of all license waiver requests and final actions relating to the requests in its bulletin.

4. The board shall consider and approve or reject all licensure requests for waiver at its board meetings.

G. The board shall adopt and approve a licensing examination, which may be administered by a nationally accepted testing service as determined by the board.

H. The board shall review examination material relative to the adoption and approval of licensing examinations. The board shall have complete authority to enter into confidentiality agreements, which prohibit the public dissemination of information pertaining to review of questions or materials, including any questions or materials certified as proprietary by the person or facility submitting them for evaluation. Any person or testing facility submitting evaluation materials for review, certification, or otherwise, conveys and assigns to the board a right of limited use and license solely for use in the certification process and any related inquiry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home inspectors, LR 26:2741 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1687 (August 2004), LR 35:1519 (August 2009).

§120. Education Providers; Instructors; Infield Training

A.1. In order to qualify as an education provider, an applicant shall:

a. pay the initial education provider fee;

b. provide a syllabus and a course list to the board;

c. agree, in writing, to defend, indemnify and hold the board harmless against any claim or suit alleging negligent or intentional acts or omissions of the education provider in its training, or otherwise;

d. remain current on all renewal and other fees;

e. employ only certified home inspector instructors; and

f. be approved by the board.

2. In order to qualify as a certified home inspector instructor of an education provider, a person must:

a. have been actively engaged in the performance of home inspections for the three years prior to certification;

b. be an actively engaged, Louisiana Licensed Home Inspector for the three years prior to certification;

c. have performed at least 500 home inspections; or

d. be licensed in the field of the subject matter of the particular course instructed.

3. In order to qualify as an infield trainer, an applicant shall:

a. be a LSBHI licensed home inspector for at least three years;

b. pay the required infield trainer fee(s);

c. be current on all other fees;

d. be current on all continuing education hours; and

e. be approved by the board.

B. Infield training shall consist of 30 hours of hands-on training of up to four trainees at one time, performed at a residential structure or using residential components or equipment under the supervision of an infield trainer holding an active or inactive LSBHI License. The training shall not be conducted during an actual home inspection where an inspection fee is paid and an inspection report is provided to a client.

C. Prior to admission to an infield training program, the trainee shall complete the required 90 hours of classroom training and pass the licensing exam described in §119.A.

D. Prior to completion of Infield training, the trainee shall:

1. prepare a minimum of 10 mock home inspection reports in a format approved by the board that conform to the requirements of the standards of practice;

2. attend the report writing seminar conducted on behalf of the board; and

3. pass the board approved examination of the Standards of Practice and Code of Ethics.

E. The trainee shall keep all mock home inspection reports for a minimum of three years.

F. Upon completion of the required infield training, the infield trainer shall provide the trainee with a completed record of training on a form approved by the board.

G. Before registering with a qualified educational provider, the trainee must first apply with the board. After enrolling with a qualified educational provider, the trainee must provide the board with the name of the provider and the commencement date of instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home inspectors, LR 30:1687 (August 2004), amended by the Office of the Governor, Board of Home Inspectors, LR 31:2011 (August 2005), LR 35:1520 (August 2009).

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RULE

Office of the Governor
Division of Administration
Office of Facility Planning and Control

Louisiana Uniform Public Work Bid Form
(LAC 34:III.Chapter 3)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the provisions of RS 39:121, the Division of Administration, Facility Planning and Control has adopted a new Rule: LAC 34:IIII.Chapter 3, Louisiana Uniform Public Work Bid Form. This Rule is required by Acts 726 and 727 of the 2008 Regular Legislative Session and provides rules for their implementation as authorized by the Act.

Title 34
GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL
Part III. Facility Planning and Control
Chapter 3. Louisiana Uniform Public Work Bid Form

§301. Name

A. The name of this document shall be the "Louisiana Uniform Public Work Bid Form" also referred to hereinafter as "Bid Form."

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2212.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1521 (August 2009).

§303. Authority

A. This form is prepared and issued in accordance with Acts 726 and 727 of the 2008 Regular Legislative Session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2212.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1521 (August 2009).

§305. Purpose

A. The purpose of this rule shall be to provide for the more effective and efficient letting of public works contracts and to establish a uniform standardized bid form to facilitate this.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2212.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1521 (August 2009).

§307. Applicability

A. This rule shall apply to all state agencies and political subdivisions. The bid form shall require only the information necessary to determine the lowest bidder. With the exception of unit prices, all items on the Louisiana Uniform Public Works bid form shall be included for public works projects. No other information may be required from the bidder. Other documentation required shall be furnished by the low bidder at a later date, in accordance with the bidding documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2212.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1521 (August 2009).

§309. Definitions

A. For the purposes of the Louisiana Uniform Public Works bid form the following terms shall have the stated meanings.

Alternate—a specified item of construction that is set apart by a separate sum. An alternate may or may not be incorporated into the contract sum at the discretion of the owner at the time of contract award.

Base Bid—the amount of money stated in the bid as the sum for which the bidder offers to perform the work described in the bidding documents, prior to the adjustments for alternate bids but including any unit prices.

Bid—a complete signed proposal to perform work or a designated portion for a stipulated sum. A bid is submitted in accordance with the bidding documents, is evaluated on price alone and is not subject to qualification.

Bidder—an entity or person who submits a bid for a prime contract with the owner. A bidder is not a contractor on a specific project until a contract is signed between the bidder and the owner.

Bid Form—a form provided to the bidder on which to submit his bid.

Bid Security—a bid bond or deposit submitted with a bid to guarantee to the owner that the bidder, if awarded the contract, will execute the contract within a specified period of time and will furnish any bonds or other requirements of the bidding documents.

Bidding Documents—documents usually including advertisement, bid notice or invitation to bidders, instructions to bidders, bid form, form of contract, forms of bonds, conditions of contract, drawings, specifications addenda, special provisions, and all other written instruments prepared by or on behalf of a public entity for use by prospective bidders on a public contract.

Owner—the public entity issuing the bid.

Public Entity—means and includes the state of Louisiana, or any agency, board, commission, department, or public corporation of the state, created by the constitution or statute or pursuant thereto, or any political subdivision of the state, including but not limited to any political subdivision as defined in Article VI Section 44 of the Constitution of Louisiana, and any public housing authority, public school board, or any public officer whether or not an officer of a public corporation or political subdivision. "Public entity" shall not include a public body or officer where the particular transaction of the public body or officer is governed by the provisions of the model procurement code.

Public Work—the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity.

Unit Price—the amount stated in a project bid representing the price per unit of materials and/or services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2212.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1521 (August 2009).

§311. Alternates

A. Provide space for, give descriptive title to and arrange for alternates in the order of priority. A maximum of three alternates are allowed by state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2212.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1522 (August 2009).

§313. Unit Price Form

A. The Unit Price Form shall be used if the contract includes unit prices. Otherwise it is not required and need not be included with the form. The number of unit prices that may be included is not limited and additional sheets may be included if needed.

LOUISIANA UNIFORM PUBLIC WORK BID FORM

TO: _____ **BID FOR:** _____

_____ _____

_____ _____

_____ _____

(Owner to provide name and address of owner) (*Owner to provide name of project and other identifying information)*

The undersigned bidder hereby declares and represents that she/he; a) has carefully examined and understands the Bidding Documents, b) has not received, relied on, or based his bid on any verbal instructions contrary to the Bidding Documents or any addenda, c) has personally inspected and is familiar with the project site, and hereby proposes to provide all labor, materials, tools, appliances and facilities as required to perform, in a workmanlike manner, all work and services for the construction and completion of the referenced project, all in strict accordance with the Bidding Documents prepared by:_____ _____ and dated: _____

(Owner to provide name of entity preparing bidding documents.)

Bidders must acknowledge all addenda. The Bidder acknowledges receipt of the following **ADDENDA:** (Enter the number the Designer has assigned to each of the addenda that the Bidder is acknowledging) _____

TOTAL BASE BID: For all work required by the Bidding Documents (including any and all unit prices designated "Base Bid" * but not alternates) the sum of:

_____Dollars ($ _____)

ALTERNATES: For any and all work required by the Bidding Documents for Alternates including any and all unit prices designated as alternates in the unit price description.

Alternate No. 1 *(Owner to provide description of alternate and state whether add or deduct)* for the lump sum of:

_____Dollars ($ _____)

Alternate No. 2 *(Owner to provide description of alternate and state whether add or deduct)* for the lump sum of:

_____Dollars ($ _____)

Alternate No. 3 *(Owner to provide description of alternate and state whether add or deduct)* for the lump sum of:

_____Dollars ($_____)

NAME OF BIDDER: _____

ADDRESS OF BIDDER:_____

_____

LOUISIANA CONTRACTOR'S LICENSE NUMBER: _____

NAME OF AUTHORIZED SIGNATORY OF BIDDER: _____

TITLE OF AUTHORIZED SIGNATORY OF BIDDER: _____

SIGNATURE OF AUTHORIZED SIGNATORY OF BIDDER **: _____

DATE: _____

* The Unit Price Form shall be used if the contract includes unit prices. Otherwise it is not required and need not be included with the form. The number of unit prices that may be included is not limited and additional sheets may be included if needed.

** If someone other than a corporate officer signs for the Bidder/Contractor, a copy of a corporate resolution or other signature authorization shall be required for submission of bid. Failure to include a copy of the appropriate signature authorization, if required, may result in the rejection of the bid unless bidder has complied with La. R.S. 38:2212(A)(1)(c) or RS 38:2212(O) .

BID SECURITY in the form of a bid bond, certified check or cashier's check as prescribed by LA RS 38:2218.A is attached to and made a part of this bid.

LOUISIANA UNIFORM PUBLIC WORK BID FORM
UNIT PRICE FORM

TO: _____
_____
_____
_____
(Owner to provide name and address of owner)

BID FOR: _____
_____
_____
_____
(*Owner to provide name of project and other identifying*

UNIT PRICES: This form shall be used for any and all work required by the Bidding Documents and described as unit prices. Amounts shall be stated in figures and only in figures.

DESCRIPTION:	❑ Base Bid or ❑ Alt.# ___			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION *(Quantity times Unit Price)*

DESCRIPTION:	❑ Base Bid or ❑ Alt.# ___			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION *(Quantity times Unit Price)*

DESCRIPTION:	❑ Base Bid or ❑ Alt.# ___			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION *(Quantity times Unit Price)*

DESCRIPTION:	❑ Base Bid or ❑ Alt.# ___			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION *(Quantity times Unit Price)*

DESCRIPTION:	❑ Base Bid or ❑ Alt.# ___			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION *(Quantity times Unit Price)*

DESCRIPTION:	❑ Base Bid or ❑ Alt.# ___			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION *(Quantity times Unit Price)*

DESCRIPTION:	❑ Base Bid or ❑ Alt.# ___			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION *(Quantity times Unit Price)*

DESCRIPTION:	❑ Base Bid or ❑ Alt.# ___			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION *(Quantity times Unit Price)*

DESCRIPTION:	❑ Base Bid or ❑ Alt.# ___			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION *(Quantity times Unit Price)*

Wording for "DESCRIPTION" is to be provided by the Owner.
All quantities are estimated. The contractor will be paid based upon actual quantities as verified by the Owner

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2212.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1522 (August 2009).

Jerry W. Jones
Assistant Commissioner

0908#113

RULE

Office of the Governor
Motor Vehicle Commission

Recreational Product Industry
(LAC 46:V.113, 115, 1801, 1802, 1803, 1804, 1805, 1806, 1901, 1903 and 1905)

EDITOR'S NOTE: The Sections below have been moved from Subpart 2 to Subpart 1. These Sections have been recodified are being repromulgated pursuant to Act 403 of the 2009 Regular Legislative Session.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part V. Automotive Industry
Subpart 1. Motor Vehicle Commission
Chapter 1. General Requirements
§113. Hearings on Area of Responsibility Disputes

NOTE: This Section has been moved from LAC 46:V.4711.

A. Before a dealer can file a notice of intent under R.S. 32:815 or 817 to establish itself as a new dealer, it must provide to the commission written approval from the manufacturer and that the manufacturer has notified its existing dealer that it intends to establish a new dealer.

B. When the commission receives a timely objection in accordance with either R.S. 32:815 or 817 the commission shall notice the dispute for hearing within 30 days following receipt of the objection; however, the hearing shall not be set any sooner than 10 days prior to the hearing date.

C. The notice of hearing shall apprise each party that there are no violations under consideration and that the commission's duties are only to allow the parties to present their dispute and to make an informed decision on the issues presented.

D. The manufacturer and/or proposed new dealer shall be responsible for presenting evidence showing whether the community can support an additional dealer, whether any change in the area of responsibility would increase competition or be in the public interest, and whether the existing dealer is providing adequate representation.

E. The existing dealer shall be responsible for presenting evidence showing the impact on their business.

F. No summary proceeding shall be allowed with regard to any final orders or judgments of the commission with regard to area of responsibility disputes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1223 (July 2006), amended LR 33:1638 (August 2007), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1525 (August 2009).

§115. Hearings on a Repurchase Demands

NOTE: This Section has been moved from LAC 46:V.4713.

A. Prior to noticing a repurchase demand for hearing, pursuant to R.S. 32:816, 818, 821 or 822, the hearing officer will determine the following:

1. that the dealer has on file with the commission a franchise agreement, service agreement or letter of authorization from the manufacturer;

2. that the dealer has made a request for repurchase by certified or registered mail within 30 days following the date it ceased to do business or ceased to carry that particular line. The dealer may combine this request with his final inventory;

3. that the dealer has forwarded his final inventory to the manufacturer by certified or registered mail;

4. that a field investigator has verified the existence of the product and has inspected the product.

B. The notice of hearing on the repurchase demand shall be served on all parties, and shall be served, in the case of all recreational products with the exception of marine products, at least 15 days prior to the hearing.

C. The notice of hearing on the repurchase demand for marine products shall be served on all parties at least 21 days prior to the hearing and shall notify the manufacturer of its option to appoint an independent marine surveyor. The marine manufacturer must identify the independent surveyor to the commission at least 10 days prior to the hearing and must furnish the surveyor's report to the commission at least five days prior to the hearing; otherwise, the report and the testimony of the surveyor may be excluded from the hearing at the discretion of the hearing chairman. The commission shall timely forward the identity and report of the independent marine surveyor to the dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1223 (July 2006), amended LR 33:1638 (August 2007), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1525 (August 2009).

Chapter 18. Recreational Products Trade Show; Definitions, License Fees and Applications; Violations and Regulation
§1801. Definitions

NOTE: This Section has been moved from LAC 46:V.3001.

Display Permit—a temporary license issued to a nonresident exhibitor, to display recreational products at a trade show or exposition. The permit issued shall be for the duration of the trade show only and shall not exceed 14 days.

Local Trade Show—a trade show in which the promoter's initial invitation is limited to Louisiana-licensed dealers within a 30-mile radius around the show location.

Nonresident Exhibitor—a nonresident dealer or manufacturer of recreational products who holds a current dealer or manufacturer license in another state and whose Louisiana business is limited to participation in trade shows or expositions in this state.

Promoter—any person, firm, association, corporation, partnership, limited liability company or trust, who alone or with others assumes the financial responsibility of a recreational products trade show or exposition in which recreational products are displayed by licensed dealers, manufacturers or distributors, or exhibitors as provided herein.

Recreational Products—any new or used recreational vehicle, motorcycle, ATV, or marine product.

Regional Trade Show—a trade show in which the promoter's initial invitation is only limited to Louisiana-licensed dealers and whose subsequent invitations may include any nonresident exhibitor who will display and show any product not displayed or shown by a Louisiana-licensed dealer.

Trade Show—a controlled event in which a promoter charges or barters for booth space and/or charges for spectator entrance in which three or more recreational products dealers exhibit vehicles.

Trade Show Permit—a temporary license issued to a promoter to perform a recreational products trade show.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32: 783(F)(7).

HISTORICAL NOTE: Promulgated by the office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:435 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1525 (August 2009).

§1802. License Fees and Applications

NOTE: This Section has been moved from LAC 46:V.3002.

A. Promoters of recreational products trade shows shall be required to obtain a license from the commission and its request for license shall consist of the following:

1. the application for license shall be on forms prescribed by the commission and shall require such information as the commission deems necessary to enable it to determine the qualifications and eligibility of the applicant;

2. a license fee of $100;

3. a promoter's license shall be for one calendar year and shall expire on December 31.

B. A promoter shall also be required to obtain a trade show permit from the commission and its request for a permit shall consist of:

1. the identity of at least three participants, the start date, ending date, location of the proposed trade show or exposition, and the type of vehicles to be promoted at the trade show;

2. an official designation as to whether the trade show is a regional trade show, with proof supporting that the show facilities have adequate space to host the type of show being permitted;

3. a fee of $500 per regional trade show;

4. a fee of $200 per local trade show.

C. A nonresident exhibitor shall be required to provide the following documents to the commission to obtain a display permit to display recreational products in a trade show:

1. an oath or affirmation that the nonresident exhibitor has complied with all registration requirements of the state in which he conducts his business including any requirements pertaining to posting of bond and demonstration of fiscal responsibility;

2. a notarized copy of the dealer's or manufacturer's current license issued in the state in which he conducts his business;

3. the name, site, and dates of the show or exposition for which a nonresident exhibitor's permit is sought and the name and address of the promoter of that show or exposition;

4. such other pertinent information consistent with the safeguarding of the public interest and public welfare;

5. an application fee of $100.

D. A Louisiana-licensed recreational products dealer who participates in a recreational products show or

exposition shall not be deemed to have an additional place of business at that show or exposition and shall not be charged any permit fees.

E. All applications to the commission for display permits received within five days of that start of the trade show or exposition shall be charged a $50 late processing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009).

§1803. Order of Preference and Priority

NOTE: This Section has been moved from LAC 46:V.3003.

A. The following order of preference shall be observed by the promoter in arranging a regional trade show.

1. The promoter shall first contact all Louisiana-licensed dealers who sell the type of vehicles being promoted, and those Louisiana-licensed dealers who accepted the invitation to attend the show shall exclude all nonresident exhibitors from displaying or showing the particular line of recreational products that they are displaying at the show or exposition. The acceptance of an invitation by a Louisiana-licensed dealer shall be expressed as a signed contract for space and accompanied by any deposits required by the show promoter and shall be performed within a reasonable time following the invitation as required by the promoter.

2. The promoter may then invite any nonresident exhibitor to attend the show or exposition to display and show any product not displayed or shown by a Louisiana-licensed dealer.

B. The following order of preference shall be observed by the promoter in arranging a local trade show.

1. The promoter shall first contact all Louisiana-licensed dealers who sell the type of vehicles being promoted, starting within a 30-mile radius of the proposed show or exposition, and those Louisiana-licensed dealers within a 30-mile radius to the show who accepted the invitation to attend the show shall exclude all other dealers from outside of 30 miles from displaying or showing the particular line of recreational products that they are displaying at the show or exposition.

2. The promoter may invite but shall accept any requests from a Louisiana-licensed dealer, who is not excluded by the provision above and is beyond 30 miles to attend a show or exposition, and those Louisiana-licensed dealers who attend the show shall exclude all nonresident exhibitors from displaying or showing the particular line of recreational products that they are displaying at the show or exposition.

3. The promoter may then invite any nonresident exhibitor to attend the show or exposition to display and show any product not displayed or shown by a Louisiana-licensed dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 783 (F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009).

§1804. Violations

NOTE: This Section has been moved from LAC 46:V.3004.

A. It shall be unlawful and shall constitute a violation of this Chapter:

1. for a recreational products dealer or a non resident exhibitor to display or show recreational products at any trade show except as allowed in §1803 above;

2. for a nonresident exhibitor to display or show recreational products at a trade show without first obtaining a display permit;

3. for a promoter:

a. to knowingly allow any dealer or nonresident exhibitor to display recreational products in any manner other than what is allowed in §1803 above;

b. to knowingly allow any dealer or nonresident exhibitor of recreational vehicles to display or show any line of recreational vehicles offered by any licensed recreational vehicle dealer whose franchise area includes the location of the trade show, unless the recreational vehicle dealer whose franchise territory includes the location of the trade show consents to the display;

c. to knowingly allow a nonresident exhibitor to display or show recreational products without having a display permit;

d. to fail to keep all records of attending dealers and sufficient and reasonable proof of the required invitations to dealers and proof that dealers who have declined to attend a trade show or exposition for a period of three years;

e. to allow a manufacturer or distributor, other than a nonresident exhibitor, to exhibit vehicles in any manner other than through a licensed dealer;

f. to fail to provide to the commission 10 days prior to the trade show a complete list of all dealers participating in the trade show;

4. for a licensed recreational products dealer or nonresident exhibitor to complete a sales transaction (by accepting the purchase funds, completing the paperwork and/or delivering product) for any recreational products at a trade show. Said restriction shall not apply or extend to sales and price negotiation, accepting deposits, setting closing dates, or completing a buyer's order;

5. for a licensed recreational vehicle dealer to knowingly display at a trade show the same line of recreational vehicles as displayed by a licensed recreational vehicle dealer whose franchise territory includes the location of the trade show, unless the recreational vehicle dealer whose franchise territory includes the location of the trade show consents to the display;

6. for a licensed recreational vehicle manufacturer or distributor to exhibit recreational vehicles at a trade show in any manner other than through a licensed dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009).

§1805. Miscellaneous Provisions; Enforcement

NOTE: This Section has been moved from LAC 46:V.3005.

A. If a recreational vehicle trade show is being held in a location where the same line makes or models of recreational vehicles does not have a dealer with a franchise territory, it shall be the manufacturer's responsibility to determine which licensed dealer(s) will represent that same line makes or models at the trade show.

B. The commission shall have authority to issue any orders necessary to enforce the provisions of this Section, including the entry of a cease and desist order which may be enforced in any proper venue including the parish of East Baton Rouge.

C. In addition to the enforcement of any necessary orders, the commission may suspend or revoke any license and/or it may impose a penalty in accordance with R.S. 32:788. In such cases, the affected licensee will be given all notices, opportunity to be heard and rights to appeal as conferred in R.S. 32:785.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:437 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1527 (August 2009).

§1806. Off-Site Displays—Marine Products

NOTE: This Section has been moved from LAC 46:V.3006.

A. The commission must approve all off-site displays of new marine products. A request for an off-site display must be received and approved by the commission seven days prior to the commencement of the display.

B. The location of any off-site display must be within the dealer's defined area of responsibility or within his manufacturer's contracted agreement for the make and mode to be displayed.

C. The licensee participating in an off-site display of his product is not required to contract all dealers within a 50 mile radius.

D. Each off-site display of marine products is limited to:

1. one marine dealer;

2. nine days and four displays a year. An off-site display of marine products will be permitted at the same location every six months.

E. The number of vehicles at any off-site display of marine products will be left to the discretion of the commission, with a maximum of 20 vehicles per licensee, per display.

F. The presence of any sales personnel, business cards, brochures, pricing sheets and other points of sales devices will be allowed to answer consumer questions. However, marine products cannot be delivered from that off-site display location.

G. Any licensee participating in an off-site display without the approval of the commission will be in violation of R.S. 32:814(A)(7)(d) and will result in a minimum penalty of $500 per vehicle, per display for the first offense.

H. A licensee must furnish a liability insurance binder to the owner of the off-site property. The same liability binder with the off-site property and owner listed must be furnished to the commission with the Off-Site Display Form.

I. This policy is separate from the rules and regulations pertaining to trade shows.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:437 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1527 (August 2009).

Chapter 19. Marine Product Manufacturer/Distributor

§1901. Uniform Procedures to Designate the Territory Assigned to a Marine Dealer

NOTE: This Section has been moved from LAC 46:V.4803.

A. On any occasion in which the marine product manufacturer/distributor has designated, an area of responsibility smaller in size to that provided for in R.S. 32:1252(4)(b) the marine product manufacturer and/or distributor must furnish with the designation the uniform procedure to establish the community or territory that is assigned to a marine dealer. If the manufacturer/distributor fails to furnish a uniform procedure with its designation, the commission shall reject the designation and shall so notify the manufacturer/distributor of the rejection by certified mail. With the notice of rejection, the commission shall provide the manufacturer/distributor the opportunity to appeal the rejection to the commission in a hearing at the commission's monthly meeting.

B. Where the marine product manufacturer/distributor has provided the uniform procedure with its designation, the commission shall review the designation and advise the manufacturer/distributor within 10 days following receipt as to whether the designation has been accepted or rejected. If the designation has been rejected, the manufacturer/distributor shall be so notified by certified mail of the rejection and informed of the opportunity to appeal the rejection in a hearing at the commission's monthly meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:781 and 817.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2482 (November 2004), amended LR 33:1638 (August 2007), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1528 (August 2009).

§1903. Procedure for Appointing Independent Marine Surveyor

NOTE: This Section has been moved from LAC 46:V.4901.

A. When a marine product manufacturer/distributor elects to appoint an Independent Marine Surveyor to inspect the marine dealer's inventory to determine whether the product has been altered or damaged to the prejudice of the manufacturer/distributor, the manufacturer/distributor shall notify the commission of the identity of the Independent Marine Surveyor within 15 days prior to the hearing before the commission. However, the manufacturer/distributor may post the identity of any pre-approved Independent Marine Surveyor with the commission.

B. The notice of appointment of Independent Marine Surveyor or the approved list shall contain the résumé, curriculum vitae, or qualifications of Independent Marine Surveyor.

C. The commission shall then promptly notify the dealer of the identity of the Independent Marine Surveyor as selected by the manufacturer/distributor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:771.

HISTORICAL NOTE: Promulgated by Office of the Governor, Recreational and Used Motor Vehicle Commission LR 30:2482 (November 2004), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1528 (August 2009).

§1905. Procedure of Designation of Area of Responsibility

NOTE: This Section has been moved from LAC 46:V.4801.

A. Beginning August 16, 2004, the commission shall notify by certified mail each marine product manufacturer/distributor, who has prior to that date failed to designate an area of responsibility for each of its existing dealers, that they must designate an area of responsibility for each dealer within 30 days following receipt of the notifications. Failure to respond to the commission within 30 days shall constitute an absence of designation thereby mandating the areas of responsibility provided for in R.S. 32:781(2)(b).

B. Following August 16, 2004, without such notification from the commission, each marine product manufacturer/distributor shall be responsible for designating an area of responsibility for any new dealer which has not had its area previously designated.

C. Thereafter, any marine product manufacturer/distributor which was not licensed with the commission prior to August 16, 2004, shall be notified by the commission by certified mail of their responsibility to designate an area of responsibility for their dealers. Failure to designate an area of responsibility for each dealer within 30 days following receipt of the notification shall constitute an absence of designation thereby mandating the area of responsibility provided for in R.S. 32:817(C).

D. Any changes in the area of responsibility once designated must meet criteria as set forth in R.S. 32:817(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:781 and 817.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:2481 (November 2004), amended LR 33:1638 (August 2007), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1528 (August 2009).

Lessie A. House
Executive Director

0908#052

RULE

Department of Health and Hospitals
Board of Medical Examiners

Consultation and Collaboration with Medical Psychologists
(LAC 46:XLV.Chapter 72)

Pursuant to the authority vested in the Louisiana State Board of Medical Examiners Board by the Louisiana Medical Practice Act, R.S. 37:1270(A)(1), 1270(B), the Louisiana Psychology Practice Act, as amended during the 2004 Session of the Louisiana Legislature by Acts 2004, Number 11, R.S. 37:2371-2378, and in accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the board has adopted LAC Title 46:XLV, Subpart 3, Chapter 72, §§7201-7217, to govern the practice of physicians who engage in consultation and collaboration with medical psychologists with respect to a patient of the physician.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 3. Practice
Chapter 72. Consultation or Collaboration with Medical Psychologists
Subchapter A. General Provisions
§7201. Preamble and Scope of Subchapter

A. Pursuant to Act 11 of the 2004 session of the Louisiana Legislature, the Louisiana Psychology Practice Act was amended to include, among other items, R.S. 37:2375C(1), which provides: "A medical psychologist holding a valid certificate to prescribe shall prescribe only in consultation and collaboration with the patient's primary or attending physician, and with the concurrence of that physician. The medical psychologist shall also re-consult with the patient's physician prior to making changes in the patient's medication regimen, including dosage adjustments, adding or discontinuing a medication. The medical psychologist and the physician shall document the consultation in the patient's medical record."

B. Pursuant to the authority granted by R.S. 37:1270(B)(6), and in the interest of promoting the public health, safety, and welfare, the rules of this Chapter are adopted by the Louisiana State Board of Medical Examiners to govern the practice of physicians in this state who consult and collaborate with a medical psychologist with respect to a patient of the physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1529 (August 2009).

§7203. Definitions

A. As used in this Chapter, the following words and terms shall have the meanings specified.

Active Clinical Relationship—shall mean that the physician has seen the patient professionally *e.g.*, examined, diagnosed and/or treated the patient within the past 12 months.

Board—the Louisiana State Board of Medical Examiners, as constituted in the Act.

Concurrence or Concur—a physician's agreement to a plan for psychopharmacological management of a patient based on prior discussion with an MP.

Consultation and Collaboration with an MP or Consult and/or Collaborate—that practice in which a physician discusses and, if deemed appropriate, concurs in an MP's plan for psychopharmacologic management of a patient for whom the physician is the primary or attending physician.

Controlled Substance—any substance defined, enumerated, or included in federal or state statute or regulations 21 C.F.R. 1308.11-.15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations or statute.

Discussion—a communication between a physician and a medical psychologist conducted in person, by telephone, in writing or by some other appropriate means.

Drug—shall mean the same as the term "drug" as defined in R.S. 40:961(16), including controlled substances except narcotics, but shall be limited to only those agents related to the diagnosis and treatment of mental and emotional disorders as defined in R.S. 37:2352(5).

Medical Practice Act or the Act—R.S. 37:1261-92 as may be amended from time to time.

Medication—is synonymous with *drug*, as defined herein.

Medical Psychologist or MP—a psychologist who has undergone specialized training in clinical psychopharmacology who has passed a national proficiency examination in psychopharmacology approved by the Louisiana State Board of Examiners of Psychologists and who holds a current certificate of responsibility from the Louisiana State Board of Examiners of Psychologists to prescribe medication.

Narcotics—natural and synthetic opioid analgesics, and their derivatives used to relieve pain.

Physician—an individual lawfully entitled to engage in the practice of medicine in this state as evidenced by a current license duly issued by the board.

Primary or Attending Physician—a physician who has an active clinical relationship with a patient and is: principally responsible for the health care needs of the patient; or currently attending to the health care needs of the patient; or considered by the patient to be his or her primary or attending physician.

Psychopharmacologic Management—the treatment and/or management of mental or emotional disorders with medication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1529 (August 2009).

§7205. General Conditions

A. A physician shall only consult and collaborate with an MP provided such is performed in the course of his or her professional practice, documented in the patient's medical record, and in compliance with all of the requirements specified by this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1529 (August 2009).

§7207. General Prohibitions

A. A physician shall not consult and collaborate:

1. if the physician is no longer engaged in the clinical practice of medicine and the provision of patient care in this state;
2. on any patient for whom the physician is not the primary or attending physician;
3. with a psychologist who is not an MP;
4. with more than one MP on the same patient;
5. if he or she is aware that more than one primary or attending physician is consulting or collaborating with the MP on the same patient at the same time;
6. with respect to the treatment of any condition other than mental and emotional disorders;
7. with respect to controlled substances if the physician's controlled substance privileges, registration or permit has been suspended, revoked or restricted by the board or other state or federal authorities;
8. with respect to narcotics; or

9. with an MP who seeks to utilize controlled substances for the treatment of:

a. non-cancer related chronic or intractable pain, as set forth in §§6915-6923 of the board's rules; or

b. obesity, as set forth in §§6901-6913 of the board's rules.

B. Physicians and MPs providing coverage call for a colleague, those providing rotating coverage for a patient in the same clinical setting, and those consulted by a physician or MP with respect to a given patient, are exempt from the limitations provided in Paragraphs A.2, 4 and 5 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1529 (August 2009).

§7209. Authority, Responsibility and Limitations

A. Consultation and Collaboration. Consultation and collaboration shall include discussion of any item the physician considers relevant to the coordination of the patient's medical care or evaluation of the psychopharmacologic management planned by the MP. The physician's consultation shall be documented in the patient's medical record and include, at a minimum:

1. Patient Authorization. A physician shall not consult and collaborate without the patient's written authorization to provide and/or receive from the MP any documents or records the physician may deem necessary throughout the course of psychopharmacologic management. A physician shall either obtain such authorization directly or document the MP's verification that the MP has done so and request and obtain a copy for his medical record on the patient;

2. Patient Identity, Date and Parties. The patient's name, current addresses and telephone number; the date of the consult; and the MP's name and telephone number shall be clearly identified. If the physician is unfamiliar with the MP, the physician shall also verify that the MP holds a current certificate of prescriptive authority;

3. Purpose. The purpose for the consult (e.g., new medication; change in medication; discontinuance of medication; adverse treatment effects; treatment failure; change in mental status; etc.);

4. Psychological Evaluation and Diagnosis. If known, the MP's psychological evaluation of the patient, including any relevant psychological history, laboratory or diagnostic studies; the MP's psychological diagnosis; and any other information the physician may deem necessary for the coordination of medical care of the patient;

5. Medication. The specific drug(s) the MP plans to utilize, including the starting dosage and titration plan, if any; frequency of use; the number of refills and anticipated duration of therapy; relevant indications and contraindications; any previously utilized psychopharmacologic therapy; and any alternatives;

6. Treatment Plan. The MPs treatment and/or management plan for the patient;

7. Results of Consultation. The results of the consultation (e.g., concurrence, deferring or denying medication recommended by the MP);

8. Responsibilities. Any specific responsibilities of the physician and MP respecting the patient's care;

9. Reporting. Any reporting and documentation requirements the physician may request of the MP and/or a schedule by which such are to take place; and

10. Immediate Consultation. A plan to accommodate immediate consultation between the physician, MP and/or the patient.

B. Denying or Deferring Concurrence. If, following discussion, the physician does not concur or believes that there is a need for further medical evaluation or information before concurring in the psychopharmacologic management planned by the MP (e.g., that the patient may be suffering from a condition that may be primarily physiological; physician assessment or additional laboratory or diagnostic testing is indicated; information has been requested from the MP or the patient for prior review; etc.), the physician shall deny concurrence of the psychopharmacologic management planned by the MP or shall defer concurrence until and unless the physician determines that such is appropriate for the patient.

C. Concurrence in Psychopharmacologic Management. Upon completion and satisfaction of the conditions prescribed in Subsection 7209.A of this Section, and upon a physician's judgment that the psychopharmacologic management planned by an MP is medically appropriate, the physician may concur. Thereafter, continued coordination of the patient's medical care shall include consultation and collaboration and other activities as the physician may deem appropriate including, but not limited to, the following:

1. Assessment of Treatment Efficacy. A physician shall see any patient subject to consultation or collaboration with an MP at least once every 12 months to assess the medical efficacy of the treatment and assure such treatment remains medically indicated. In the event the psychopharmacologic management includes a Schedule II or III controlled substance, the physician shall see the patient at least once every 6 months.

2. Treatment records. A physician shall document and maintain in the medical record of a patient subject to consultation and collaboration:

a. accurate and complete records of all consultations with the MP including, but not limited to each of the items specified in 7209.A;

b. copies of all consultations and documentation received from the MP; and

c. history, physical and other examinations and evaluations, consultations, laboratory and diagnostic reports, diagnoses, treatment plans and objectives, psychopharmacologic and other medication therapy, informed consents, and the results of periodic assessments and reviews.

D. Responsibility for Treatment. A physician shall retain professional responsibility to his or her patients for consultation and collaboration with an MP.

E. Consultation or collaboration with an MP is personal to the physician. A physician shall not authorize a non-physician to consult with an MP on his or her behalf.

F. Consultation and Collaboration. All adjustments or changes in the patient's medication subsequent to initial concurrence of psychopharmacologic management, including dosage adjustments or adding or discontinuing a medication, shall be preceded by consultation and collaboration with the MP that includes, but is not limited to,

updating the information required by Subsection 7209.A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1530 (August 2009).

§7211. Withdrawal or Termination of Concurrence

A. A physician shall notify an MP and his patient in a timely manner that he or she has withdrawn or terminated concurrence if:

1. the physician determines that the medication prescribed is no longer appropriate or is contraindicated;

2. the physician receives information indicating that the patient is non-compliant with the treatment prescribed and questions relating to such non compliance cannot be addressed satisfactorily upon further consultation with the MP;

3. the MP fails or refuses to provide requested documentation or other information that may impact the physician's decision to concur or continue to concur in the psychopharmacologic management planned by the MP;

4. adjustments or changes were made to the patient's psychopharmacologic management by the MP without consultation and collaboration;

5. the physician becomes aware of information that would prohibit consultation and collaboration under §7207 of this Chapter;

6. the physician is advised of the patient's election to withdraw from psychopharmacologic management by an MP, or to withdraw his or her authority for the physician or the MP to consult and collaborate;

7. the physician retires or withdraws from clinical practice in this state or relocates his or her practice to a location that would render continuing care of the patient impractical; or

8. the physician's license is suspended, revoked or restricted in a manner that would prohibit consulting and collaborating with an MP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1531 (August 2009).

§7213. Informed Consent

A. A physician shall not consult and collaborate with an MP without the patient's written authorization as set forth in Subparagraph 7209.A.1.

B. A physician shall insure that each of his or her patients subject to consultation and collaboration with an MP is informed:

1. of the relationship between the physician and MP and the respective role of each with respect to the patient's psychopharmacologic management;

2. that he or she may decline to participate in such a practice and may withdraw at any time without terminating the physician-patient relationship;

3. of the physician's decision to deny or withdraw from consultation and collaboration with an MP; and

4. by written disclosure, of any contractual or financial arrangement that may impact the physician's decision to engage in consultation and collaboration with an MP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1531 (August 2009).

§7215. Reporting Obligations

A. A physician who consults and collaborates with an MP should report to the board, as well as the Louisiana State Board of Examiners of Psychologists, all instances in which he or she has a good faith reason to believe that the MP has:

1. failed to consult with the primary or attending physician prior to prescribing medication or making any adjustments or changes in an established medication regimen;

2. prescribed a narcotic, as defined in R.S. 40:961;

3. treated any condition, illness or disease other than management of mental or emotional disorders; or

4. prescribed a course of medication that resulted in the injury or death of a patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 37:2371-2378.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1531 (August 2009).

§7217. Action against Medical License

A. Any violation or failure to comply with the provisions of this Chapter shall be deemed unprofessional conduct and conduct in contravention of the board's rules, in violation of R.S. 37:1285(A)(13) and (30), respectively, as well as violation of any other applicable provision of R.S. 37:1285(A), providing cause for the board to suspend, revoke, refuse to issue or impose probationary or other restrictions on any license held or applied for by a physician culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1531 (August 2009).

Robert L. Marier, M.D.
Executive Director

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RULE

Department of Health and Hospitals
Board of Medical Examiners

Physician Licensure and Practice; Telemedicine
(LAC 46:XLV.408 and Chapter 75)

Pursuant to the authority vested in the Louisiana State Board of Medical Examiners (the "Board") by the Louisiana Medical Practice Act, R.S. 37:1261-1292, as amended during the 2008 Session of the Louisiana Legislature by Acts 2008, Number 850, R.S. 37:1262(4) and 37:1276.1, and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the board has adopted LAC Title 46:XLV, Subpart 2, Chapter 3, Subchapter H, Section 408 and Subpart 3, Chapter 75, Subchapter A, Sections 7501-7521 to govern the practice of all physicians who utilize telemedicine in this state.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Profession
Subpart 2. Licensure and Certification
Chapter 3. Physicians
Subchapter H. Restricted Licensure, Permits
§408. Telemedicine Permit Qualifications, Procedure, Issuance, Expiration and Renewal

A. Qualifications. A physician who does not hold a license to practice medicine in Louisiana may not engage in the practice of medicine across state lines in this state via telemedicine, as defined in Chapter 75 of these rules, unless he or she holds a telemedicine permit issued by the board. To be eligible for a telemedicine permit an applicant shall:

1. possess the qualifications for licensing prescribed by §311 of these rules;

2. possess an unrestricted license to practice medicine issued by the medical licensing authority of a state other than Louisiana (whether allopathic or osteopathic);

3. not be enrolled in a medical residency or other post graduate medical training program. The board may, in its discretion, grant an exception to this requirement on a case-by-case basis where the applicant is enrolled in fellowship or other advanced training and it has been shown to the board's satisfaction that the applicant has completed all training relevant to his or her designated area of practice;

4. have attended the board's physician orientation program described in §449 of these rules or completed it online; and

5. have completed a board-approved application and satisfied the applicable fee.

B. Permit Denial. The board may deny or refuse to issue a telemedicine permit to an otherwise eligible applicant:

1. who does not satisfy the qualifications prescribed by this Chapter;

2. for any of the causes enumerated by R.S. 37:1285(A), or violation of any other provision of the Louisiana Medical Practice Act, R.S. 37:1261 et seq.;

3. who has been the subject of previous disciplinary action by the medical licensing authority of any state;

4. who is the subject of a pending investigation by the board, the medical licensing authority of another state or a federal agency;

5. who has been denied, had suspended, revoked, restricted or relinquished staff or clinical privileges at a hospital or institution while under investigation for, or as a result of, professional competency or conduct;

6. who has been, or is currently in the process of being denied, terminated, suspended, refused, limited, placed on probation or under other disciplinary action with respect to participation in any private, state, or federal health care insurance program; or

7. who voluntarily surrendered while under investigation by the issuing authority, or had suspended, revoked or restricted, his or her state or federal controlled substance permit or registration.

C. Applicant's Burden. The burden of satisfying the board as to the qualifications and eligibility of the applicant for a telemedicine permit shall be upon the applicant, who shall demonstrate and evidence such qualifications in the manner prescribed by and to the satisfaction of the board.

D. Application. Application for a telemedicine permit shall be made in a format approved by the board and shall include:

1. proof documented in a form satisfactory to the board that the applicant possesses the qualifications set forth in this Subchapter;

2. certification of the truthfulness and authenticity of all information, representations and/or documents contained in or submitted with the completed application;

3. a description of the manner of and the primary practice site from which telemedicine is to be utilized by the applicant;

4. acknowledgment that the applicant shall only utilize telemedicine in accordance with the telemedicine rules promulgated by the board in Chapter 75 of these rules and shall retain professional responsibility for the services provided to any patient by telemedicine;

5. criminal history record information;

6. such other information, acknowledgments and documentation as the board may require; and

7. a fee of $150. The board may waive such fee in favor of an applicant who advises the board in writing that his or her use of telemedicine in this state shall be limited to the provision of voluntary, gratuitous medical services.

E. Appearances. An applicant shall be required to appear before the board or its designee if the board has questions concerning the applicant's qualifications.

F. Effect of Application. The submission of an application pursuant to this Subchapter shall constitute and operate as an authorization and consent by the applicant to:

1. submit to the jurisdiction of the board in all matters set forth in the Act or any other applicable Louisiana law, as well as the board's rules;

2. produce medical or other documents, records, or materials and appear before the board upon written request; and

3. report to the board in writing within 30 days of any disciplinary action against the applicant's:

a. license to practice medicine in another state; or

b. federal or state registration or permit to prescribe, dispense or administer controlled substances or the voluntary surrender thereof while under investigation by the issuing authorities.

G. Permit Expiration, Renewal. A telemedicine permit shall expire annually on the expiration date stated thereon or the first day of the month in which the licensee was born, whichever is the later, unless renewed by the submission of a renewal application containing such information as the board may require, together with a renewal fee of $100.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, 1276.1 and 1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1532 (August 2009).

Subpart 3. Practice
Chapter 75. Telemedicine
Subchapter A. General Provisions
§7501. Scope of Subchapter

A. The rules of this Subchapter govern the use of telemedicine by physicians licensed to practice medicine in this state and those who hold a telemedicine permit issued by the board to practice medicine across state lines in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1532 (August 2009).

§7503. Definitions

A. As used in this Chapter and in §408 of these rules, unless the content clearly states otherwise, the following words and terms shall have the meanings specified.

Board—the Louisiana State Board of Medical Examiners, as constituted in the Medical Practice Act.

Controlled Substance—any substance defined, enumerated, or included in federal or state statute or regulations 21 C.F.R. 1308.11-.15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations or statute.

Department—The Louisiana Department of Health and Hospitals.

Medical Practice Act or the Act—R.S. 37:1261-92, as may from time to time be amended.

Physician—an individual lawfully entitled to engage in the practice of medicine in this state as evidenced by a current license or telemedicine permit duly issued by the board.

Primary Practice Site—the location at which a physician spends the majority of time in the exercise of the privileges conferred by licensure or permit issued by the board.

State—any state of the United States, the District of Columbia and Puerto Rico.

Telemedicine—the practice of health care delivery, diagnosis, consultation, treatment, and transfer of medical data by a physician using interactive telecommunication technology that enables a physician and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously. Neither a telephone conversation, an electronic mail message between a physician and a patient, or a true consultation constitutes telemedicine for the purposes of this Part.

Telemedicine Permit— a permit issued by the board in accordance with Chapter 3 of the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009).

§7505. General Uses, Limitations

A. Telemedicine shall not be utilized by a physician with respect to any patient located in this state in the absence of a physician-patient relationship as provided in §7509 of these rules.

B. The practice of medicine by telemedicine, including the issuance of any prescription via electronic means, shall be held to the same prevailing and usually accepted standards of medical practice as those in traditional (face-to-face) settings. An online, electronic or written mail message, or a telephonic evaluation by questionnaire or otherwise, does not satisfy the standards of appropriate care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009).

§7507. Prerequisite Conditions

A. Prior to utilizing telemedicine the physician shall ensure that:

1. he or she has access to those portions of the patient's medical record pertinent to the visit;

2. there exists appropriate support staff who:

a. are trained to conduct the visit by telemedicine;

b. are available to implement physician orders, identify where medical records generated by the visit are to be transmitted for future access, and provide or arrange back up, follow up, and emergency care to the patient; and

c. provide or arrange periodic testing and maintenance of all telemedicine equipment.

B. A licensed health care professional who can adequately and accurately assist with the requirements of §§7509 and 7511 of this Chapter shall be in the examination room with the patient at all times that the patient is receiving telemedicine services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009).

§7509. Providing Telemedicine Services; Records

A. Physicians who utilize telemedicine shall insure that a proper physician-patient relationship is established that at a minimum includes:

1. verification of the patient. Establishing that the person requesting the treatment is who the person claims to be;

2. evaluation. Conducting an appropriate evaluation of the patient, including review of any relevant history, laboratory or diagnostic studies, diagnoses, or other information deemed pertinent by the physician;

3. diagnosis. A diagnosis shall be established through the use of accepted medical practices including, but not limited to patient history, mental status and appropriate diagnostic and laboratory testing and fully documented in the patient's medical record. The diagnosis shall indicate the nature of the patient's disorder, illness, disease or condition and the reason for which treatment is being sought or provided;

4. treatment plan. The physician shall discuss with his or her patient the diagnosis, as well as the risks and benefits of appropriate treatment options, and establish a treatment plan tailored to the needs of the patient. A treatment plan shall be established and fully documented in the patient's record; and

5. follow-up care. A plan for accessing follow-up care shall be provided to the patient in writing and documented in the patient's record.

B. Patient records generated by a physician conducting a telemedicine visit shall be maintained at the physician's primary practice site and at the location of the patient where such visit was conducted, or such other location as may be directed by the physician(s) responsible for the patient's care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009).

§7511. Informed Consent

A. In addition to any informed consent and right to privacy and confidentiality that may be required by state or federal law or regulation, a physician shall insure that each patient to whom he or she provides medical services by telemedicine is:

1. informed of the relationship between the physician and patient and the respective role of any other health care provider with respect to management of the patient; and

2. notified that he or she may decline to receive medical services by telemedicine and may withdraw from such care at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7513. Prohibitions

A. Telemedicine shall not be utilized to provide medical services to patients located in this state in the absence of medical licensure or a current telemedicine permit issued by the board and other than in compliance with the rules of this Chapter.

B. No physician shall utilize telemedicine:

1. for the treatment of non-cancer related chronic or intractable pain, as set forth in §§6915-6923 of the board's rules;

2. for the treatment of obesity, as set forth in §§6901-6913 of the board's rules;

3. to authorize or order the prescription, dispensation or administration of any amphetamine or narcotic, provided, however, that this limitation shall not apply to a physician who is currently certificated by a specialty board of the American Board of Medical Specialties or the American Osteopathic Association:

a. in the specialty of psychiatry from using amphetamines in the treatment of his or her patients suffering from attention deficit disorder; or

b. the American Society of Addiction Medicine in the subspecialty of addictive medicine from using narcotics in the treatment of an addictive disorder, provided such is permitted by and in conformity with all applicable federal and state laws and regulations; or

4. to provide care to a patient who is physically located outside of this state, unless the physician possesses lawful authority to do so by the licensing authority of the state in which the patient is located.

C. A physician shall not utilize telemedicine except in the usual course and scope of his or her medical practice.

D. A non-Louisiana licensed physician who practices across state lines by virtue of a telemedicine permit issued by the board shall not:

1. open an office in this state;

2. meet with patients in this state;

3. receive telephone calls in this state from patients; or

4. engage in the practice of medicine in this state beyond the limited authority conferred by his or her telemedicine permit.

E. No physician shall supervise, collaborate or consult with an allied health care provider located in this state via telemedicine unless he or she possesses a full and unrestricted license to practice medicine in this state and satisfies and complies with the prerequisites and requirements specified by all applicable laws and rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7515. Exceptions

A. The following activities shall be exempt from the requirements of this Chapter:

1. furnishing medical assistance in case of a declared emergency or disaster, as defined by the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or as otherwise provided in Title 29 of the Louisiana Revised Statutes of 1950, or the board's rules;

2. issuance of emergency certificates in accordance with the provisions of R.S. 28:53; and

3. a true consultation, e.g., an informal consultation or second opinion, provided by an individual licensed to practice medicine in a state other than Louisiana, provided that the Louisiana physician receiving the opinion is personally responsible to the patient for the primary diagnosis and any testing and treatment provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7517. Action against Medical License

A. Any violation or failure to comply with the provisions of this Chapter shall be deemed to constitute unprofessional conduct and conduct in contravention of the board's rules, in violation of R.S. 37:1285(A)(13) and (30), respectively, as well as violation of any other applicable provision of R.S. 37:1285(A), and may provide just cause for the board to suspend, revoke, refuse to issue or impose probationary or other restrictions on any license held or applied for by a physician or applicant culpable of such violation, or for such other administrative action as the board may in its discretion determine to be necessary or appropriate under R.S. 37:1285(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7519. Action against Permit

A. For noncompliance with any of the provisions of this Chapter, or upon a finding of the existence of any of the causes enumerated by R.S. 37:1285(A), the board may, in addition to or in lieu of administrative proceedings provided by this Chapter, suspend, revoke, refuse to issue or impose probationary or other restrictions on any permit held or applied for by a physician or applicant culpable of such violation, or take such other administrative action as the board may in its discretion determine to be necessary or appropriate under R.S. 37:1285(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7521. Unauthorized Practice

A. Any individual who utilizes telemedicine to practice medicine in this state in the absence of a medical license or a telemedicine permit duly issued by the board, shall be deemed to be engaged in the unauthorized practice of medicine and subject to the civil, injunctive and criminal penalties prescribed by the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, 1276.1 and 1290.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1535 (August 2009).

Robert L. Marier, M.D.
Executive Director

0908#077

RULE

Department of Health and Hospitals
Board of Nursing

Registered Nurses—Alternative to Disciplinary Proceedings
(LAC 46:XLVII.3419)

The Louisiana State Board of Nursing has amended 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 amendment to LAC 46:XLVII.3419 addresses 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 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 35:1535 (August 2009).

Barbara L. Morvant, MN, RN
Executive Director

0908#048

RULE

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 has amended 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 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 Rule 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 35:1535 (August 2009).

Barbara L. Morvant, MN, RN
Executive Director

0908#049

RULE

Department of Health and Hospitals
Board of Nursing

Registered Nurses—Renewal of License
(LAC 46:XLVII.3333)

The Louisiana State Board of Nursing has amended 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 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 demographical 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 35:1536 (August 2009).

Barbara L. Morvant, MN, RN
Executive Director

0908#050

RULE

Department of Health and Hospitals
Board of Wholesale Drug Distributors

Wholesale Drug Distributors
(LAC 46:XCI.103, 105, 301, 303, 305, 315, 317, 319, 321, 501, 503, 507, 509, 711, and 801)

The Louisiana Board of Wholesale Drug Distributors has amended LAC 46:XCI.103, 105, 301, 303, 305, 315, 317, 319, 321, 501, 503, 507, 509, 711, and 801 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 37:3467 et seq., of the Louisiana Board of Wholesale Drug Distributors Practice Act. These Rule amendments will assist the board in its ability to safeguard life and health and promote the welfare of the citizen of Louisiana by regulating wholesale distributors of legend drugs or devices in and into the state. The Rule amendments have no known impact on family formation, stability, and autonomy as described in R.S. 49:972. The amendments to the Rule are set forth below.

Title 46
PROFESSIONAL AND OCCUPATION STANDARDS
Part XCI. Wholesale Drug Distributors
Chapter 1. General Provisions
§103. Definition

A. As used in this regulation, unless the context otherwise requires:

Adulterated Drug or Device—a drug or device shall be deemed adulterated if:

a. - c. …

d. it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of federal or Louisiana law or rule; or

ii. Repealed.

e. - g.i. …

ii. substituted wholly or in part thereof.

h. Repealed.

Blood—whole blood collected from a single donor and processed either for transfusion or further manufacturing.

Blood Components—that part of blood separated by physical or mechanical means.

Consumer or Patient—a person who is the end user of a drug or device.

* * *

Delivery—actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for consideration.

Distribute—to sell, offer to sell, broker, give away, or transfer, drugs or devices whether by passage of title, physical movement, or both.

Drug or Device—any legend drug or legend device.

Drug Sample—a unit of a prescription drug that is labeled "sample," "not to be sold," or "complimentary,", or other words to that effect, which is provided as a courtesy and not intended to be sold but is intended to promote the sale of the drug.

Facility or Physical Location—structure, warehouse, or building used by a person for the reception, storage, handling, repackaging, and/or offering for sale of a drug or device.

Label or Labeling—a display of written, printed, or graphic matter located immediately upon, or accompanying, a drug or device.

Medical Gas—any pure gas or gas mixture packaged as any liquefied (cryogenic) or compressed gas (vaporized) that is designated as a drug product.

* * *

Off-Site Storage Facility—a structure, warehouse, or building used by a licensed wholesale drug or device distributor strictly for storage of legend drugs or devices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:381 (April 1992), amended LR 29:1479 (August 2003), LR 32:394 (March 2006), LR 34:874 (May 2008), LR 35:1537 (August 2009).

§105. Wholesale Drug Distribution—Exemptions

A. Wholesale drug distribution does not include:

1. intra-company sales;

2. the purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug or device for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organization;

3. the sale, purchase or trade of a drug or device or an offer to sell, purchase, or trade a drug or device by a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

4. the sale, purchase, or trade of a drug or device or an offer to sell, purchase, or trade a drug or device among hospitals or other health care entities that are under common control; for the purposes of this section *common control* means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;

5. the sale, purchase, or trade of a drug or device or an offer to sell, purchase, or trade a drug or device for emergency medical reasons; for purposes of this Section, *emergency medical reasons* include transfers of prescription drugs or devices by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage that arises from delays in or interruptions of regular distribution schedules;

6. the dispensing of a drug or device pursuant to a prescription;

7. the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

8. the sale, purchase, or trade of blood and blood components intended for transfusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 35:1537 (August 2009).

Chapter 3. Wholesale Drug or Device Distributors

§301. Licensing, Renewal and Reinstatement Requirements

A. Every wholesale drug or device distributor shall submit an initial application for a new license on a form furnished by the board and accompanied by the initial license fee.

1. - 2. …

B. All new licenses issued by the board shall expire on December 31 of the calendar year issued.

C. A license shall be renewed annually by timely submitting an application and the license renewal fee.

D. Each application for the renewal of the license must be made between October 1 and December 31 of each year on a form provided by the board.

1. If a license is not renewed on or before the expiration date, a person may apply for reinstatement of the expired license within one year by submitting an application, the license renewal fee, and the license reinstatement fee.

2. If a license is expired beyond one year, a person may apply for reinstatement of the expired license by submitting an application, the initial license fee, the license reinstatement fee, and if applicable, the initial inspection fee.

3. A person may not lawfully operate as a wholesale drug or device distributor in Louisiana until the expired license has been reinstated.

E. Licenses renewed annually between October 1 and December 31 shall expire on December 31 of the following calendar year.

F. Each license issued hereunder shall be displayed by the licensee in a conspicuous place at the licensed facility or physical location.

G. Out-of-state wholesale drug or device distributors licensed by the board must have on file at all times with the board a current copy of a valid certificate of registration or license for wholesale drug or device distribution as issued by the appropriate regulatory board or agency of the state in which the facility or physical location licensed with the board is located.

1. If the state in which the facility licensed with the board is located does not require the facility to be registered or licensed as a wholesale drug or device distributor and the facility or physical location is registered or licensed in the state in which it is located as a manufacturer of drugs or devices, a current copy of the valid manufacturer registration or license must be submitted to and maintained with the board.

2. If the state in which the facility or physical location licensed with the board is located does not require the facility or physical location to be registered or licensed as a wholesale drug or device distributor and/or the facility or physical location is not a registered/licensed manufacturing facility and the state in which the facility or physical location is located does not require any registration or licensure of the facility or physical location, a letter from the appropriate regulatory board or agency must be submitted to the board confirming such fact.

3. If the facility or physical location licensed with the board does not physically distribute and/or manufacture the drugs or devices that it owns or holds title to and/or the facility or physical location licensed with the board contracts with another facility for the warehousing and/or distribution of the drugs or devices and the state in which the facility or physical location licensed by the board is located does not require any registration or licensure of the facility or physical location, a letter from the appropriate regulatory board or agency confirming this fact and a current copy of the valid registration or license from the state in which the contracted facility is located must be submitted to the board.

H. Wholesale drug or device distributor applicants and licensees physically located and conducting operations in Louisiana shall provide a list of their wholesale drug or device distributors from whom they purchased and/or received a legend drug or device within the 12 months prior to application or renewal application; the list shall include, but not be limited to:

1. name of each wholesale drug or device distributor;

2. each wholesale drug or device distributor's business address and telephone number; and

3. each wholesale drug or device distributor's distribution address(es) from which the legend drug or device was shipped.

I. An initial application for a new license is valid for 180 days after receipt by the board. If the application is not completed, the application becomes void and any fees paid are non-refundable.

J. Requests for voluntary cancellation of a license made by a licensee must be made in writing and must include information such as, but not limited to, the date the request is effective and the reason for the voluntary cancellation of the license.

1. If the request for voluntary cancellation is made before the license has expired, the original unexpired license certificate must be returned to the board and no refund of any portion of the license fee(s) paid will be made by the board.

K. If a licensed in-state wholesale drug or device distributor has an additional off-site storage facility, the off-site storage facility may operate under the current wholesale drug or device distribution license held by the licensee as long as the off-site storage facility is in compliance with §309.A.1 of these regulations and has temperature monitoring and an alarm system and the off-site storage facility does not physically receive or distribute legend drugs or devices from its location.

L. A license shall not be issued by the board for any wholesale drug or device distributor to operate from or out of a dwelling, building, or property zoned as residential.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 29:1480 (August 2003), LR 32:396 (March 2006), LR 34:875 (May 2008), LR 35:1538 (August 2009).

§303. Required Information

A. The board requires the following from each applicant as part of the initial licensing procedure and as part of any renewal or reinstatement of such license:

1. the name, full business address, and telephone number of the applicant;

2. all trade or business names used by the applicant;

3. addresses, telephone numbers, and the names of contact persons for the facility or physical location used by the applicant;

4. the type of ownership or form of business operation used by the applicant (i.e., partnership, corporation, or sole proprietorship); if other than a natural person, the type of entity and the name of the state where formed;

5. the names of the owners of the applicant including the percentage of interest owned;

6. the name of the person designated as the responsible party;

7. the names and titles of the directors and officers of the applicant;

8. a list of every state or territory, other than Louisiana, where the applicant holds a current license for wholesale drug or device distribution;

9. any other information which the board may require to determine qualification for obtaining, renewing, or reinstating a license.

B. Changes in any information required in this regulation shall be submitted in writing to the board within 60 days after such changes become effective. Failure to do so may result in disciplinary action being taken against the licensee.

C. A license shall be valid only for the person or the facility or physical location for which it is issued. Licenses are not transferable for change of location or change of ownership of the facility or physical location licensed by the board. Any such change shall require the submission of an application and fee for, and the issuance of, a new license by the board and the termination of the existing license.

D. Wholesale drug or device distributors with a place of business physically located in Louisiana must notify the board, in writing, within three business days of discovery of, or being in a position to have acquired such knowledge of, any theft or diversion of drugs or devices.

E. Wholesale drug or device distributors with a place of business physically located in Louisiana must notify the board, in writing, within 24 hours of discovery of, or being in a position to have acquired such knowledge of, any contraband, counterfeit, or misbranded drugs or devices in their possession whether actual or constructive.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 29:1480 (August 2003), LR 30:1481 (July 2004), LR 32:397 (March 2006), LR 35:1539 (August 2009).

§305. Qualifications

A. - A.9. …

B. The board shall deny a license to an applicant if it determines that the issuing of such a license would not be in the interest of public health, safety or welfare.

C. The designated responsible party must have knowledge of the policies and procedures pertaining to operations of the applicant facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 32:398 (March 2006), LR 35:1539 (August 2009).

§315. Organizational On-Site List

A. Wholesale drug or device distributors shall establish and maintain an on-site list of owners, officers, directors, managers, and other persons in charge of wholesale drug or device distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:384 (April 1992), amended LR 32:400 (March 2006), LR 35:1539 (August 2009).

§317. Federal, State and Local Law Compliance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:384 (April 1992), amended LR 32:400 (March 2006), repealed LR 35:1539 (August 2009).

§319. Salvaging and Reprocessing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:384 (April 1992), amended LR 32:401 (March 2006), repealed LR 35:1539 (August 2009).

§321. Inspection Alternatives

A. The board, in its discretion, may accept a satisfactory inspection by the United States Food and Drug Administration (USFDA) or a state agency which the board determines to be comparable to that made by USFDA or the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:384 (April 1992), amended LR 32:401 (March 2006), LR 35:1539 (August 2009).

Chapter 5. Powers and Functions of the Board

§501. Injunctive Powers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR

18:385 (April 1992), amended LR 32:401 (March 2006), repealed LR 35:1539 (August 2009).

§503. Board Domicile; Meetings

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:385 (April 1992), amended LR 29:1481 (August 2003), LR 32:401 (March 2006), repealed LR 35:1540 (August 2009).

§507. Rule Promulgation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:385 (April 1992), amended LR 32:401 (March 2006), repealed LR 35:1540 (August 2009).

§509. Inspection Contracts

A. The board may contract with any person or agency it deems qualified to conduct any inspections or reinspections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:385 (April 1992), amended LR 30:1481 (July 2004), LR 32:401 (March 2006), LR 35:1540 (August 2009).

Chapter 7. Disciplinary Procedures

§711. Grounds for Disciplinary Action

A. After notice and hearing, the board may deny, revoke or suspend a license or otherwise sanction a licensee, for any of the grounds set forth in R.S. 37:3474.1 or R.S. 37:3474.2 and any of the following:

1. - 3. …

B. The authority of the board to impose a monetary penalty in a case is not to be affected by any other civil or criminal proceeding concerning the same violation, nor shall the imposition of a monetary penalty preclude the board from imposing other sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:384 (April 1992), amended LR 32:403 (March 2006), LR 35:1540 (August 2009).

Chapter 8. Fees

§801. Fees

A. The board may collect the following fees.

1. Initial License Fee—$200
2. License Renewal Fee—$200
3. Initial Inspection Fee—$100
4. Duplicate License Fee—$10
5. License Reinstatement Fee for licenses suspended, revoked, or expired—$200
6. License Verification Fee—$15

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 32:403 (March 2006), amended LR 35:1540 (August 2009).

Kimberly B. Barbier
Executive Assistant

0809#057

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Adult Residential Care Providers—Minimum Licensing Standards—Dementia Training Requirements
(LAC 48:I.6803, 6851 and 6867)

The Department of Health and Hospitals, Bureau of Health Services Financing amended LAC 48:I.6803, §§6851 and §6867 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40.2200.1-2200.5. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

Title 48
PUBLIC HEALTH—GENERAL
Part 1. General Administration
Subpart 3. Licensing and Certification

Chapter 68. Adult Residential Care Providers Licensing Standards

Subchapter A. General Provisions

§6803. Definitions

* * *

Alzheimer's Special Care Unit (ASCU)—any adult residential care provider, as defined in R.S. 40:2166.3, that segregates or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease or related disorder so as to prevent or limit access by a resident to areas outside the designated or separated area, or that advertises, markets, or otherwise promotes the facility as providing specialized Alzheimer's/dementia care services.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2166.1-2166.8 and R.S. 40.2200.1-2200.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2582 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1540 (August 2009).

Subchapter D. ARCP Services

§6851. Alzheimer Special Care Units

A. - B.2. …

C. Staff Training for Alzheimer's/Dementia Program. In an ARCP that advertises or markets itself as an ASCU, training in specialized care of residents who are diagnosed by a physician as having Alzheimer's/dementia shall be provided to all licensed and unlicensed staff who provide direct care to such residents. Said training shall be provided in accordance with the provisions established in §6867 of this Chapter.

D. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2166.1-2166.8 and R.S. 40.2200.1-2200.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2595 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1540 (August 2009).

Subchapter F. Provider Responsibilities
§6867. Staff Training

A. - H.1. …

I. Dementia Training

1. All employees shall be trained in the care of persons diagnosed with dementia and dementia-related practices that include or that are informed by evidence-based care practices.

2. ARCP staff who provide care to residents in an Alzheimer's special care unit shall meet the following training requirements:

a. Staff who provide direct face-to-face care to residents shall be required to obtain at least eight hours of dementia-specific training within 90 days of employment and eight hours of dementia-specific training annually. The training shall include the following topics:

i. an overview of Alzheimer's disease and related dementias;

ii. communicating with persons with dementia;

iii. behavior management;

iv. promoting independence in activities of daily living; and

v. understanding and dealing with family issues.

b. Staff who have regular contact with residents, but who do not provide direct face-to-face care, shall be required to obtain at least four hours of dementia-specific training within 90 days of employment and two hours of dementia training annually. This training shall include the following topics:

i. an overview of dementias; and

ii. communicating with persons with dementia.

c. Staff who have only incidental contact with residents shall receive general written information provided by the facility on interacting with residents with dementia.

3. ARCP staff who do not provide care to residents in an Alzheimer's special care unit shall meet the following training requirements:

a. Staff who provide direct face-to-face care to residents shall be required to obtain at least two hours of dementia-specific training annually. This training shall include the following topics:

i. an overview of Alzheimer's disease and related dementias; and

ii. communicating with persons with dementia.

b. All other staff shall receive general written information provided by the facility on interacting with residents with dementia.

4. Any dementia-specific training received in a nursing or nursing assistant program approved by the Department of Health and Hospitals or the Department of Social Services may be used to fulfill the training hours required pursuant to this Section.

5. Adult residential care providers may offer a complete training curriculum themselves or they may contract with another organization, entity, or individual to provide the training.

6. The dementia-specific training curriculum must be approved by the department. To obtain training curriculum approval, the organization, entity, or individual must submit the following information to the department or its designee:

a. a copy of the curriculum;

b. the name of the training coordinator and his/her qualifications;

c. a list of all instructors;

d. the location of the training; and

e. whether the training will be web-based or not.

7. A provider, organization, entity, or individual must submit any content changes to an approved training curriculum to the department, or its designee, for review and approval.

8. If a provider, organization, entity, or individual, with an approved curriculum, ceases to provide training, the department must be notified in writing within 30 days of cessation of training. Prior to resuming the training program, the provider, organization, entity, or individual must reapply to the department for approval to resume the program.

9. Disqualification of Training Programs and Sanctions

a. The department may disqualify a training curriculum offered by a provider, organization, entity, or individual that has demonstrated substantial noncompliance with training requirements including, but not limited to:

i. the qualifications of training coordinators; or

ii. training curriculum requirements.

10. Compliance with Training Requirements

a. The review of compliance with training requirements will include, at a minimum, a review of:

i. the existence of an approved training curriculum; and

ii. the provider's adherence to established training requirements.

b. The department may impose applicable sanctions for failure to adhere to the training requirements outlined in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2166.1-2166.8 and R.S. 40.2200.1-2200.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2599 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1541 (August 2009).

Alan Levine
Secretary

0908#089

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Nursing Facilities—Minimum Licensing Standards
Dementia Training Requirements
(LAC 48:I.9701 and 9727)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 48:I.9701 and §9727 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40.2200.1-2200.5. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing
Chapter 97. Nursing Homes
Subchapter A. General Provisions
§9701. General Provisions

* * *

*Alzheimer's Special Care Unit—a*ny nursing home as defined in R.S. 40:2009.2, that segregates or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease or related disorder so as to prevent or limit access by a resident to areas outside the designated or separated area, or that advertises, markets, or otherwise promotes the facility as providing specialized Alzheimer/dementia care services.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4 and R.S. 40.2200.1-2200.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:44 (January 1998), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1542 (August 2009).

§9727. Staff Orientation, Training and Education

A. - F. …

G. Dementia Training

1. All employees shall be trained in the care of persons diagnosed with dementia and dementia-related practices that include or that are informed by evidence-based care practices.

2. Nursing facility staff who provide care on a regular basis to residents in Alzheimer's special care units shall meet the following training requirements:

a. Staff who provide nursing and nursing assistant care to residents shall be required to obtain at least eight hours of dementia-specific training within 90 days of employment and five hours of dementia-specific training annually. The training shall include the following topics:

i. an overview of Alzheimer's disease and related dementias;

ii. communicating with persons with dementia;

iii. behavior management;

iv. promoting independence in activities of daily living; and

v. understanding and dealing with family issues.

b. Staff who have regular communicative contact with residents, but who do not provide nursing and nursing assistant care, shall be required to obtain at least four hours of dementia-specific training within 90 days of employment and one hour of dementia training annually. This training shall include the following topics:

i. an overview of dementias; and

ii. communicating with persons with dementia.

c. Staff who have only incidental contact with residents shall receive general written information provided by the facility on interacting with residents with dementia.

3. Nursing facility staff who do not provide care to residents in an Alzheimer's special care unit shall meet the following training requirements.

a. Staff who provide nursing assistant care shall be required to obtain four hours of dementia-specific training within 90 days of employment and two hours of dementia training annually.

b. Staff who are not licensed and who have regular communicative contact with residents but do not provide nursing assistant care shall be required to obtain four hours of dementia-specific training within 90 days of employment and one hour of dementia training annually. The training shall include the following topics:

i. an overview of dementias; and

ii. communicating with persons with dementia.

c. Staff who have only incidental contact with residents shall receive general written information provided by the facility on interacting with residents with dementia.

4. Nothing herein shall be construed to increase the number of training hours already required by regulations promulgated by the department.

5. Any dementia-specific training received in a nursing assistant program approved by the Department of Health and Hospitals or the Department of Social Services may be used to fulfill the training hours required pursuant to this Section.

6. Nursing facility providers may offer an approved complete training curriculum themselves or may contract with another organization, entity, or individual to provide the training.

7. The dementia-specific training curriculum must be approved by the department. To obtain training curriculum approval, the organization, entity, or individual must submit the following information to the department or its designee:

a. a copy of the curriculum;

b. the name of the training coordinator and his/her qualifications;

c. a list of all instructors;

d. the location of the training; and

e. whether the training will be web-based or not.

8. A provider, organization, entity, or individual must submit any content changes to an approved training curriculum to the department, or its designee, for review and approval.

9. If a provider, organization, entity, or individual, with an approved curriculum, ceases to provide training, the department must be notified in writing within 30 days of cessation of training. Prior to resuming the training program, the provider, organization, entity, or individual must reapply to the department for approval to resume the program.

10. Disqualification of Training Programs and Sanctions

a. The department may disqualify a training curriculum offered by a provider, organization, entity, or individual that has demonstrated substantial noncompliance with training requirements, including, but not limited to:

i. the qualifications of training coordinators; or

ii. training curriculum requirements.

11. Compliance with Training Requirements

a. The review of compliance with training requirements will include, at a minimum, a review of:

i. the existence of an approved training curriculum; and

ii. the provider's adherence to established training requirements.

b. The department may impose applicable sanctions for failure to adhere to the training requirements outlined in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4 and R.S. 40.2200.1-2200.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:48 (January 1998), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1542 (August 2009).

Alan Levine
Secretary

0908#088

RULE

Department of Revenue
Policy Services Division

Income Tax Withholding Tables (LAC 61:I.1501)

Under the authority of R.S. 47:32, R.S. 47:112, R.S. 47:295, and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, is amending LAC 61:I.1501 relative to individual income tax withholding tables based on the income tax rates as provided by Act 396 of the 2008 Regular Session of the Louisiana Legislature.

Act 396 amended R.S. 47:32 to reduce state income tax rates in the two highest income brackets for tax years beginning on or after January 1, 2009. Act 396 provided that the revised withholding tables will not become effective until after July 1, 2009. LAC 61:I.1501 is being amended to correct minor errors in the income tax withholding tax formulas. The errors do not affect the income tax withholding tables.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 15. Income: Withholding Tax
§1501. Income Tax Withholding Tables

A. - C.4. …

D. Income Tax Withholding Formulas. The overall structure of the formulas used to compute the withholding tax is to calculate the tax on the total wage amount and then subtract the amount of tax calculated on the personal exemptions and dependency credits the taxpayer claims for withholding purposes. The correct withholding formula depends upon the number of personal exemptions claimed and annual wages.

1. Withholding Formulas for Single or Married Taxpayers Claiming 0 or 1 Personal Exemption

W is the withholding tax per pay period.
S is employee's salary per pay period for each bracket.
X is the number of personal exemptions; X must be 0 or 1.
Y is the number of dependency credits; Y must be a whole number that is 0 or greater.
N is the number of pay periods.
A is the effect of the personal exemptions and dependency credits equal to or less than $12,500;
A=.021(((X * 4500) + (Y * 1000)) ÷ N).
B is the effect of the personal exemptions and dependency credits in excess of $12,500
B=.016((((X * 4500) + (Y * 1000)) – 12,500) ÷ N).
If annual wages are less than or equal to $12,500, then
W=.021(S) - (A + B).
If annual wages are greater $12,500 but less than or equal to $50,000, then
W=.021(S) + .0160(S - (12,500 ÷ N)) - (A + B).
If annual wages are greater than $50,000, then
W=.021(S) + .0160(S - (12,500 ÷ N)) + .0135(S - (50,000 ÷ N)) - (A + B).

2. Withholding Formulas for Married Taxpayers Claiming 2 Personal Exemptions

W is the withholding tax per pay period.
S is the employee's salary per pay period for each bracket.
X is the number of personal exemptions. X must be 2.
Y is the number of dependency credits. Y must be 0 or greater.
N is the number of pay periods.
A is the effect of the personal exemptions and dependency credits equal to or less than $25,000;
A=.021(((X * 4500) + (Y * 1000)) ÷ N)
B is the effect of the personal exemptions and dependency credits in excess of $25,000;
B=.0165((((X * 4500) + (Y * 1000)) - 25,000) ÷ N)
If annual wages are less than or equal to $25,000, then
W=.021(S) - (A + B).
If annual wages are greater $25,000 but less than or equal to $100,000, then
W=.021(S) + .0165(S - (25,000 ÷ N)) - (A + B).
If annual wages are greater than $100,000, then
W=.021(S) + .0165(S - (25,000 ÷ N)) + .0135(S - (100,000 ÷ N)) - (A + B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:32, R.S. 47:112, R.S. 47:295 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Policy Services Division, LR 35:255 (February 2009), amended LR 35:1543 (August 2009).

Cynthia Bridges
Secretary

0908#051

RULE

Department of Social Services
Office of Community Services

Residential Licensing (LAC 67:V.Chapters 61-69)

EDITOR'S NOTE: The Chapters below have been moved from Part I to Part V. These Chapters have been recodified and being repromulgated pursuant to Act 400 of the 2009 Regular Legislative Session.

Title 67
SOCIAL SERVICES
Part V. Community Services
Subpart 8. Residential Licensing
Chapter 61. Emergency Shelter
§6101. General

NOTE: This Section has been moved from LAC 67:I.1101.

A. A child caring agency offering emergency shelter care is a person group or organization operating one or more facilities established for the purpose of providing 24 hour emergency shelter care on a regular basis to children under age 18. Facilities caring for five or more children must be licensed but licensure is optional when emergency shelter care is to be provided to fewer than five children. The standards do not apply to state approved foster homes or to foster homes developed by licensed child placing agencies.

B. For the purpose of these standards the word child caring agency shall mean child caring agency offering emergency shelter care.

C. There is an annual fee for the license as determined by the Division of Licensing and Certification based on capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources Office of the Secretary Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2669 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1543 (August 2009).

§6103. Organization and Administration

NOTE: This Section has been moved from LAC 67:I.1103.

A. Purpose

1. The child caring agency shall have a written statement adopted by the governing body specifying objectives, purposes, agency function, and services offered. When the agency operates under a charter or articles of incorporation all of its purposes shall be stated therein.

2. An unincorporated agency whether a sole proprietorship or partnership shall state clearly its purposes, objectives, functions and services in a written plan of operation.

a. Compliance Requirement. Submission of the written documents such as charter and/or bylaws.

3. Evidence must be shown by the agency that services and programs as stated in the operational plan are being implemented.

a. Compliance Requirement. Agency's records must document the services and programs provided to individual children.

4. When an agency adds a new function or service to its program, its governing body shall adopt a supplementary statement of such function.

a. Compliance Requirement. Presentation in writing to the licensing body within 90 days of implementation of the new services, programs, etc.

B. Governing Body

1. All corporations shall have a governing body which is responsible for and has authority over the policies and activities of the child caring agency. If incorporated in Louisiana, the governing body shall consist of a minimum of nine members, the majority of whom must be Louisiana residents. If not corporated in Louisiana, there shall be a local advisory board of seven members, the majority of whom are Louisiana residents.

2. The governing or local advisory board shall consist of one of the following:

a. a board of local citizens elected or appointed for the purpose;

b. a board or committee comprised of members of a religious or charitable organization such as a church, lodge, veterans organization, etc.;

c. a public authority.

3. In case of a partnership or sole proprietorship, there shall be a local advisory board of at least seven members, the majority of which are Louisiana residents.

a. Compliance Requirements. Corporations will provide the licensing authority with the names, addresses, telephone numbers and titles of the members of the governing body and/or local advisory board; partnerships and sole proprietorships shall provide the names and addresses and telephone numbers of each of the owners and the names, addresses and telephone numbers of the local advisory board.

4. The governing body shall be responsible for the program and standard of services of the agency.

a. Compliance Requirement. The governing body shall review and approve all policies of the agency. The approval will be recorded in the official minutes of the governing body or written statement or summary of the minutes.

5. The governing body of an incorporated agency shall identify in writing who has the power to appoint and dismiss the executive of the agency as well as the duties and responsibilities of the director.

a. Compliance Requirement. Written documentation of the above.

6. The governing body shall determine who has the authority to employ and dismiss personnel.

a. Compliance Requirement. Written documentation.

7. Any policies and/or administrative decisions of the governing body which would change the purpose of the agency will be made known to the licensing agency before implementation.

a. Compliance Requirement. Written notification to the licensing authority at least 30 days prior to the proposed date of implementation.

8. The governing body and/or local advisory board shall meet as often as necessary but no less than twice a year to insure the proper operation of the agency and care provided to children. Minutes shall be made of each meeting of the governing body or local advisory board and shall be kept on file. The minutes of an incorporated body shall be signed by an officer of the board.

a. Compliance Requirement. Applicable minutes or summary of minutes shall be on file for review.

9. The governing body shall complete a written annual evaluation of the administrator.

a. Compliance Requirement. Written statement by the governing body and appropriate members certifying that the evaluation has been prepared.

C. Resources

1. The governing body shall be responsible for the funding of the program and shall prepare a financial statement and/or audit including the annual operational and capital budgets.

2. A new agency seeking licensure shall prepare an annual budget for its fiscal year and shall indicate all sources of income and expenditure.

a. Compliance Requirement. Presentation of either an annual financial statement, audit or budget to the licensing authority.

3. A facility dependent on contributions from parents of its children or other outside funding for the care of individual children shall have funds to operate for 30 days should all funding processes cease. An agency's funding should be sufficient to prevent the children from feeling their security or placement is in jeopardy.

a. Compliance Requirement. Documentation of the funds on hand or sources of credit available to the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2669 (December

2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1544 (August 2009).

§6105. Personnel

NOTE: This Section has been moved from LAC 67:I.1105.

A. Personnel Qualifications. All employees shall present a written statement from a licensed physician which documents the individual is free from communicable disease.

1. Administrator

a. Every newly appointed administrator shall have a bachelor's degree from an accredited college or university and a minimum of four years experience in a social agency offering direct services to children. One year of administrative experience in social services may be substituted for two years of regular experience. A master's degree plus two years of social service experience may be substituted for the four years of experience. An alternative may be a bachelor of social work (BSW) degree or professional equivalent with three years experience working with children, one year of which may be experience in administration.

2. Social Work Staff

a. The social worker providing services to the child, whether a staff person employed by the child caring agency or an employee of the child placing agency, shall have a minimum of a bachelor's degree in a behavioral science. Bachelor's degree social work staff shall be supervised by an individual with a master of social work (MSW) degree or have consultation on a regular basis from a board certified social worker (BCSW). A facility with 20 or more children shall have a person with at least a bachelor's degree on the staff to supervise the social service program. Emergency care facilities licensed to exclusively care for children under the age of two are exempt from employing a social worker.

b. The social worker shall have minimum of a bachelor's degree in a behavioral science. Bachelor's degree social work staff shall be supervised by an individual with a master of social work (MSW) degree or have consultation on a regular basis from a board certified social worker (BCSW). A facility with 30 or more children shall have a person with a master of social work degree on the staff to supervise the social service program.

3. Direct Child Care Staff

a. Direct child care staff shall be at least 18 years of age, have a high school diploma or equivalency, or in lieu of a diploma, experience supervising children's activities other than in one's own home may be substituted.

b. Compliance Requirement. The qualifications of all the above staff shall be documented in their personnel records. This shall include a brief summary of the personal interviews and at least three written references attesting to character and previous employment. References shall not be obtained from relatives of the prospective employee. A written statement by the administrator verifying compliance with these requirements is acceptable.

4. Volunteers

a. Volunteers who assume direct child care responsibilities shall be carefully screened by the agency.

b. Compliance Requirement. Letters of personal reference attesting to the individual's character and reputation in the community shall be on file.

B. Personnel Responsibilities

1. Administrator

a. The administrator shall be responsible for implementing and complying with the following:

i. policies adopted by the governing body;

ii. the ongoing operations of the agency; and

iii. all federal and state laws and regulations pertaining to the operation of the agency.

b. The administrator's specific or delegated responsibilities shall include:

i. directing the agency program;

ii. representing the agency in the community;

iii. delegating appropriate responsibilities to other staff including the responsibility of being in charge of the facility(ies) during the administrator's absence;

iv. recruiting qualified staff and employing, supervising, evaluating, training and terminating employment of staff;

v. providing leadership and carrying authority in relation to all departments of the agency;

vi. providing consultation to the governing body in carrying out their responsibilities, interpreting to them the needs of children, making needed policy revision recommendations and assisting them in periodic evaluation of the agency's services;

vii. preparing the annual budget for the governing body's consideration, keeping the body informed of financial needs, and operating within the established budget;

viii. supervising the facility's management including building, maintenance and purchasing;

ix. participating with the governing body in interpreting the agency's need for financial support;

x. establishing effective communication between staff and children and providing for their input into program planning and operating procedures;

xi. compliance requirement. A written job description for the position of administrator shall be adopted by the governing body that will include the above responsibilities and shall be available to the licensing authority. An organization chart which specifies lines of authority within the agency structure shall be on file.

2. Social Worker (when applicable)

a. The social worker shall be responsible for planning the most effective use of available resources toward meeting the prescribed treatment goals for each child in the facility. Emphasis in emergency shelter care shall be on crisis intervention, handling separation anxiety and alleviating immediate stress.

b. Compliance Requirement. A written job description for the position of social worker shall include the above responsibilities and shall be available to the licensing authority. Case records shall be available for review.

3. Direct Child Care Staff

a. The direct child care staff is responsible for the daily care and supervision of the child in the living group to which the child care worker is assigned. He/she must assume many of the daily child caring responsibilities that parents usually perform. Such responsibilities will take precedence over any other duties. Included in the specific job responsibilities are:

i. handling separation anxiety and alleviating the stress of a child in crisis;

ii. training the child in good habits of personal care, hygiene, eating and social skills;

iii. protecting the child from harm;

iv. handling routine problems arising within the living group;

v. representing adult authority to the children in the living group and exercising this authority in a mature, firm, compassionate manner;

vi. enabling the child to meet his/her daily assignments;

vii. participating in all staff conferences regarding the child's progress in program evaluation of treatment goals and future planning;

viii. participating in the planning of the facilities program and scheduling such program into the operation of the living group under his/her supervision;

ix. maintaining prescribed logs of all important events that occur during his/her tour of duty; significant information about the performance and development of each child in the group;

x. compliance requirement. A written job description for the position of child care staff which includes the above responsibilities shall be available to the licensing authority; logs maintained by child care staff shall be available to the licensing authority.

C. Personnel Training

1. The agency shall provide orientation for all new social work and child care staff. The orientation shall provide training which relates to the specific job function for which the employee was hired as well as relating to the needs of children.

a. Compliance Requirement. A written orientation plan.

2. At least 15 hours of in-service training shall be provided annually for the social work and child care staff. The content of training shall include, but is not limited to handling separation anxiety, dealing with a child in crisis, helping staff understand the individual needs of children, child growth and development and state licensing standards.

a. Compliance Requirement. In-service training provided for social work and child care staff be documented in writing and the name of the person who conducted the training. The licensing authority representative may also document in-service training by direct observation of the training session.

3. First aid training is mandatory for all new child care staff and shall be updated at least every three years.

a. Compliance Requirement. All child care staff shall have a written statement documenting first aid training received or in progress. Training shall be provided by a Red Cross instructor or a licensed health professional.

D. Personnel Staffing Standards

1. The child care agency shall provide staff necessary to insure the proper care, treatment, and safety of the residents.

2. An overall staffing pattern must be developed to insure that there will be at least one direct child care staff person on duty in a general area of the facility where children are present.

3. Child care staff required to supervise children during working hours shall not be less than is represented in the following ratio.

Age of Child	Staff-Child Ratio
0-6 years	1 to 6 (waking hours)
6-11 years	1 to 8 (waking hours)
12 years & older	1 to 10 (waking hours)

4. Child care staff required to supervise children during sleeping hours shall not be less than is represented by the following ratio.

Age of Child	Staff-Child Number on Duty	Number on Call	
Ratio	(Awake)	(On premises asleep)	
0-6 years	2 to 12	1	1
6-11 years	2 to 20	1	1
3 to 40	1	2	
4 to 60	2	2	
5 to 80	2	3	
12 years 4 older	1 to 12	1	0
2 to 40	1	1	
3 to 60	1	2	
4 to 80	2	2	

a. Compliance Requirements for Paragraphs 1-4. Current personnel roster, staff schedules and resident rosters on file in the office of the agency.

5. There shall be a licensed registered nurse or a licensed practical nurse employed at least eight hours during the day, if six or more children under two years of age are under care in the facility. The nurse will be responsible for carrying out the health program as outlined by the administration and attend to the health needs of the children.

6. There shall be a licensed registered nurse or licensed practical nurse on call during the night hours if six or more children under two years of age are under care in the facility.

7. There shall be sufficient domestic and maintenance workers that those employed to give direct care to children shall not have their duties interfered with by other responsibilities to the extent that they are unable to give adequate supervision to children in their care.

8. Staff below the age of 18 years may be hired to augment the regular child care staff.

a. Compliance Requirement for Paragraphs 5-8. Personnel contracts or documented evidence of contract arrangement on file in the office of the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987),

repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2670 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1545 (August 2009).

§6107. Admission, Intake and Acceptance of Children

NOTE: This Section has been moved from LAC 67:I.1107.

A. Children are considered candidates for emergency shelter care when they are in danger of abuse or severe neglect or when they are abandoned either purposely or by events beyond the control of their caretaker.

B. Intake Process

1. The intake study shall include all available identifying information on the child. The placing agency shall provide this information within 24 hours or the next working day, whichever is less.

a. Compliance Requirements. Documentation in the records of the following:

i. name of child;

ii. name of parents or guardian;

iii. legal authorization for placement;

iv. caseworkers name;

v. reason for referral;

vi. school and grade if appropriate;

vii. physical problems, if any;

viii. medication, if prescribed;

ix. names of authorized visitors.

2. At the time of placement or within 48 hours, there shall be a written placement agreement between the agency, the child and/or the child's parents or placement agency which provides for:

a. written authorization for the facility to care for the child according to agency's written child care policies;

b. written authorization for the facility to obtain medical care for the child;

c. written financial agreement when a charge is made for the care of the child;

d. written rules regarding visits, mail, gifts and telephone calls;

e. compliance requirement. A copy of this agreement shall be in the child's record.

3. The facility shall have a written plan for orientation of children.

a. Compliance Requirement. Written documentation of the above.

C. Limitations on Acceptance

1. A facility shall accept only those children who meet the conditions outlined in the facility's admission policies and for whom the facility has an operational program.

a. Compliance Requirement. The conditions of the admission policies and the appropriateness of the operational program for the child shall be observed.

2. A facility shall accept a child for care only from his parents, a court, person or agency holding court custody. If persons legally responsible for the child cannot be located, the facility shall ask the appropriate court for temporary custody. A child cannot be accepted from one parent alone where there is joint custody and the other parent is available.

a. Compliance Requirement. This requirement shall be documented by a birth certificate, court order, and/or written statement from a single parent in the child's record.

3. No child shall be denied admission to a facility based on race or national origin.

a. Compliance Requirement. The facility shall have on file a written statement to this affect.

4. An agency shall not accept more children than the maximum specified on the license unless prior approval has been obtained from the licensing authority.

a. Compliance Requirement. If additional room or other changes warrant an increase in the number of children for which a facility is licensed, the licensee shall apply to the licensing authority for an increase in the number of children prior to accepting additional children.

5. The agency shall not keep a child in care unless the child has had a medical examination including a test for tuberculosis at admission or within 72 hours after admission.

6. If there is a suspicion of child abuse when a child is placed in emergency shelter care, the local child protection agency shall be notified.

a. Compliance Requirement for Paragraphs 5-6. Documentation shall be in the child's case record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2672 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1547 (August 2009).

§6109. Child Care, Development and Training

NOTE: This Section has been moved from LAC 67:I.1109.

A. Individual Service Plan

1. A service plan which specifies the child's particular physical, emotional and educational needs and the way these needs will be met while in the emergency shelter shall be documented in the child's case record within 72 hours. When a child placing agency is involved, development of the service plan shall be a joint responsibility.

a. The service plan shall include the objective to be attained through emergency shelter placement and the anticipated length of stay.

b. The service plan shall include specific instructions for treatment and shall be shared with all staff involved in the service plan.

c. A written appraisal of the child's educational and vocational needs shall be a part of the service plan.

d. Compliance requirement: A written service plan on file.

2. When appropriate, procedures shall be established which give the child, parents or legal guardians the opportunity for participation in the formulation of the service plan.

a. Compliance Requirement. These procedures shall be stated in writing and made available to parents or legal guardians.

3. When a child's service plan indicates the need for professional consultation or treatment, the agency shall be responsible for obtaining those specified services.

a. Compliance Requirement

i. When professional services are obtained, documentation shall be included in the child's case record.

ii. A schedule indicating when needed services not yet provided are planned to be provided shall be included in the child's case record.

B. Daily Aspects of Care

1. The daily schedule shall be developed in relation to the needs of the children.

a. Compliance Requirement

i. The agency's written general child care policies shall reflect how a child's daily schedule is developed to meet his or her needs.

ii. A copy of the daily schedule shall be available for school, non-school and vacation periods.

2. Children shall be given training in good habits of personal care, hygiene and grooming. They shall be supplied with personal care, hygiene, and grooming items and supplies.

a. Compliance Requirement. The general child care policies on the child's daily schedule shall reflect how training in personal care is met.

3. The agency shall make available to each child an adequate number of supervised recreational activities.

a. Compliance Requirement. Activity schedules shall be available which indicate the inclusiveness of each activity and by whom supervised.

C. Clothing

1. The facility shall see that each child is supplied with his or her own clothing. Each child shall be provided with clothing that is properly fitted, appropriate for the child's age and sex, and comparable to the majority of children's clothing in the community.

D. Health Aspects of Care

1. Responsibility for the health supervision of the facility shall be placed with one physician. The agency shall have written policies and procedures for obtaining diagnosis and treatment of medical and dental problems.

a. Compliance Requirement

i. Copies of the policies and procedures shall be available to the licensing authority.

ii. The agency shall ensure access to 24 hour, seven day per week medical coverage by hospitals, physicians and dentists.

iii. The agency shall make known to all staff members the policies and procedures to be followed in an emergency.

2. Immunization shall be given according to recommendations of a physician or the schedule established by the Office of Preventive and Public Health Services.

a. Compliance Requirement. Current medical and immunization records shall be maintained as follows:

i. a medical consent form signed by a person authorized to give consent;

ii. record of medical examinations;

iii. immunization records;

iv. record of each visit to physician and recommended treatment.

3. Facilities for medical isolation shall be available.

a. Compliance Requirement. Space for isolation purposes shall be designated.

4. Medication shall be prescribed only by a licensed physician and administered under his direction.

a. Compliance Requirement. Medication records shall include the medication given, the time, the dosage, and the name of the person administering the medication.

E. Food and Nutrition

1. Planning, preparation and serving of foods shall be in accordance with the nutritional, social and emotional needs of the children in care. The diet shall include a variety of food attractively served. Children shall be encouraged but not forced to eat all food served.

2. Food provided shall be of adequate quality and in sufficient quantity to provide the nutrients for proper growth and development.

a. "Food for Fitness"—A daily food guide, developed by the United States Department of Agriculture shall be used as a basis of meeting nutritional standards. See §1117, Appendix I, for Daily Food Guide, Subsection A.

b. Children shall be provided a minimum of three meals daily and snacks.

c. All milk and milk products used for drinking shall be Grade A and pasteurized.

d. There shall be no more than 14 hours between the last meal or snack one day and the first meal the following day.

e. Compliance Requirements for Paragraphs 1 and 2. Menus shall be prepared and maintained on file at least one month after used.

F. Money

1. The agency shall provide a plan for all children over five years of age to have money for personal use.

a. Compliance Requirements. Documentary evidence that each child in care for over seven days has received money from some source.

2. Money received by a child shall be his own personal property and shall be accounted for separately from the agency's funds. When indicated in the treatment plan, a child may be required to use his or her earned money to pay for room and board. Donations accepted for a child shall be used in accordance with the donor's expressed intent.

a. Compliance Requirement. The agency shall document the procedure for handling children's money.

3. The child shall be encouraged to learn how to manage money.

a. Compliance Requirement. The policy for handling children's money shall include specific ways and procedures for children to obtain, safeguard, save, invest, withdraw, and spend their money.

G. Community Relationships

1. When the child shows sufficient self-control and emotional stability, the child caring agency shall encourage and arrange for him to participate in community activities such as: school, recreational or cultural functions, and visits with parents, relatives and friends.

2. Whenever appropriate the agency shall make possible and encourage visits by interested individuals or groups and theft participation in on-campus activities.

a. Compliance Requirement. The agency shall document its plan for encouraging children to participate in community life.

3. Children shall be permitted the opportunity to attend off-campus religious services of their choice.

a. Compliance Requirement. There shall be a written policy statement regarding the religious program available or absence of one.

H. Education, Work and Training

1. The agency shall assume the responsibility for arranging an educational plan appropriate for each child.

2. The agency shall use off-campus education facilities for those students who are able to participate in an off-campus school setting.

3. For children unable to attend regular classes, the agency shall use community education resources or its own resources or some combination of these resources to help the child develop and become self-sufficient to the extent of their capacity.

4. The agency not having State Department of Education accreditation or an approved school program or access to such shall make this information clear in its policies, brochures and information given to all applicants.

5. If the child caring agency does have a school program accredited or approved by the State Department of Education, documentation of this accreditation or approval shall be on file at the agency.

a. Compliance Requirement for Paragraphs 1-5. The child caring agency shall outline in writing the provisions made for these needs.

6. The child caring agency shall differentiate between tasks of daily living which children are expected to perform as part of living together, jobs to earn spending money, and jobs performed in or out of the facility to gain vocational training.

a. Compliance Requirement

i. The task of daily living which children are expected to perform as part of living together shall be made known to the child during his or her orientation to the facility. The task of daily living shall not preclude leisure time and recreational activities.

ii. The agency's rules regarding jobs to earn spending money or gain vocational training shall be made known to all children old enough to have a job.

iii. Children in care shall not be used as employees. The work that they perform shall not be work that ordinarily is performed by staff.

I. Discharge

1. The agency shall have written documentation describing discharge policies and procedures.

a. Compliance Requirement. The documentation shall be available for review.

2. Children shall not be retained more than 45 days in emergency shelter care. There can be two renewals of 30 days each by written contract between the emergency shelter care facility and the placing party.

a. Compliance Requirement. Written documentation.

3. No child shall be precipitously or arbitrarily discharged from care.

a. Compliance Requirement. The agency shall give due notice of discharge to all appropriate parties such as parents, legal guardian, and the placing agency.

4. If a child has been received under care from a court, the child shall not be discharged to other persons except on the order of the court and after an investigation of home conditions satisfactory to the court, unless the child is being returned to the court for disposition.

a. Compliance Requirement. Self-evident.

5. The discharge plan for the child shall be recorded in the child's record upon his or her release and a summary of the plan made available to all appropriate parties.

a. Compliance Requirement.

i. the circumstances surrounding the discharge shall be documented in the case record;

ii. the name, address and relationship of the person to whom the child is released shall be recorded; and

iii. date of discharge shall be recorded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2673 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1547 (August 2009).

§6111. Children's Rights

NOTE: This Section has been moved from LAC 67:I.1111.

A. Privacy

1. The staff of the facility shall function in a manner that allows appropriate privacy for each child. The facility's space and furnishings shall be designed and planned to enable the staff to respect the children's right to privacy and at the same time provide adequate supervision according to the ages and developmental needs of the children.

a. Compliance Requirement. Each child shall have access to a quiet area where he or she can withdraw from the group when not specifically engaged in structured activities.

2. The child shall not be placed in a position of having to acknowledge his or her dependency, destitution, or neglect.

3. The child shall not be required to make public statements to acknowledge his or her gratitude to the child caring agency.

4. Children shall not be required to perform at public gatherings.

a. Compliance Requirement for Paragraphs 2, 3, and 4. The facility shall not require the child to make written or oral statements regarding his or her background or dependency on the facility for care.

5. The facility shall not use reports or pictures or release or cause to be released research data from which children can be identified without written consent from the child and the parents or legal guardians and/or the court having jurisdiction.

a. Compliance Requirement. The signed consent form shall be on file at the facility before any reports, pictures, or research data are released from which the child can be identified. The signed consent form shall indicate how any reports or pictures shall be used.

B. Contact with Family and Collaterals

1. There shall be contacts between the child and parents or legal custodian while the child is in care unless the rights of the parents have been legally terminated or restricted by court order. The frequency of contact shall be determined by the needs of the child and family.

2. Children in care shall be allowed to send and receive uncensored mail and conduct private telephone conversations with family members unless the best interests

of the child or a court of competent jurisdiction necessitates restrictions.

3. If it has been determined that the best interests of the child necessitate any restrictions on communications or visits, these restrictions shall be ordered by the court.

4. If limits on communications or visits are indicated for practical reasons, such as expense of travel or telephone calls, such limitations shall be determined with the participation of the child and family.

5. Children shall not be denied the right to contact an attorney, probation officer, social worker, judge or other officer of the court.

6. Compliance Requirement for Paragraphs 1-5. The facility shall have clearly stated written policies regarding visits, gifts, mail and telephone calls between the child, family members and appropriate collaterals. Any restrictions as specified in Paragraphs 3, 4 and 5 above shall be documented in the child's record.

C. Participation in Program Development

1. Children's opinions and recommendations shall be considered in the development and continued evaluation of the program and activities.

a. Compliance Requirement. The procedures for this shall be documented in program policy.

D. Disciplinary Safeguards

1. Only specifically authorized staff members shall be allowed to handle discipline.

2. Children shall not be subjected to corporal punishment.

3. Children shall not be subjected to cruel, severe, unusual, degrading or unnecessary punishment.

4. Children shall not be subjected to verbal remarks which belittle or ridicule them, their families or others.

5. Children shall not be denied food, mail or visits with their families as punishment.

6. Any discipline or control shall be individualized to fit the needs of each child.

7. Seclusion, defined as the placement of a child alone in a locked room, shall not be employed.

a. Compliance Requirement for Paragraphs 1-7

i. The facility shall have written policies regarding methods used for control and discipline of children which shall be available to appropriate staff and to the children's parents or legal custodian.

ii. The incidents for which disciplinary measures are taken and the method of discipline used shall be logged by the authorized staff member.

8. Physical holding shall only be employed to protect the individual from physical injury to himself or others. Physical restraints shall not be employed as punishment.

9. Mechanical restraints shall not be used.

a. Compliance Requirement for Paragraphs 8 and 9, The need for restraint by physical holding and the length of time this type restraint was employed shall be recorded in the child's case record.

E. Clothing and Personal Possessions

1. Each child shall be provided adequate clothing which is appropriate for his or her age group which reflects community standards.

a. Compliance Requirement. The facility shall not require clothing or dress which set the child apart from other children in the community.

2. A child shall be allowed to bring appropriate personal possessions to the facility and shall be allowed to acquire possessions of his or her own.

a. Compliance Requirement. Prior to admission, information shall be made available to the child and his or her parents or legal guardian concerning what personal possessions may be brought to the facility and the kinds of gifts a child may receive. They shall also be informed about what articles children cannot have or receive while at the facility.

F. Civil Rights

1. Children shall not be segregated or denied participation in overall program activities because of race or national origin.

a. Compliance Requirement. The facility shall comply with all appropriate federal and state civil rights laws.

G. Religious Participation

1. Children shall have an opportunity to participate in religious services and functions of their parents' choice.

a. Compliance Requirement. The facility shall make available the opportunity to attend religious services but not impose participation against the wishes of the child and/or parents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2674 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1549 (August 2009).

§6113. Building, Grounds

NOTE: This Section has been moved from LAC 67:I.1113.

A. Furnishings and Equipment. The furnishings and equipment shall be adequate, sufficient, and substantial for the needs of the age groups in care.

1. Sleeping Rooms

a. All bedrooms shall be on or above street grade level and be outside rooms. Normally, bedrooms shall accommodate no more than four residents. Any deviation from this size shall be justified on the basis of meeting the program needs of the specific individuals being served. Bedrooms must provide at least 60 square feet per person in multiple sleeping rooms, and not less than 80 square feet in single rooms.

b. Each resident shall be provided a separate bed of proper size and height, a clean comfortable mattress and bedding appropriate for weather and climate.

i. Compliance Requirement. Children 6 years of age and older shall be provided with a rigid-frame single bed standard twin mattress and (length 75" x width 38" x height six"). Children ages two to six may be provided with youth beds with rigid frames. Infants up to two years of age shall be provided with standard size cribs.

c. There shall be at least 3 feet of space between beds or cribs.

d. When possible, there should be individual sleeping rooms for adolescents and for children whose behavior would be upsetting to the group.

e. Appropriate furniture shall be provided, such as a chest of drawers, a table or desk, and an individual closet with clothes racks and shelves accessible to the residents.

f. Individual storage space reserved for the child's exclusive use shall be provided for personal possessions such as clothing, toys, and other items so that they are in easy access to the resident.

i. Compliance Requirement. Self-evident by on-site observation.

2. Bath and Toilet Facilities

a. There shall be separate toilet and bath facilities for boys and girls beyond nursery age.

b. There shall be separate toilet facilities for employees.

c. Toilets should be convenient to sleeping rooms and play rooms.

d. Toilets, bathtubs, and showers shall provide for individual privacy unless specifically contraindicated by program needs.

3. Dining Room and Kitchen

a. There shall be a designated space for dining.

b. Dining room tables and chairs shall be adjusted in height to suit the ages of the children.

4. Heat and Ventilation

a. Temperature shall be maintained within reasonable comfort range (65 degrees to 85 degrees).

b. Each habitable room shall have direct outside ventilation by means of windows, louvers, air conditioners, or mechanical ventilation horizontally and vertically.

5. Compliance Requirement for Paragraphs 2-4. These requirements shall be self-evident upon on-site observation.

B. Playing Space and Equipment

1. Indoor and Outdoor Play Space. The indoor play space shall be a minimum of 35 square feet per child, separate from and excluding bedrooms, halls, kitchen and any rooms not available to children. The outdoor play space shall be a minimum of 75 square feet per child. This area shall not include parking and must be an area which is reserved primarily for recreational purposes.

a. Compliance Requirement. Self-evident upon on-site visit and/or floor plan and site plan.

2. Play Equipment. There shall be play equipment sufficient to provide all children in care opportunities for easy access to such equipment.

a. Compliance Requirement. An on-site visit must reveal play equipment suitable for all ages of children in care. The following types of equipment are suggested as suitable for each age group and other similar types of play equipment may be substituted according to the needs of each facility.

i. Infants. Rattles, squeeze toys, stuffed toys, teething rings.

ii. Toddlers. Pull toys, blocks, sand pile, sand pails and shovels, wheel toys, climbing steps and boxes, "walking" boards, finger paints, clay, water colors, colored paper, paste, scissors and picture books.

iii. Three to Six Years. Large boxes, balls, slides, swings, bars, rope ladder, hammers, shovels, saws, work benches, dump trucks, trains, airplanes, wagons, scooters, tricycles, finger paints, picture books, pegboards, kitchen utensils, dolls, doll houses, "grown-up" clothes, musical instruments, phonograph records.

iv. Six to Twelve Years. Football, baseball and basketball equipment, hobby materials.

v. Twelve Years. Outdoor play equipment, books, games.

vi. Adolescents. Hobby materials, phonograph records, books, football, baseball, and basketball equipment, games.

C. Health and Safety

1. The facility shall comply with all applicable building codes fire and safety laws, ordinances and regulations.

a. Compliance Requirements

i. It is the responsibility of the facility to request the necessary health and fire inspections and to comply with any resulting recommendations noted in the inspection reports.

ii. Written documentation that all building codes, fire, health and safety laws, ordinances and regulations are met shall be on file at the facility and copies shall be submitted to the licensing authority on request.

2. No child shall have access to machinery such as power driven lawn mowers, mangles, commercial type power driven washing machines, etc., unless these are provided with approved safety devices.

3. Secure railings shall be provided for flights of more than four steps and for all galleries more than 4 feet from the ground.

4. Where children under age two are in care, gates shall be provided at the head and foot of each flight of stairs accessible to these children.

5. An outdoor swimming pool shall be enclosed by a 6 foot high fence. All entrances and exits to pools shall be closed and locked when not in use. Machinery rooms shall be locked to prevent children from entering.

a. Compliance Requirement. Paragraphs 2, 3, 4 and 5 above must be self-evident upon on-site visit.

6. A certified individual, 18 years of age or older, shall be on duty when children are swimming in ponds, lakes or pools where a lifeguard is not on duty.

a. Compliance Requirement

i. Certification from one of the following shall constitute compliance:

(a). Water Safety Instructors Certificate or Senior Lifesaving Certificate from the Red Cross;

(b). Water Safety Instructor Certificate from the Young Men's Christian Association or the Young Women's Christian Association;

(c). the National Association of Underwater Instructors Certificate.

ii. Certification shall be documented in personnel records.

7. There shall be written plan and procedures for water safety.

a. Compliance Requirement. The plan shall be shared with appropriate staff and submitted to the licensing authority upon request.

8. Storage closets or chests containing medicine or poisons shall be securely locked.

9. Garden tools, knives and other dangerous instruments shall be in accessible to small children.

10. Electrical devices shall have appropriate safety controls.

a. Compliance Requirement for Paragraphs 8-10. Must be self-evident upon on-site visit.

D. Maintenance

1. Buildings and grounds shall be kept clean and in good repair.

2. Outdoor areas shall be well drained.

3. Equipment and furniture shall be safely and sturdily constructed and free of hazards to children and staff.

4. The arrangement of furniture in living areas shall not block exit ways.

a. Compliance Requirement for Paragraphs 1-4. Must be self-evident upon on-site visit and observation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2676 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1550 (August 2009).

§6115. Required Records and Reports

NOTE: This Section has been moved from LAC 67:I.1115.

A. Children's Records

1. Accurate and current records shall be maintained for each child in care.

a. Compliance Requirement. The record shall contain, as a minimum the following which shall be provided by the placement party:

i. identifying information which includes the child's name, date of birth, place of birth, sex, religion, race, names and addresses of parents, brothers, and sisters, names and addresses and relationships of other responsible persons, date of admission, date of discharge;

ii. intake information as required by Section III, A, 1;

iii. placement agreement between the institution and the child's parents, guardian or agency holding custody as required by Section III, A, 2;

iv. if granted, consent of parents, child, guardian or agency holding custody for use of children's pictures, within licensing requirements;

v. medical records are required by Section IV, D, 2-4;

vi. copy of the child's birth certification (or a document that establishes the child's identity and birth date), if such exists;

vii. a copy of court order if appropriate;

viii. results of neurological, psychological or psychiatric evaluations if the intake study or medical examination indicates a need for such an evaluation;

ix. a copy of the initial service plan and the child's progress in relation to the service plan;

x. record of any specialized testing or treatment obtained;

xi.. a copy of any financial agreement with parents and/or placement agency.

2. Case records shall be held confidential and secure.

a. Compliance Requirement

i. Information in case records shall not be disclosed for any purpose other than direct and authorized services to the child or the administration of the facility.

ii. These records shall be on the premises of the facility and shall be available for review by the licensing authority.

3. A monthly statistical record shall be kept by the facility showing the number of children in care, placement and discharge, the children's age, sex, and race.

a. Compliance Requirement. This information shall be available for review to the licensing authority upon request.

B. Personnel Records

1. Personnel records shall be maintained on each employee of the facility.

a. Compliance Requirement. The records shall contain all pertinent information relative to:

i. qualifications for the position;

ii. initial health card or physician's statement and annually thereafter that employee is free of communicable diseases, including a TB test report;

iii. pre-employment references;

iv. evaluations of performance;

v. date of employment;

vi. date and reason for separation;

vii. forwarding address of separated employees.

C. Emergency Reports and Records

1. Any serious occurrence such as accidents, injury, or arrests, involving a child shall be reported immediately to the parents and/or placement agency and to any other appropriate agencies or individuals.

2. All runaways shall be reported to the parents, guardian or placement agency, and the appropriate local law enforcement agency within 24 hours from the time it has been determined that the child has left the facility without permission.

a. Compliance Requirement. The time the incident occurred, the person reporting the incident and the person or agency to whom the report was made shall be noted in the child's case record.

3. Any disaster or emergency situation which makes the facility unable to comply with any of the licensing standards shall be reported within 24 hours to the licensing authority.

a. Compliance Requirement. Self-evident.

D. General Reports

1. The following reports shall be obtained at the time of the initial licensing and annually thereafter:

a. inspection report from the state fire marshal;

b. inspection report from the Office of Preventive and Public Health Services:

i. Compliance Requirement. Current reports shall be submitted with each application for a license and shall be on file at the facility.

2. The administration of the child caring facility shall submit the following reports to the licensing authority:

a. any change in administrator;

b. any change in purpose of or additions or deletions of services;

c. any change in accreditation by a school program offered by the facility;

d. any impending change of residence or location; e. any change in name of the facility.

3. The licensing authority shall have the authority to visit and inspect the facility at all reasonable times.

4. The license shall be on display in a conspicuous place at the facility.

a. Compliance Requirement. Paragraphs, 2, 3, and 4 above are self-evident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2677 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1552 (August 2009).

§6117. Appendix I

NOTE: This Section has been moved from LAC 67:I.1117.

A. Daily Food Guide

1. This information provides a detailed interpretation of the nutrition standard of the Minimum Standards for Child-Caring Agencies.

2. It is based on Food for Fitness-A Daily Food Guide prepared by the Agricultural Research Service and published as Leaflet No. 424, U.S. Department of Agriculture, Superintendent of Documents, Washington, D.C.

3. In the daily food guide which follows, foods within each group have similar but identical food value. Each day choose at least the minimum number of servings from each of the broad Food Groups: Meat Group, Bread-Cereal Group, Vegetable-Fruit Group, Milk Group and Other Foods. Servings may differ-small for young children, large (or seconds) for very active adults or teenagers.

B. Meat Group

1. Each day serve 4 ounces of cooked, lean meat, or a combination of meats and meat alternates having a protein value equal to 4 ounces of cooked lean meat.

Amounts	Meats
Four ounces of raw lean meat are to be counted as 3 ounces of cooked meat	Lean beef
	Veal
	Lamb
	Pork
	Variety meats: heart, liver,.-kidney
Either of these is equal in protein value to 1 ounce cooked lean meat*	Poultry, example:
	1 small drumstick
	Processed meats, example:
	1 all-meat frankfurter
	Meat Alternates
Any one of these is equal in protein value to 1 ounce cooked lean	1 egg
	2 tablespoons peanut butter
	1/2 cup, when cooked, of dried peas, lentils, beans, textured vegetable protein
	1 thin slice cheddar cheese** (1 oz.) 1/2 cup cottage cheese**

2. The department considers that 1 ounce of cooked fish is equal in protein value to 1 ounce of cooked lean meat.

**If cheese is counted as meat, it should not be counted as milk.

C. Bread-Cereal Group

1. Each day provide four or more servings of breads and cereals which are whole grain, enriched or restored.

Amounts	
Count any one of these as one serving	1 slice bread
	1 roll, muffin or biscuit
	5 saltine crackers
	2 graham crackers
	1 tortilla
	1 ounce ready to eat cereal
	1/2 to 3/4 cup cooked oatmeal, cornmeal, grits, rice, macaroni, noodles or spaghetti
	2-3 enriched cookies

D. Vegetable-Fruit Group

1. Each day provide four or more servings of vegetables and fruits including one good source or two fair sources of Vitamin C.

2. At least one serving every other day should be a good source of Vitamin A.

3. The remaining servings each day may be any vegetable or fruit including those valuable for Vitamins C and A.

Amounts	Good Sources of Vitamin C
Count any one of these as one serving of Vitamin C	1 medium orange
	1/2 grapefruit
	1/2 cup orange juice, grapefruit or blended citrus juices**
	1/2 cantaloupe*
	3/4 cup strawberries
	1/2 cup cooked broccoli* or Brussels sprouts*
	Fair Sources of Vitamin C
Count any two of these as one serving of Vitamin C	1 medium tomato raw* or 1/2 cup cooked*, or 1/2 cup juice*
	1 tangerine or 1/2 cup tangerine juice
	1/2 cup cauliflower, raw cabbage, cooked rutabaga, turnip greens*, collards* or other leafy greens* 1 medium potato, sweet* or white 1/2 medium green pepper
	Good Sources of Vitamin A
Count any one of these one serving of Vitamin A	1/2 cup sweet potatoes, carrots, pumpkin, or winter squash
	1/2 cup collards, broccoli, turnip greens or other dark leafy greens
	5 apricot halves
	1/4 medium cantaloupe
	Other Vegetables and Fruits
Count any one of these as one serving	Other vegetables not listed above
	1 medium apple
	1 banana
	1 peach, etc.
	1/2 cup other fruit or vegetable

4. If the food chosen for Vitamin C is also a good source of Vitamin A, the additional serving of Vitamin A food may be omitted.

5. Fruit juice fortified with Vitamin C may be substituted for fruit juice naturally high in Vitamin C. Fruit flavored drinks shall not be substituted for fruit juice or fruit.

E. Milk Group

1. Each day serve the specified amounts of fresh milk or combinations of fresh milk and milk products having a total calcium value equal to the specified amounts of fresh milk.

Amounts	Milk Products
Any one of these is equal to the calcium value of 1/2 cup fresh milk	1/4 cup undiluted evaporated milk
	2 tablespoons of nonfat dry milk
	1/2 cup custard or milk pudding
	1/2 cup cream soup made with milk
	1/2 cup milk used on cereal
Any one of these is equal to the calcium value of 1/4 cup fresh milk	1/2 cup ice cream
	1 thin slice cheddar cheese (1 oz.)
	1/2 cup cottage cheese

2. If cheese is counted as meat, it should not be counted as milk.

F. Other Foods

1. Serve butter, margarine, fats, oils, sugar, or unenriched refined grain products as needed to complete meals and to provide additional food energy and other food values.

2. Bacon and cream cheese are counted as fats because they contain very little protein. Either 1 tablespoon of cream cheese or one slice of crisp bacon is equivalent to 1 teaspoon of margarine or butter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2678 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1553 (August 2009).

Chapter 63. Foster Care/Substitute Family Care

§6301. Definitions

NOTE: This Section has been moved from LAC 67:I.1301.

Client—a person placed in foster home by a placing agency.

Corporal Punishment—punishment inflicted in any manner upon the body.

FosterHome—a family home providing 24-hour care for clients unrelated to adult members of the household by blood, marriage, guardianship or adoption.

Foster Parent(s)—either a single person or a legally married couple approved to provide foster care.

Placing Agency—any organization legally authorized to place clients in foster home.

Related—includes individuals within the following degrees of relationship whether by blood, half-blood, adoption, or marriage: parent, spouse, sibling, grandparent, uncle, aunt, niece, nephew, son, daughter, grandchild, and first cousin. This includes persons of preceding generations denoted by prefixes of "great" and also includes persons whose relationship is denoted by prefixes of "step."

Service Plan—a comprehensive, time-limited, goal-oriented, individualized plan for the care, treatment and education of a client in care of a foster home. The service plan is based on a current comprehensive evaluation of the client's needs.

Substitute Family Care (SFC)—an arrangement wherein both children and adults with specific handicapping conditions are placed in the private homes of persons not related, as defined above, to clients. (NOTE: Exceptions with regard to relatedness may be made subject to the approval of the appropriate program office). Program administration and specialized professional and support services are provided through agents of the program office of DHHR responsible for providing services to individuals with specified disabilities.

Single Person—a person who is unmarried, separated, divorced, or widowed.

Training—any activity outside the normal routine of the foster home which promotes the development of skills related to client care, increases the knowledge of the person involved in a related field or fosters the development of increased professionalism.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2679 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1554 (August 2009).

§6303. Qualifications

NOTE: This Section has been moved from LAC 67:I.1303.

A. Age

1. Foster parent(s) shall have a birth certificate or other document as evidence that they meet the following age requirements.

a. A foster parent shall be at least 21 years of age.

b. Persons receiving initial approval as foster parent(s) shall be less than 65 years of age.

2. Except with regard to the above age limitations, the age of foster parent(s) shall be considered only as it affects the ability of the foster parent(s) to care for the client(s).

B. Marital Status

1. Foster parent(s) shall be either a single person or a legally married couple.

C. Income

1. Foster parent(s) shall have sufficient income to meet their needs and ensure the security and stability of the household, independent of foster care maintenance payments.

D. Employment

1. A single foster parent or a foster parent couple who both work outside the home shall have a plan for caring for client(s) approved by the placing agency.

2. Foster parent(s) shall obtain approval from the placing agency for a business conducted in the home, demonstrating that the activities related to this business will not interfere with the care of the client(s).

a. A foster home shall not be used as a lodging for transient roomers or as a day care center for non-related children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987),

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§6305. Personal Characteristics

NOTE: This Section has been moved from LAC 67:I.1305.

A. General

1. Foster parent(s) shall demonstrate emotional stability, good character, a responsible adult life style, freedom from excessive use of alcohol or use of illegal drugs and the ability to provide appropriate supervision, humane care, reasonable discipline and a home-like environment for the client(s).

a. Foster parent(s) shall demonstrate a capacity for setting realistic expectations for behavior and performance based on age, abilities and disabilities of the client(s).

b. Foster parent(s) shall demonstrate the emotional stability of a healthy adult as evidenced by a willingness to discuss and deal appropriately with their own feelings of anger, frustration, sorrow, conflict and affection and those of others.

B. Criminal Record Check

1. Foster parent(s) and all other members of the household 18 years of age or older shall sign a release for a criminal record check and shall be free of convictions, indictment or substantial evidence of involvement in any criminal activity involving violence against a person, serious sexual misconduct, gross irresponsibility or disregard for the safety of others or serious violations of accepted standards or ethical conduct.

a. Exceptions to the above requirement shall be made, at the discretion of the placing agency, when the criminal activity is not recent or is not sufficiently serious to warrant disqualification and poses no current or future threat to the health, safety, or well-being of the client(s).

C. References

1. Foster parent(s) shall provide the names, addresses and telephone numbers of five persons who may be contacted by the placing agency as personal references.

a. At least three of the required references shall be persons not related to the foster parent(s) by blood or marriage.

D. Informed Consent of Household

1. Foster parent(s) shall ensure that all members of the household are informed of and agree to the acceptance of the client(s) into the home.

a. Exceptions to the above requirement shall be made, at the discretion of the placing agency, when the household member involved is incapable of communication or informed decision-making and poses no threat to the health, safety or well-being of the client(s).

E. Health

1. Foster parent(s) shall, as required by the placing agency, provide information on the physical and mental health history of every member of the household.

2. Members of the household must be free of communicable diseases, specific illnesses or disabilities which would either endanger the health of the client(s) or interfere with the capability of the household to provide adequate care for the client(s).

3. Foster parent(s) shall, on request, provide a medical statement from a licensed physician verifying that household members are free of communicable diseases, specific illnesses or disabilities which would either endanger the health of the client(s) or interfere with the capability of the household to provide adequate care for the client(s).

4. Handicapping conditions of foster parent(s) or household members are to be considered only as they affect the ability of the household to care for the client(s).

F. Physical Examination

1. Prior to initial approval of the foster home, a licensed physician shall examine the foster parent(s) and certify that they are free of tuberculosis and other communicable diseases, specific illnesses or disabilities which would either endanger the health of the client(s) or interfere with the capability of the foster parent(s) to care for the client(s).

a. Physical examinations shall be updated every three years. Tuberculosis scans are not required for follow-up examinations.

b. Foster parent(s) shall obtain a physical examination and provide a written report on the findings of this examination whenever required to do so by the placing agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2680 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1555 (August 2009).

§6307. Professional Responsibilities

NOTE: This Section has been moved from LAC 67:I.1307.

A. Training

1. Foster parent(s) shall complete an initial orientation and training program involving at least six hours of training activities prior to accepting the first foster client.

a. Exceptions to the above requirements may be granted when a client requires emergency placement. In such circumstances, the foster parents shall receive the initial six hours of training within 90 days of the placement of the initial client.

2. Foster parent(s) shall participate in at least 15 hours of approved training and consultation activities each year. These hours may be shared between both persons in a foster parent couple, but each person must receive at least five hours of training.

a. Exceptions to the above requirement may be granted at the discretion of the placing agency when foster parent(s) are considered sufficiently trained or experienced to provide high-quality foster care.

B. Records

1. Foster parent(s) are responsible for keeping records on the client(s) as required by the placing agency. Each client's record shall contain at least the following information:

a. client's name, age, religion and, if available, birth date;

b. names, addresses and telephone numbers of the client's caseworker and other representatives of the placing agency involved in monitoring the placement;

c. emergency telephone number(s) for obtaining consent for medical treatment;

d. date on which the client arrives and date the client leaves the home;

e. records on immunizations and medical treatment;

f. name, address and phone number of the client's physician;

g. a listing of any serious illnesses or hospitalization;

h. information regarding serious food or drug allergies and other chronic or handicapping conditions;

i. dates of family visits;

j. school reports or employment records;

k. names of relatives with whom contact may be maintained.

2. Foster parent(s) shall maintain records in a confidential manner which ensures that a client's record will not be read by persons not involved in the client's care and treatment. The client's record shall be given to the placing agency when the client leaves the foster home.

C. Capacity

1. Foster parent(s) shall not exceed the following maximum capacities of foster homes.

a. SFC foster parent(s) shall care for a maximum of four clients.

b. All other foster parent(s) shall have no more than eight dependents, including clients and their own children and shall care for a maximum of six clients.

c. Exceptions to the above maximum capacities may be granted at the discretion of the placing agency, when such exceptions will not have an adverse effect on the care of clients already in the home.

2. Foster parent(s) shall not care for more than two children who are under the age of two years, including their own children.

a. Exceptions to the above requirements may be granted at the discretion of the placing agency when such exception is considered to present no risk to the care of clients.

D. Relationship with the Placing Agency

1. Foster parent(s) shall cooperate with the placing agency staff in home surveys and in the ongoing monitoring of the foster home.

a. Foster parent(s) shall provide the placing agency any information reasonably related to compliance with these requirements and shall allow representatives of the placing agency access to any member of the household and into all rooms within the home.

2. Foster parent(s) shall notify the placing agency prior to allowing any person to take up residence in the foster home.

3. Foster parent(s) shall notify the placing agency immediately in any of the following circumstances:

a. a serious injury or illness involving medical treatment of the client;

b. the death of a client;

c. unauthorized absence of the client from the home;

d. removal of the client from the home by any person or agency other than the placing agency; or attempts at such removal;

e. any fire or other emergency requiring evacuation of the home;

f. any serious altercations involving clients;

g. any involvement of client(s) with authorities;

h. in no instance shall notification of any of the above circumstances be given later than 12 hours after the occurrence.

4. Foster parent(s) shall inform the placing agency at least four weeks prior to a planned move of the family home.

5. Foster parent(s) shall inform the placing agency as soon as possible in any of the following circumstances:

a. any serious illness or death in the household;

b. the departure of any member of the household;

c. any other circumstances or incident seriously affecting clients or client care.

E. Goal-Setting Conference

1. Foster parent(s) will participate in an annual goal-setting conference with the placing agency to evaluate the strengths and weaknesses of the foster home and of the supportive relationships of placing agency representatives with foster parent(s). This conference will result in a brief written plan, provided by the placing agency to all parties to improve services and relationships.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 18:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2680 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1555 (August 2009).

§6309. Client Care and Treatment

NOTE: This Section has been moved from LAC 67:I.1309.

A. The Care and Treatment Team

1. Foster parent(s) will work cooperatively with placing agency representatives as members of a treatment team responsible for planning, providing and discussing the total care and services provided to each client.

a. Foster parent(s) shall fully disclose all information related to a client's problems or progress to placing agency representatives.

2. Foster parent(s) shall treat any personal information about a client or the client's family in a confidential manner.

B. Support System

1. Foster parent(s) shall have an adequate support system for supervising and providing care for client(s) on an ongoing basis while allowing foster parent(s) opportunities for conducting personal business and for enjoying occasional breaks from the responsibility for caring for client(s).

a. Any person given the responsibility for the client(s) on a regular basis must be identified to and approved by the placing agency.

C. The Client's Family

1. When the client is minor when and adult client's family is available and accepting of contact with the client, foster parent(s) shall maintain a working relationship with the client's family in accordance with the client's service plan and in cooperation with placing agency staff. In such circumstances, the foster parent(s) will participate in planning for and providing visits by the client with his/her biological parents, friends, and other family members.

2. Foster parent(s) shall allow biological parents and other family members to communicate with the client by

mail and by telephone in accordance with the client's service plan.

D. Client Care

1. Daily Routine

a. Foster parent(s) shall provide a flexible daily routine for the client(s). This routine shall be similar to the routine of other family home and shall be developed to be appropriate to each client's age and abilities.

i. Opportunities shall be provided for experiencing normal social life in the community, for recreation, for appropriate physical exercise and for intellectual, spiritual and emotional growth.

2. Household Tasks

a. Foster parent(s) shall only expect a client to perform household tasks which are within the client's abilities, are reasonable for the client's age and are similar to those expected of other household members.

b. Foster parent(s) shall as appropriate, teach the client(s) the tasks and skills required for independent life in the community.

3. Food and Nutrition

a. Foster parent(s) shall ensure that each client is provided with three nutritionally balanced meals a day and shall, in accordance with the client's service plan or on the advice of a licensed physician, provide for special dietary needs of a client.

i. The dietary laws of a client's religion shall be observed in the food provided to that client.

4. Clothing

a. Foster parent(s) shall ensure that each client is provided with adequate, well-fitting, clean clothing appropriate to the season and to the client's age, sex, activities and individual needs. Clothing shall be in good repair and shall be reasonably fashionable and in style.

i. A client's clothing shall be of a quality commensurate with that of other household members and shall meet community standards.

ii. A client's clothing shall be his/her own, not shared in common.

iii. A client's clothing shall go with the client at the time of discharge.

iv. Second-hand shoes shall not be provided.

5. Personal Belongings

a. Foster parent(s) shall ensure that each client is provided with clean towels, washcloths, his/her own toothbrush, his/her own comb or hair brush and other toiletry items suitable to the client's age and sex.

b. Foster parent(s) shall allow the client(s) to bring, possess and acquire personal belongings subject only to reasonable household rules and the client's service plan.

i. Personal belongings shall be sent with the client when he/she leaves the home.

6. Money

a. Foster parents shall ensure that the client(s) have the opportunity to have spending money in amounts appropriate to their age and abilities, either through a regular allowance, paid work, employment or money paid directly to the client from other sources.

i. A client's money from any source shall be his/her own and may be subject to restrictions only according to his/her service plan.

ii. Clients shall not be required to pay for any mandated foster home service, except according to their service plans.

iii. Clients shall not be required to pay for necessary toiletry items.

b. Foster parent(s) shall, as appropriate to the client's age and abilities make every effort to teach good habits of money management, budgeting and shopping.

7. Hygiene

a. Foster parent(s) shall, through careful daily monitoring, make every effort to teach a client good habits of personal hygiene and grooming appropriate to the client's sex, age and culture.

8. Heritage

a. Foster parent(s) shall recognize, encourage and support the religious beliefs, ethnic heritage and language of a client and his/her family.

b. Foster parent(s) shall allow a client freedom to express his/her feelings about his/her family, past, current status and future.

c. Foster parent(s) shall, whenever possible, arrange transportation for clients to attend religious services or ethnic events in the community.

9. Discipline and Control

a. Foster parent(s) shall provide loving and humane discipline and control for a client as appropriate to the client's age and understanding.

i. Methods of control shall stress praise and encouragement for good behavior, rather than punishments for bad behavior.

b. Foster parent(s) shall not allow the client(s) to be subjected to verbal abuse, derogatory remarks about themselves or their families or threats of removal from the foster home.

c. Foster parents shall not use the following punishments or permit their use by others on clients:

i. any cruel, severe, humiliating or unusual punishment;

ii. corporal punishment;

iii. denial of adequate nourishment, shelter, clothing or other basic services;

iv. denial of family contact when used as a punishment;

v. physically strenuous exercise or harsh work;

vi. isolation in a locked room or any closet or other enclosed space;

vii. isolation in an unlocked room for more than one hour.

d. Foster parent(s) shall not punish a client for bedwetting or any other action currently beyond the client's control.

e. Foster parent(s) shall not allow a client to be punished by other clients, by individuals not known to the client or by any person not authorized to care for the client.

10. Exploitation and Client Rights: Foster parent(s) shall ensure that clients are protected from exploitation in

any form and are allowed to enjoy the normal rights, freedoms and responsibilities of community life subject only to reasonable household rules, age-appropriate restrictions and restrictions in accordance with the client's service plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2681 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1556 (August 2009).

§6311. Medical and Dental

NOTE: This Section has been moved from LAC 67:I.1311.

A. Foster parent(s) shall cooperate in planning the medical and dental care and other therapeutic services for the client.

B. Foster parent(s) shall be responsible for arranging transportation for clients to all necessary medical and dental appointments.

C. Foster parent(s) shall arrange or cooperate in arrangements for keeping immunizations current for the clients.

D. Foster parent(s) shall arrange or cooperate in arrangements for an annual physical examination of each client and medical appointments and follow-up appointments as needed.

E. Foster parent(s) shall arrange or cooperate in arrangements for regular dental appointments and follow-up appointments for the client(s). Foster parent(s) shall arrange for semi-annual dental checkups for clients three to six years of age and annual checkups for clients over six years of age.

F. Foster parent(s) shall immediately report to the placing agency any serious changes in the health of the client.

G. Foster parent(s) shall report to the placing agency any corrective or follow-up medical or dental care for the client needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2683 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1558 (August 2009).

§6313. Medications

NOTE: This Section has been moved from LAC 67:I.1313.

A. Foster parents shall be responsible for ensuring that drugs ordered for the client are available, that such drugs and other medical supplies are safely stored and that the client receives the drugs ordered in accordance with prescription directions.

1. A client shall not be given a prescription drug not prescribed for that client.

2. Dosages of prescription medications shall be changed only by a doctor's order.

3. Foster parent(s) shall exercise good judgment in providing nonprescription medicines only when the client actually needs them and shall use non-prescription medications only in accordance with the directions on the label of the medicine.

4. Any frequent use of non-prescription medicine shall be reported to the placing agency.

5. Foster parent(s) shall make every effort to learn and look for potential negative side-effects of both prescription and non-prescription drugs and shall report any negative side-effect to a physician immediately.

6. At the request of the placing agency, foster parent(s) may be required to keep medication log for the client(s) detailing all medications given, the date and time, the name(s) of the client(s) and the signature of the person administering the medication.

B. When a client is placed on any drug prescribed to alter the client's mood or change the client's behavior, the foster parent(s) shall ensure that the placing agency is informed prior to giving the drug to the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2683 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1558 (August 2009).

§6315. Seizure Log

NOTE: This Section has been moved from LAC 67:I.1315.

A. At the request of the placing agency, foster parent(s) shall keep a log of seizure activity including:

1. the time of occurrence of the seizure;

2. a description of the seizure including duration, intensity and any unusual circumstances which may have precipitated the seizure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2683 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1558 (August 2009).

§6317. Recreation and Community Activities

NOTE: This Section has been moved from LAC 67:I.1317.

A. Foster parent(s) shall provide opportunities for physical exercise and recreational activities for the client(s) as appropriate to their ages and abilities.

B. Foster parent(s) shall encourage and provide opportunities for the client(s) to take part in community services and activities both with the foster family and, when possible, on their own.

1. Clients shall have opportunities for social interactions with persons of the opposite sex.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2683 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1558 (August 2009).

§6319. Education, Training and Employment

NOTE: This Section has been moved from LAC 67:I.1319.

A. Foster parent(s) shall cooperate in educational planning for the school-age client(s) and shall, when receiving a school-age client, ensure that immediate steps

are taken to place the client in an appropriate, approved school program.

1. Clients shall be encouraged to become involved in appropriate extracurricular activities.

B. When a client is involved in a training program, sheltered employment program or employment in the community, foster parent(s) shall assist the client in meeting his/her commitments and responsibilities in accordance with the service plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2684 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1558 (August 2009).

§6321. Exterior Environment

NOTE: This Section has been moved from LAC 67:I.1321.

A. A foster home shall be reasonably safe, in good repair and comparable in appearance and maintenance to other family homes in the community.

B. The home and the exterior around the home shall be free from objects, materials and conditions which constitute a danger to the clients' served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2684 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1559 (August 2009).

§6323. Play Area

NOTE: This Section has been moved from LAC 67:I.1323.

A. A foster home serving children shall have a safe outdoor play area which clients may use either on the property or within a reasonable distance of the property.

B. Any play equipment on the property shall be safe, well-constructed and suitable for the clients served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2684 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1559 (August 2009).

§6325. Kitchen

NOTE: This Section has been moved from LAC 67:I.1325.

A. Foster parent(s) shall have the necessary equipment for the safe preparation, storage, serving and cleanup of meals.

B. Foster parent(s) shall maintain all cooking areas and cooking and refrigeration equipment in working and sanitary condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2684 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1559 (August 2009).

§6327. Dining Area

NOTE: This Section has been moved from LAC 67:I.1327.

A. A foster home shall have a comfortable dining area with sufficient furniture to allow all members of the household to eat together.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2684 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1559 (August 2009).

§6329. Living Room

NOTE: This Section has been moved from LAC 67:I.1329.

A. A foster home shall have living and family room space comfortably furnished and accessible to the client(s) and sufficiently large to accommodate the various activities of the family.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2684 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1559 (August 2009).

§6331. Bedrooms

NOTE: This Section has been moved from LAC 67:I.1331.

A. Sleeping arrangements in a foster home shall be subject to the prior approval of the placing agency

B. Foster parent(s) shall permit no more than four clients to a bedroom.

C. Foster parent(s) shall provide each client with his/her own bed and each infant with his/her own crib. The bed shall be no shorter than the client's height and no less than 30 inches wide. It shall have a clean, comfortable, non-toxic mattress.

D. Foster parent(s) shall provide bed linens and sufficient blankets and pillows for all clients.

E. Foster parent(s) shall not permit clients over the age of four years to share a bedroom with a person of the opposite sex.

1. Clients under the age of 18 years shall not share bedrooms with adults, except when a client's needs close supervision due to illness or except at the discretion of the placing agency.

F. Foster parent(s) shall provide a chest, dresser or other adequate storage space for a client's clothing and personal belongings in the client's bedroom. A designated space for hanging up clothes shall be provided near the client's sleeping area.

G. Foster parent(s) shall allow some scope in the decoration of sleeping areas for the personal tastes and expressions of the clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1559 (August 2009).

§6333. Bathrooms

NOTE: This Section has been moved from LAC 67:I.1333.

A. A foster home shall have a minimum of one flush toilet, one wash basin with hot and cold running water, and one bath or shower with hot and cold water.

B. Foster parent(s) shall equip each bathroom with toilet paper, towels, soap, and other items required for personal hygiene.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2685 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1560 (August 2009).

§6335. General Safety

NOTE: This Section has been moved from LAC 67:I.1335.

A. A foster home shall be well heated and ventilated.

B. Foster parent(s) shall equip windows and doors with screens.

C. Foster parent(s) shall have access to a telephone within a reasonable distance of the home.

D. SFC foster parents shall have a telephone in the home.

E. Foster parent(s) shall ensure the safe storage of drugs, poisons, or other harmful materials.

F. Foster parent(s) shall store firearms and ammunition in areas not normally accessible to clients. More stringent requirements may be imposed, at the discretion of the placing agency, depending on the ages and capabilities of clients in the home.

1. Foster parent(s) shall not purchase firearms for clients, permit clients to use firearms without written authorization from the placing agency.

G. Foster parent(s) shall have household first aid supplies for treating minor cuts, burns and other minor injuries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2685 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1560 (August 2009).

§6337. Fire Safety

NOTE: This Section has been moved from LAC 67:I.1337.

A. A foster home shall be free from fire hazards.

1. Foster parent(s) shall, at the request of the placing agency, submit their home to inspection by a fire safety expert.

B. A foster home shall be equipped with an operating smoke alarm on each floor used for sleeping.

C. Foster parent(s) shall ensure that each client knows how to evacuate from the home in the event of a fire and shall conduct periodic evaluation drills.

D. Foster parent(s) shall store combustible substances away from sources of heat.

E. A foster home in a mobile home shall have two doors which provide unrestricted exits to the outside.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2685 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1560 (August 2009).

§6339. Health and Sanitation

NOTE: This Section has been moved from LAC 67:I.1339.

A. Foster parent(s) shall keep the home clean and free of hazards to the health and physical well-being of the family.

B. The home shall have a continuous supply of drinking water approved by local health authorities. If the water is not from a city water supply, the foster parent(s) shall have the water tested and approved.

C. Milk served to the client(s) shall either be Grade A and pasteurized or from an approved source.

D. All plumbing in the foster home shall be in working order.

E. A foster home shall have an adequate supply of hot water for bathing and dish washing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2685 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1560 (August 2009).

§6341. Transportation

NOTE: This Section has been moved from LAC 67:I.1341.

A. A foster home shall have a safe means of transportation adequate to meet the needs of the household.

B. Foster parent(s) shall ensure that any vehicle used to transport client(s) is properly maintained, licensed and inspected as required by state law.

1. The driver of any vehicle used to transport client(s) by the foster home shall be properly licensed to operate that vehicle according to state law.

2. Any vehicle used to transport client(s) by the foster home shall be properly licensed to operate that vehicle according to state law.

3. Any vehicle which client(s) are permitted to drive by the foster home shall carry sufficient liability insurance covering client use of the vehicle.

4. Foster parent(s) shall not permit a client to operate a motor vehicle without a valid Louisiana license or learner's permit and the written authorization of the placing agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2685 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1560 (August 2009).

Chapter 65. Transitional Living

§6501. Purpose

NOTE: This Section has been moved from LAC 67:I.1501.

A. It is the intent of the legislature to provide for the care and to protect the health, safety, and well being of youths in the custody or formerly in the custody of the state of Louisiana, who are nearing the age of majority and who, by reason of age, are unlikely to be placed with foster families for adoption. The legislature recognizes that such youth are likely to remain in need of supervision and services, even after reaching the age of majority, to assist them in making the transition from child foster care to independent adulthood. It is the purpose of this policy to establish a system of licensed facilities to care for such persons up to the age of 22; to establish statewide minimum standards; to ensure the maintenance of those standards; and to regulate conditions in these facilities through a program of licensing and inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:92 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2685 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009).

§6503. Authority

NOTE: This Section has been moved from LAC 67:I.1503.

A. Act 726 of the 2001 Regular Session directs the Department of Social Services, Bureau of Licensing to develop and publish minimum standards for licensing transitional youth residences. The bureau shall review such standards and, if necessary, revise and amend them at least once every six years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:92 (January 2004), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2686 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009).

§6505. Waivers

NOTE: This Section has been moved from LAC 67:I.1505.

A. The Secretary of the Department of Social Services may waive compliance with any standard if the intent of the standard is being met and if the health, safety, and well being of the persons in care are not affected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:93 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2686 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009).

§6507. Application for Licensure

NOTE: This Section has been moved from LAC 67:I.1507.

A. An application for a transitional youth residence license shall be made by the provider to:

Department of Social Services
Bureau of Licensing
P.O. Box 3078
Baton Rouge, LA 70821

B. There shall be an annual licensing fee of:

i. $200 for each transitional youth residence caring for 6 or fewer youths;

ii. $400 for each transitional youth residence caring for at least 7 but less than 11 youths; and

iii. $600 for each transitional youth residence caring for 12 or more youths.

C. The Department of Social Services, Bureau of Licensing has the power to deny, revoke, or refuse to renew a license for a transitional youth residence if the applicant has failed to comply with the provisions of this policy.

D.1. Upon the refusal of the Bureau of Licensing to grant or renew a license or upon the revocation of a license, the applicant or licensee shall have the right to appeal such action by submitting a written request within 10 days of the receipt of the notification of the refusal or revocation to:

Bureau of Appeals
P. O. Box 2944
Baton Rouge, LA 70821

2. The appeal hearing shall be held no later than 30 days after the request.

E. Whoever operates a transitional youth residence without a valid license or in violation of this policy after being notified of such violation and being given an opportunity to correct such violation, shall be fined not less than $75 or more than $250 for each day of such offence. The Department of Social Services may file suit in the district court for the parish in which the facility is located for injunctive relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:93 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2686 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009).

§6509. Definitions

NOTE: This Section has been moved from LAC 67:I.1509.

Abuse—the infliction of physical or mental injury on an individual by other parties, including but not limited to such means as sexual abuse, exploitation, or extortion of funds or other things of value, to such an extent that his/her health, self-determination, or emotional well-being is endangered.

Administrator—the owner or the manager designated by the governing body as responsible for the management, administration, and supervision of the program.

DSS—the Department of Social Services.

Documentation—written evidence or proof, signed and dated.

Human Services Field—psychology, sociology, special education, rehabilitation counseling, juvenile justice, corrections, nursing, etc.

Shall or Must—indicates mandatory standards.

Transitional Youth Residence—any communal or supervised independent living arrangement existing for the primary purpose of providing care for at least 2, but less than

20, youths living in individualized apartment units, alone or jointly with other youths, under the supervision, custody or control, directly or indirectly, of the Office of Community Services.

Transitional Youth Residence Program—a program of services, including counseling, guidance, vocational or education training, and supervision for youths living in transitional youth residences.

Transitional Living—a program to provide care, supervision, vocation and education training, guidance and counseling for youth between the ages of 16 and 21 in the custody or formerly in the custody of the Office of Community Services, living in their own apartments (congregate or individual) to assist them in making the transition to adult living.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:93 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2686 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009).

§6511. Inspections

NOTE: This Section has been moved from LAC 67:I.1511.

A. The Department of Social Services, Bureau of Licensing shall inspect at regular intervals not to exceed one year, or deemed as necessary by the bureau, and without prior notice, all transitional youth residence administrative offices subject to the provisions of this policy. The facility shall be open to inspection by authorized DSS personnel during working hours or at all times when youths are in care.

B. The bureau shall also investigate all complaints except those alleging abuse against a youth resident and those concerning the prevention and spread of communicable diseases. The bureau may take such action as is authorized in the law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:93 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2686 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1562 (August 2009).

§6513. General Requirements

NOTE: This Section has been moved from LAC 67:I.1513.

A. A provider shall allow designated representatives of DSS in the performance of their mandated duties to inspect all aspects of a provider's functioning which impact the youth and to interview any staff member or youth.

B. A provider shall make available to DSS any information that the provider is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements.

C. A provider will furnish adequate space for the representatives of DSS to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:93 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2687 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1562 (August 2009).

§6515. Governing Body

NOTE: This Section has been moved from LAC 67:I.1515.

A. A provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the program. The provider, whether it is a corporation, partnership or association, shall identify the names and addresses of its members and officers and shall, where applicable, have a charter, partnership agreement, constitution, and articles of association or by-laws.

B. A provider shall have documents identifying all members of the governing body; their addresses; their terms of membership; any officers of the governing body; and terms of office of any officers.

C. When the governing body of a provider is composed of more than one person, the governing body shall hold formal meetings at least twice a year.

D. When the governing body is composed of more than one person, a provider shall have written minutes of all formal meetings of the governing body and by-laws specifying frequency of meetings and quorum requirements.

E. A private provider shall have documentation of its authority to operate under state law.

F. The provider's governing body shall:

1. ensure the provider's compliance and conformity with the provider's charter;

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

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

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

5. designate a person to act as director and delegate sufficient authority to this person to manage the facility;

6. formulate and annually review, in consultation with the director, written policies concerning the provider's philosophy, goals, current services, personnel practices, and fiscal management;

7. annually evaluate the director's performance;

8. have the authority to dismiss the director;

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

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

11. ensure that the director or a person authorized to act on behalf of the director shall be accessible to staff or designated representatives of DSS at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:94 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2687 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1562 (August 2009).

§6517. Accounting

NOTE: This Section has been moved from LAC 67:I.1517.

A. A provider shall not permit public funds to be paid, or committed to be paid, to any person to whom any of the members of the governing body, administrative personnel, or members of the immediate families of members of the governing body or administrative personnel have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the facility. The provider shall have a written disclosure of any financial transaction with the facility in which a member of the governing body, administrative personnel, or his/her immediate family is involved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:94 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2687 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1563 (August 2009).

§6519. Administrative Files

NOTE: This Section has been moved from LAC 67:I.1519.

A. The provider shall maintain records that cover the basic administrative requirements of running a facility.

B. The administrative files shall include at least:

1. an organizational chart of the provider;

2. all leases, contracts and purchase-of-service agreements to which the provider is a party;

3. insurance policies issued in the name of the provider that include commercial comprehensive liability and coverage for any owned and non-owned vehicles utilized to transport clients;

4. annual budgets;

5. master list of all social service providers and other contractors used by the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:94 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2687 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1563 (August 2009).

§6521. Program Description

NOTE: This Section has been moved from LAC 67:I.1521.

A. A provider shall have a written program description describing:

1. the overall philosophy and approach to supervised transitional living;

2. the long-term and short-term goals;

3. the types of youth best served;

4. the provider's approach to service planning;

5. ongoing programs available to the youth during placements; and

6. any living arrangements provided.

B. The provider must include a written description of direct services, support services, and services to be arranged to achieve the goals of the transitional living program.

1. Direct services shall include, but are not limited to, the following:

a. services related to education and vocational training e.g., career planning; preparation for the GED or higher education; job readiness; job search assistance; job placement; job follow-up activities; vocational training; tutoring and other remedial education;

b. programs and services in basic independent living skills e.g., money management; home management (housekeeping, etc.); consumer skills; identifying community resources; time management; communication skills; use of transportation; physical and mental health care; locating safe and stable housing; problem solving/decision making; sex education; menu planning and nutrition; cooking;

c. individual and/or group counseling as well as workshops and conferences to promote: self-esteem; self confidence; development of interpersonal and social skills; preparation for transition to independence and termination of services; after care.

2. Support services shall include, but not be limited to, the following:

a. vocational assessment or training;

b. GED classes;

c. preparation for college entrance exams;

d. driver's education, if appropriate;

e. counseling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:94 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2688 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1563 (August 2009).

§6523. Records

NOTE: This Section has been moved from LAC 67:I.1523.

A. A provider shall ensure that all entries in records are legible, signed by the person making the entry, and accompanied by the date on which the entry was made.

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

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:95 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2688 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1563 (August 2009).

§6525. Confidentiality and Security of Files

NOTE: This Section has been moved from LAC 67:I.1525.

A. A provider shall have a written policy and procedure for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released. Records shall be the property of the provider and he/she, as custodian, shall secure records against loss, tampering, or unauthorized use.

B. A provider shall maintain the confidentiality of all youths' case records. Employees of the provider shall not disclose or knowingly permit the disclosure of any information concerning the youth or his/her family directly or indirectly, to any unauthorized person.

C. When the youth is of majority age or emancipated, a provider shall obtain the youth's written informed permission prior to releasing any information from which the youth or his/her family might be identified.

D. When the youth is a minor, a provider shall obtain written informed consent from the legally responsible person prior to releasing any information from which the youth might be identified.

E. A provider shall, upon request, make available information in the case record to the youth, the legally responsible person, or legal counsel of the youth.

F. A provider may use material from case records for teaching or research purposes, development of the governing body's understanding and knowledge of the provider's services, or similar educational purposes, provided that names are deleted and other identifying information are disguised or deleted.

G. A provider shall not release a personnel file without the employee's permission except in accordance with state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:95 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2688 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1564 (August 2009).

§6527. Staffing Requirements

NOTE: This Section has been moved from LAC 67:I.1527.

A. There shall be a director responsible for the day-to-day administration of the program who has at least a bachelor's degree in a human service field, one year of experience relative to the population being served, and is at least 21 years of age. Documentation of director's qualifications shall be on file.

B. There shall be a qualified professional who will have the responsibility for supervising the client's individual service plan. This person shall have at least a bachelor's degree in a human service field and one year of experience relative to the population served (one person can serve in the capacity as director and qualified professional).

C. A provider shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to carry out the responsibilities the provider undertakes and to adequately perform the following:

1. administrative functions;
2. fiscal functions;
3. clerical functions;
4. direct youth service functions;
5. supervisory functions;
6. record keeping and reporting functions;
7. social service functions;
8. ancillary service functions.

D. A provider shall ensure that all staff members are properly supervised, certified and/or licensed as legally required.

E. A provider shall ensure that there is staff immediately accessible to the youth 24 hours a day, 7 days a week.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:95 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2688 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1564 (August 2009).

§6529. Staff Plan and Practices

NOTE: This Section has been moved from LAC 67:I.1529.

A. A provider shall have a written plan for recruitment, screening, orientation, on-going training, development, supervision, and performance evaluations of staff members.

B. There shall be written job descriptions for each staff position.

C. The provider shall have a written employee grievance procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:95 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2689 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1564 (August 2009).

§6531. Personnel File

NOTE: This Section has been moved from LAC 67:I.1531.

A. A provider shall have a personnel file for each employee which shall contain:

1. the application for employment and/or résumé;
2. three reference letters from former employer(s) and personal references or phone notes on such references to assess applicant's qualifications;
3. criminal record clearance;
4. evidence of applicable professional credentials/certifications;
5. job description;
6. annual performance evaluations;
7. personnel actions, reports and notes relating to the individual's employment with the provider;
8. employee's starting and termination dates;
9. driver's license to operate a vehicle used to transport clients (if applicable).

B. The staff member shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR

30:95 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2689 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1564 (August 2009).

§6533. Orientation

NOTE: This Section has been moved from LAC 67:I.1533.

A. A provider's orientation program shall provide at least 16 hours of training for all direct service workers within one week of the date of employment to include the following topics:

1. philosophy, organization, program, practices and goals of the provider;
2. instructions in the specific responsibilities for the employee's job;
3. implementation of the transitional living plan;
4. emergency and safety procedures including medical emergencies;
5. detecting and reporting suspected abuse and neglect;
6. reporting critical incidents;
7. rights of youth;
8. crisis de-escalation and management of aggressive behavior;
9. assistance with self-administration of medications;
10. universal precautions;
11. methods of facilitating youth development training;
12. issues of adolescents and young adults.

B. A new employee shall sign a statement of understanding certifying that such training has occurred.

C. A new employee shall not be given sole responsibility for the implementation of the service plan until training is completed.

D. Each employee having direct care responsibilities shall have current first aid certification that shall be obtained within the first 30 days of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:96 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2689 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1565 (August 2009).

§6535. Training

NOTE: This Section has been moved from LAC 67:I.1535.

A. A provider shall ensure that each direct service worker participated in an annual review of all the orientation topics.

B. Current first aid certification shall be obtained for employees having direct care responsibilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:96 (February 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2689 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1565 (August 2009).

§6537. Staff Communications

NOTE: This Section has been moved from LAC 67:I.1537.

A. A provider shall establish procedures to assure adequate communication among staff to provide continuity of services to the youth. Written documentation shall be maintained.

B. Any employee of a provider working directly with youth in care shall have access to information from the youths' case records that is necessary for effective performance of the employee's assigned tasks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:96 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2689 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1565 (August 2009).

§6539. External Professional Services

NOTE: This Section has been moved from LAC 67:I.1539.

A. A provider shall, as necessary, give assistance to youth in obtaining any required professional services not available from employees of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:96 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2689 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1565 (August 2009).

§6541. Admission Policy

NOTE: This Section has been moved from LAC 67:I.1541.

A. A provider shall have a written description of an admission policy that shall include the following information:

1. written description of the admission criteria as provided to all placing agencies;
2. the age and sex of the youth to be served by the provider;
3. the needs, problems, situations or patterns best addressed by the provider;
4. pre-admission skills and other criteria for successful participation in and completion of the program; and
5. criteria for discharge as well as the termination of admission agreement.

B. A provider shall not refuse admission to any youth on the grounds of race, color, sex, religion, national origin, handicap, or any non-merit factor in accordance with all state and federal guidelines.

C. A provider shall not accept any youth whose needs cannot be adequately met by the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:96 (January 2004), repromulgated by the Department of Social

Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2690 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1565 (August 2009).

§6543. Service Agreement

NOTE: This Section has been moved from LAC 67:I.1543.

A. The provider shall ensure that a written service agreement is completed prior to placement. A copy of the agreement, signed by the provider, the youth, if applicable the legally responsible party and all those involved in its formulation, shall be kept in the youth's record and a copy shall be available to DSS, the youth, and where appropriate, the legally responsible person.

B. The service agreement shall include:

1. a delineation of the respective roles and responsibilities of the provider and where applicable, the referring agency;

2. specification of all services to be provided including the plan for contact between the youth and provider staff;

3. facility rules that will govern continued participation in the transitional living program, and consequences of inappropriate behavior of youth while in care;

4. the provider's expectations concerning the youth and the youth's responsibility;

5. criteria for discharge;

6. specification of financial arrangements including any fees to be paid by the youth;

7. authorization to care for the youth;

8. authorization for medical care;

9. attendance and absences from the provider to also include curfew times; and

10. criteria for notifying the funding agency of any change of address of the youth and any significant change in the youth's life or program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:96 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2690 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1566 (August 2009).

§6545. Service Planning

NOTE: This Section has been moved from LAC 67:I.1545.

A. A provider shall make every effort to ensure that service and program planning for each youth is a comprehensive process involving appropriate provider staff; representatives of the referring agency; where appropriate, representatives of other significantly involved agencies; the youth; where appropriate, the legally responsible person; and any other person significantly involved in the youth's life on an ongoing basis.

1. The director, qualified professional, or a designated staff who meets the director qualifications, shall be responsible for the coordination and development of the transitional living plan.

2. A provider shall ensure the youth is in attendance during the development of his/her transitional living plan.

B. Following acceptance of a youth, a provider shall conduct an assessment of his/her transitional living skills and annually thereafter. The assessment shall include the following:

1. life safety skills including ability to access emergency services, basic safety practices and evacuation of the living unit;

2. physical and mental health care; (i.e., health maintenance, scheduling physician appointments);

3. recognizing when to contact a physician;

4. money management, budgeting, and consumer awareness (i.e., paying bills, shopping, food management, sources of income, credit);

5. self-administration of medication;

6. stated purpose and possible side effects of medications prescribed for the youth and other common prescription and non-prescription drugs and other drug use;

7. career planning/career interests;

8. use of transportation (i.e., ability to access public transportation, learning to drive, obtaining insurance);

9. social skills;

10. daily living skills (i.e., housekeeping, cooking, personal appearance, and grooming skills);

11. vocational/job skills/job seeking skills (i.e., employment experience, training);

12. identifying community resources;

13. education (i.e., current grade level; education goals/expectations/plans);

14. locating housing;

15. problem solving/decision making;

16. time management (punctuality and attendance);

17. communication skills;

18. parenting skills;

19. legal issues, knowledge of legal rights; and

20. use of recreation and leisure time.

C. On the basis of the transitional living skill assessment, a provider shall, within one month of placement, formulate a transitional living plan for the youth. The plan shall include:

1. the youth's long term goals;

2. time-limited, measurable objectives addressing training in skill areas identified as needs;

3. the type and frequency of supervision needed;

4. the identification of roles and responsibilities of all persons involved (youth, provider, and others) in the implementation of the plan;

5. the life skills and the criteria necessary for achieving a successful discharge; and

6. the preliminary plan for discharge and aftercare.

D. The plan shall be reviewed monthly and shall be revised whenever necessary. A written progress report shall be completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:97 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2690 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1566 (August 2009).

§6547. Youth's Case Record

NOTE: This Section has been moved from LAC 67:I.1547.

A. A provider shall have a written record for each youth that shall include:

1. the name, sex, race, birth date and birthplace of the youth; address of youth's current place of employment, school or other service providers;

2. other identification data including court status and legal status, identifying who is authorized to give consent;

3. youth's history including, where applicable, family data, educational background, employment record, prior medical history and prior placement history;

4. the service agreement;

5. written authorization signed by the youth or, when appropriate the legally responsible person for emergency medical care;

6. written authorization signed by the youth or, when appropriate the person legally responsible for managing the youth's money;

7. assessment of the youth's independent living skills;

8. a copy of the youth's individual service plan and any modifications or updates of the service plan;

9. monthly progress reports;

10. the names, addresses and phone numbers of the youth's physician and dentist;

11. psychological and psychiatric evaluation, if applicable;

12. dates of admission and discharge;

13. signed acknowledgement of rights and grievance procedures; and

14. incident reports.

B. A provider shall maintain health records on a youth including:

1. a description of any serious or life threatening medical condition of the youth;

2. a description of any medical treatment or medication necessary for the treatment of any serious or life threatening medical condition together with the provider's provisions for ensuring the youth's access to such medication or treatment;

3. current medications; and

4. report of general medical examination by a physician within a year prior to admission and annual exams; and

5. dental exams.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:97 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2691 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1566 (August 2009).

§6549. Accounting for Youth's Money

NOTE: This Section has been moved from LAC 67:I.1549.

A. A provider shall have a written policy describing how they will manage the youth's money.

B. A provider shall only accept a youth's money when such management is mandated by the youth's service plan. The provider shall manage and account for money of youth who are minors.

C. Providers who manage youth's money shall maintain in the youth's file a complete record accounting for his/her money.

1. The provider shall maintain a current balance sheet containing all financial transactions to include the signature of staff and the youth for each transaction.

2. The money shall be kept in an individual account in the name of the youth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:98 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2691 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1567 (August 2009).

§6551. Supervision and Support

NOTE: This Section has been moved from LAC 67:I.1551.

A. A provider shall have a written plan for providing support and supervision to youth in transitional living situations. This plan shall ensure:

1. regular contact between provider personnel and the youth daily and at least two face-to-face visits weekly in the youth's apartment. A youth may not be seen less than the above amount unless specified by his/her plan, which has been signed by the parent or legal guardian;

2. all contacts with the youth shall be documented; and

3. provisions for emergency access by youth to an appropriate provider staff member on a 24-hour basis.

B. A provider shall, through at least monthly visits by staff to the living situation, determine and document that:

1. there is no reasonable cause for believing that the youth's mode of life or living situation presents any unacceptable risks to the youth's health or safety;

2. the living situation is maintained in a clean and safe condition;

3. the youth is receiving any necessary medical care;

4. the current provider plan provides appropriate and sufficient services to the youth.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:98 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2691 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1567 (August 2009).

§6553. Rights and Grievance Procedures for Youth

NOTE: This Section has been moved from LAC 67:I.1553.

A. The provider shall have a written policy on youths' rights. A copy will be given to the youth to review and sign. The signature page will be maintained in the youth's record. The policy shall assure the youth:

1. are free from physical or psychological abuse or neglect, and from financial exploitation;

2. are able to consult freely and privately with his/her parent(s) or legal guardian(s);

3. are able to possess and use personal money and belongings;

4. are actively and meaningfully making decisions affecting his/her life;

5. are allowed to have privacy;

6. are allowed visits to and from his/her family and friends;

7. are not required to work without compensation;

8. are treated with dignity and respect;

9. are provided due process;

10. have access to records, including information about their finances;

11. participate in self-directed service planning which is developed and modified timely;

12. are provided adequate and appropriate assistance in meal planning;

13. shall not be deprived of any civil or legal rights, benefits, or privileges guaranteed by law or the Constitution of the United States;

14. shall not be denied admission to a program, segregated, or discriminated against on the basis of race, sex, handicap, creed, national background or ancestry, sexual orientation, political beliefs, or any other non-merit factor;

15. are provided access to professional and specialized services, as appropriate;

16. shall be free from mental, emotional, and physical abuse and neglect and assured that no chemical restraints will be used;

17. shall be allowed to participate in religious services in accordance with his/her faith, but shall not be forced to attend religious services;

18. shall be encouraged and assisted to exercise rights as a citizen; to voice grievances;

19. shall be free to consult with legal counsel of their choice;

20. are allowed to meet with representatives of the Bureau of Licensing as well as other state officials.

B. The provider shall have a written grievance policy and procedures for youth designed to allow them to make complaints without fear of retaliation. The youth shall be informed of the advocacy services available.

1. The provider shall make every effort to ensure that all youth are aware of and understand the grievance procedure.

2. The youth's records shall contain a record of any grievances and their resolutions.

C. The provider shall develop written procedures for a Youth Advisory Board consisting of youth representatives receiving services to provide feedback relative to program policies, practices, and services.

1. The Youth Advisory Committee shall be allowed to meet at least monthly.

2. The provider shall maintain documented minutes of the Youth Advisory Board and resolutions of problems addressed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:98 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2691 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1567 (August 2009).

§6555. Reporting of Critical Incidents and Abuse and Neglect

NOTE: This Section has been moved from LAC 67:I.1555.

A. A provider shall have a written policy and procedures for the reporting and documentation of unusual incidents and other situations or circumstances affecting the health, safety or well being of the youth (i.e., accident or injury to the youth, unexplained overnight absences, death, fights or physical confrontations, suspected incidents of abuse or neglect, etc.).

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

2. Copies of all critical incident reports shall be kept as a part of the youth's record.

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

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

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

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

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

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

6. ensuring that the staff member involved does not work directly with the youth involved or any other youth in the program until the investigation is complete.

C. When and if an incident occurs, a detailed report of the incident shall be made. At a minimum, the incident report shall contain the following:

1. a brief description of the incident;

2. date and time the incident occurred;

3. where the incident occurred;

4. action taken as a result of the incident;

5. name and signature of the person who completed the report and the name(s) of person(s) who witnesses the incident; and

6. date and time and name of responsibility party notified.

D. In the event an incident results in the death of a youth, involves abuse or neglect of a youth, or entails any serious threat to the youth's health, safety or well being, the provider shall:

1. immediately report to the placing agency with a preliminary written report within 24 hours of the incident;

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

3. immediately notify the Bureau of Licensing and other appropriate authorities, according to state law, with written notification to the above agencies to follow within 24 hours of the suspected incident;

4. immediately notify to the family or representative of the youth, with written notification to follow within 24 hours;

5. provide follow-up written reports to all the above persons and agencies; and

6. document appropriate corrective action taken to prevent future incidents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:99 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2692 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1568 (August 2009).

§6557. Behavior Management

NOTE: This Section has been moved from LAC 67:I.1557.

A. A provider shall have a written description of any behavior management strategies to be utilized.

B. No strategy shall deny any of the youth's rights unless approved by the individual plan of care.

C. The youth's record shall document that he/she has acknowledged receiving a copy of the behavior management strategies at admission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:99 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2693 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1569 (August 2009).

§6559. Transportation

NOTE: This Section has been moved from LAC 67:I.1559.

A. A provider shall ensure that every vehicle used by provider staff to transport youth is properly maintained, inspected, licensed according to state laws, and insured.

B. Any youth who drives must be properly licensed to operate any vehicle which he/she drives and has the required insurance coverage. The youth's record must contain this documentation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:99 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2693 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1569 (August 2009).

§6561. Physical Environment

NOTE: This Section has been moved from LAC 67:I.1561.

A. A provider shall ensure and document in the youth's record that any living situation selected by the provider for the use of youth is:

1. accessible to and functional for the youth, taking into consideration any handicapping condition or other disability of the youth;

2. free from any hazard to health or safety;

3. properly equipped with useable facilities for sleeping, food storage and preparation, sanitation, bathing, personal hygiene and household cleaning;

4. in compliance with applicable health, safety, sanitation and zoning codes. The provider shall, on request, allow DSS to inspect any living situation;

5. each resident shall have his or her own bed; and

6. living situations shall be equipped with operable smoke detectors and fire extinguishers.

B. A provider shall ensure and document in the youth's record that any youth placed in a transitional living situation selected by the provider has:

1. 24-hour access to a telephone;

2. access to transportation; and

3. access to any services mandated by the youth's service program plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:99 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2693 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1569 (August 2009).

§6563. Capacity

NOTE: This Section has been moved from LAC 67:I.1563.

A. A provider shall ensure that no more than three youths are placed in an apartment utilized as a transitional living situation.

B. A provider who utilizes communal living arrangements (home situation) housing four or more must obtain fire and health approval.

C. A provider's arrangements for selecting youth and youth groups for a specific living situation shall make allowance for the needs of each youth for reasonable privacy and shall not conflict with the program plan of any resident of the living situation or with the overall philosophy of the provider.

D. No youth shall be placed together in a living situation except by mutual agreement between the youth. Signed agreements shall be maintained in each client's record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:99 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2693 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1569 (August 2009).

§6565. Emergency Procedures

NOTE: This Section has been moved from LAC 67:I.1565.

A. The provider shall ensure the development of an emergency evacuation policy and safety plan for each client that is specific for location of the living unit in the event of a fire, natural or national disaster. The youth's record shall document that the youth has acknowledged receiving a copy of this policy and plan at admission.

B. A provider shall document that all youth are trained in emergency procedures within one week of admission. Such training shall include:

1. instruction in evacuation from the living situation;

2. instruction in contacting police, fire and other emergency services; and

3. instruction in fire and accident prevention.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:100 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2693 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1569 (August 2009).

§6567. Food Service

NOTE: This Section has been moved from LAC 67:I.1567.

A. When meals are prepared in a central kitchen, the provider shall ensure that menus include the basic four food groups and each youth's nutritional needs are met. Menus shall be maintained on file for at least a month.

B. If youths develop and prepare their menus and meals, the provider shall give assistance to ensure nutritional standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:100 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2693 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009).

§6569. Discharge

NOTE: This Section has been moved from LAC 67:I.1569.

A. A provider shall have a written discharge policy detailing the reasons a youth may be discharged.

B. A provider shall, whenever possible, notify the placing agency and the youth's parent(s), tutor or curator as soon as possible or within five working days prior to the planned discharge of a youth.

C. A provider shall compile a complete written discharge summary immediately upon discharge; such summary to be included in the youth's record. When the youth is discharged to another agency, this summary must accompany the youth. This summary shall include:

1. a summary of services provided during involvement in the program;

2. a summary of growth and accomplishments during involvement;

3. the assessed needs which remain to be met and alternate service possibilities that might meet those needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1451 et seq. and Act 726 of the 2001 Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 30:100 (January 2004), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009).

Chapter 67. Maternity Home

§6701. Fee

NOTE: This Section has been moved from LAC 67:I.1701.

A. There is an annual licensure fee of $50.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-11.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009).

§6703. Definition

NOTE: This Section has been moved from LAC 67:I.1703.

A. A maternity home is defined as "any place in which any person, society, agency, corporation, or facility receives, treats or cares for within a period of six months, more than one illegitimately pregnant woman, either before, during or within two weeks after childbirth. The provisions of this definition shall not include the sixth degree of kindred computed according to civil law, or general or special hospitals in which maternity treatment and care is part of the medical services performed and the care of children only brief and incidental." This definition does not include foster family homes used by agencies in lieu of group care. These foster family homes would come under regulations governing child placing agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-11.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009).

§6705. Application

NOTE: This Section has been moved from LAC 67:I.1705.

A. The original application for a license is made on a form provided by the Division of Licensing and Certification. A license will be issued for a period of one year unless there is mutual agreement between the division and the maternity home that it be for a greater or lesser period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-11.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009).

§6707. Licensing Procedures

NOTE: This Section has been moved from LAC 67:I.1707.

A. A social services consultant of the division's staff will prepare a comprehensive survey of the home's program, measuring performance in relation to requirements and offering recommendations and suggestions in indicated areas. This report will be made available to the facility for review of facts prior to submission to the director of the Division of Licensing and Certification for a decision on the license. A home has the right to appeal through the court if its license is denied or revoked.

B. The licensing report is held confidential by the division but must be released to persons or courts upon request.

C. A maternity home which is operated in conjunction with other programs subject to license, such as child caring and/or child placing programs, shall obtain a license for each of its programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-11.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009).

§6709. Organization and Administration

NOTE: This Section has been moved from LAC 67:I.1709.

A. Purpose

1. There shall be a written statement specifying the purpose of the maternity home. This statement shall be one which has been adopted by the governing body. All functions of the maternity home shall be stated in its charter, or articles, when the home operates under one of these.

2. It shall be clear from the practices of the home that the purposes for which it was declared to be established are being met.

3. The governing body shall adopt a supplementary statement of any new function which is added to the program of the maternity home.

B. Governing Body

1. There shall be a responsible governing body which shall be of the following:

a. a board of local citizens elected or appointed for that purpose;

b. a religious, fraternal, charitable organization, or veteran's organization; or

c. a public authority.

2. This governing body shall exercise sufficient authority so that it can reasonably be held responsible for the practices within the maternity home.

3. The governing body shall have the power to appoint or dismiss the executive director and shall carry responsibility for the direction of the program.

4. If the governing body is a national or regional organization and has a local advisory board or committee, minutes of the local group setting forth changes in policies and administrative decisions affecting the local operation shall be made available to the licensing authority.

C. Administrative Responsibilities

1. There shall be one person employed by the governing body to serve as superintendent or executive director. This person shall be responsible for the administration of the maternity home.

2. The agency executive director or superintendent shall be responsible for the direction and supervision of all personnel employed in the maternity home.

3. The duties, responsibilities, and authority of each staff member shall be clearly defined specifying:

a. where responsibilities, and authority rest for each of his or her functions within the maternity home;

b. that no responsibility or authority shall conflict with another.

4. The duties, responsibilities, and authority of each board committee working directly with staff shall be clearly defined.

5. The following personnel practices shall be observed:

a. the Division of Licensing and Certification shall be notified promptly when there is a change of executive director within the period covered by a license, this notification shall include a statement of the qualifications of the new employee;

b. only such staff members who are qualified for the duties assigned by virtue of ability, health, age, emotional stability, education, and experience shall be employed and retained in employment;

c. a written statement shall be given to the employee at the time of employment setting forth the duties that will be assigned to him, to whom he is directly responsible, and conditions of employment, including official responsibilities, salary, hours of work, sick leave, retirement benefits, vacations, and the notice he will be expected to give or receive in case of resignation or release;

d. no person shall be required to do work in contravention of the labor laws of the state of Louisiana or the United States;

e. the governing body of the maternity home shall be encouraged to participate in a retirement plan for the employees, such coverage may be the home's own retirement plan or Retirement Survivors' and Disability Insurance.

D. Resources

1. The maternity home shall prepare an annual budget adequate to finance the program. The budget shall be prepared for the maternity home's fiscal year and shall clearly indicate all sources of income as well as anticipated expenditures.

2. The maternity home partially dependent on board payments to carry out its functions shall have sufficient funds available to continue care until other plans can be made for residents should contributions cease.

3. The governing body shall not assign to the personnel of the maternity home the responsibility for fund raising.

4. Soliciting funds shall be the responsibility of the governing body or of a special officer appointed for this purpose.

E. Auditing of Accounts

1. Accounts of the maternity home shall be audited annually by an independent certified public accountant or by a public authority.

F. Personnel Plan

1. An executive director shall be employed whose qualifications include a basic year's training in an accredited school of social work, or three years of successful experience in a recognized social agency, or five years successful experience in closely allied fields such as nursing, education, or ministry.

2. A caseworker shall be employed who meets the following qualifications: completion of one basic year in an accredited school of social work and one year of experience in a family or children's agency. The experience may be waived if the facility employs a casework supervisor with the same qualifications as the supervisor in a child placing agency.

3. A case aide or aides may be employed with the following qualifications: a B.A. or B.S. degree in social work or a related field. This person shall be closely supervised by the casework supervisor.

4. A full-time resident staff person shall be employed when the superintendent does not live at the home. The resident staff person's qualifications shall include:

a. a high school education;

b. at least two years successful experience in allied fields such as practical nursing, household management, housemother experience;

c. an ability to accept and work with expectant mothers;

d. an ability to supervise assistant resident staff persons; and

e. be over the age of 21.

5. Assistant staff person, with the following qualifications, shall be employed when the population requires it:

a. a high school education;

b. an ability to accept and work with expectant mothers; and

c. be over the age of 21.

6. There shall be on call at all times an employee who is a graduate nurse or practical nurse.

a. The graduate nurse must have a current license to practice nursing in the state of Louisiana.

b. The practical nurse must have a current license to practice in the state of Louisiana.

7. Sufficient clerical staff shall be employed to keep correspondence, records, bookkeeping system, and files current and in good order. Expectant mothers receiving care in the maternity home shall not be used in this capacity. Clerical staff shall be selected in relation to ability to understand the confidentiality of the work and to respect the program.

8. Sufficient domestic staff shall be employed so that the major and heavy household duties are not assigned to the expectant mothers or become the duties of the resident staff person. Domestic staff shall be selected in relation to ability to understand the confidentiality of the work and to respect the program.

9. All employees living or working within an institution shall be required to obtain a written statement from a physician certifying that the employee is free from venereal disease, tuberculosis, and other infectious or contagious disease. This statement shall be obtained prior to employment, or immediately thereafter and annually during employment.

10. Resident staff shall be provided with quarters which insure reasonable privacy and rest during hours off duty. In addition, provision shall be made for personal belongings and bathing and toilet facilities separate from those used by expectant mothers.

11. Foster homes which are used in lieu of a congregate home shall meet the standards outlined for foster homes in "Minimum Requirements for License of Child Placing Agencies", published by the Division of Licensing and Certification.

G. Staff

1. There shall be on duty at all times one adult serving in the capacity of resident staff. In addition, an alternate person shall be on call. There shall be one adult on the staff designated as the assistant to the resident staff who will also serve as relief resident staff.

2. In small maternity homes, it may be necessary for one employee to serve in more than one capacity. When this practice is followed, the employee shall be well qualified by training and experience for the different duties 'assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R. S. 46:1401-11.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1571 (August 2009).

§6711. Ethical Practices

NOTE: This Section has been moved from LAC 67:I.1711.

A. The following code of professional ethics shall be observed:

1. respect for the confidential nature of information provided by expectant mother and other agencies. Divulging identifying information about the expectant mother or her baby to anyone other than professional social casework staff and judicial agencies is prohibited. Information may be provided to other social casework staff and judicial agencies only when necessary for planning for the mother or the baby's welfare. Information about the mother may be given to other professional persons such as physicians or attorneys with the mother's written permission. Honesty in all dealing with expectant mothers, with other organizations and the public, including the keeping of agreements made with each;

2. the fulfilling of any responsibility accepted by the maternity home from courts of law;

3. utilizing funds for the stated purposes of the maternity home;

4. honoring contracts and prompt payment of bills.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-11.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2696 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1572 (August 2009).

§6713. Social Services

NOTE: This Section has been moved from LAC 67:I.1713.

A. A social study shall be completed for every expectant mother accepted for care by the maternity home. The social study shall be completed by a caseworker on the maternity home's staff or by a caseworker of the referring agency. When she is accepted through correspondence or on an emergency basis, the expectant mother shall be interviewed by the maternity home caseworker within a week after arrival. An immediate interview however, is preferable.

B. Intake

1. The intake study shall include social information establishing that the expectant mother is in need of the services of the maternity home.

2. The following identifying information is essential: name, date of birth, nationality, religion, education, occupation, health history, physical appearance of mother, marital status, and home address.

3. The social worker shall discuss with the expectant mother the following:

a. the regulations of the maternity home and her responsibilities;

b. the services available to her through the maternity home and community;

c. agreement that while she is in the care of the maternity home she may plan either to keep or to release her baby. The narrative record shall clearly show that a full discussion was held with the expectant mother regarding alternatives. The expectant mother should understand that should she not surrender her child to the home, the home will release the child only to the mother or to a licensed agency.

4. The agreement shall be in writing when a charge for care is made.

C. Continuing Casework

1. Following admission, the social worker shall counsel with the expectant mother as often as her individual needs require. The caseworker will begin to establish a relationship in order to gain an understanding of the expectant mother's total situation and the meaning of the pregnancy for the expectant mother.

2. Interviewing shall be focused on the expectant mother's individual problems and on plans for the baby. In general, the treatment plan will be focused on preparing the expectant mother for a return to useful community life and providing her with information regarding the resources available in her local community.

3. The decision to surrender or take her baby should be made by the mother before, or at the time of discharge. Should the expectant mother desire postponement of her decision regarding surrender, the consideration of allowing more time shall be made on an individual basis by the social worker. In any event, adequate discharge plans shall be made.

4. The social worker shall know at the time of discharge what plans the expectant mother has for living arrangements, employment, or school. It is the social worker's responsibility to assist the expectant mother directly or through referral to other agencies when she needs help in these areas.

D. Records

1. A narrative record shall be maintained which incorporates the information required in Subsections A and B of this Section. Copies of correspondence, agreements, and other forms shall be filed in this folder. The confidential nature of these records shall be respected, and these records are for the use of professional casework staff only. Social records shall be accessible only to the appropriate staff and shall be maintained in locked files.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-11.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2696 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1572 (August 2009).

§6715. Care in the Home

NOTE: This Section has been moved from LAC 67:I.1715.

A. Health Aspects

1. Responsibility for the health supervision of the maternity home shall be placed in a licensed physician or a group of licensed physicians appointed by the governing body. A physician shall approve written procedures governing the following:

a. medications and treatment that may be given without specific orders from a licensed physician or by a physician designated by him;

b. circumstances under which a physician shall be called;

c. action to be taken in case of emergency;

d. a special diet if required; and

e. household tasks that may be required. The physician shall review annually the health practices within the maternity home and certify in writing that they meet the licensing requirements.

2. Unless the maternity home requires, prior to admission, a statement from a physician that the expectant mother is free from communicable diseases, the maternity home shall have an isolation facility available. The expectant mother admitted without the statement from the physician shall be placed in isolation until she has had a complete physical examination to determine her freedom from communicable diseases.

3. The expectant mother shall be placed immediately under medical supervision. She shall have a physical examination within a week after admission to the home and at least monthly prior to confinement and before discharge. Should she leave the home before she is medically discharged, this fact shall be recorded on her medical record.

4. Nourishing food, attractively served, shall be provided. The diet shall be planned in consultation with a nurse, or if a special diet, the physician in charge. Necessary changes in diet prescribed in individual cases by the physician shall be followed.

5. A complete medical record shall be maintained on each expectant mother when she delivers at the maternity home. The case worker or nurse is responsible for maintaining a record for each expectant mother who delivers in public or private hospitals. This record shall contain dates of visits to the medical facility and a summary of medical consultation. Delivery information on the infant shall be recorded. These records shall be maintained in locked files.

6. When an infant is admitted for care into the home's nursery, all standards for child caring institutions apply.

E. Program

1. Regulations

a. The regulations of the maternity home shall not infringe on the expectant mother's privilege of writing and receiving uncensored mail and visits from her family.

b. The same food shall be served to the staff and expectant mothers when they dine together, except when special diets must be prepared for any of the expectant mothers.

c. A mother who wishes to give personal attention to her baby, such as bathing and feeding, shall be permitted to do so.

d. An expectant mother shall be allowed a choice of duties, insofar as possible.

2. Recreation

a. A recreational program shall be provided which will meet the individual needs of the expectant mothers. This program shall consist of a well-stocked library, magazines, newspapers, games, radio or television, piano, and record players. It is desirable to encourage arts and crafts with proper leadership. There shall be provision for outdoor activities. The yard should provide for privacy and be equipped with comfortable outdoor furniture. Expectant mothers interested in community activities should be encouraged to participate.

3. Education

a. Every effort shall be made to arrange continued education for girls under 16 and for older girls whose schooling has been interrupted. Vocational training when appropriate should be encouraged. Household duties should have an educational value.

4. Religion

a. Expectant mothers shall have the privilege of attending the church of their choice. Religious services should be available in the maternity home to those expectant mothers wishing to attend. An expectant mother wishing consultation with her pastor shall be provided the opportunity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R. S. 46:1401-11.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2697 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1573 (August 2009).

§6717. Plant and Equipment

NOTE: This Section has been moved from LAC 67:I.1717.

A. Maintenance

1. The building, grounds, and equipment shall be kept clean and in good repair.

B. Location. Local zoning ordinances should be followed.

C. Allocation of Space

1. The room assigned expectant mothers shall be clean, airy, and inviting. Each expectant mother shall have a separate bed, and there shall be at least 4 feet between beds. Each expectant mother shall have adequate closet and drawer space for personal possessions in the room assigned to her. There shall be toilet and bath facilities available in the ratio of one to six expectant mothers. Any maternity home established or rebuilt shall be designed for a maximum of not more than four girls to a room.

2. A recreation room for the exclusive use of the expectant mothers shall be provided.

3. A room insuring privacy where expectant mothers can visit with their families shall be provided.

4. An isolation room and bath for expectant mothers admitted prior to examination for communicable diseases shall be provided.

5. When facilities for delivery are provided in the maternity home, separate and properly equipped quarters approved by the home's physician shall be provided.

6. When the home has facilities for delivery, a recovery room shall be provided on the same floor as the delivery room unless an elevator is available.

7. Separate, private offices shall be provided for the casework staff when the offices are housed in the maternity home. Facilities for the use of a private telephone should be provided.

8. Living quarters separate from those occupied by the expectant mothers shall be provided for auxiliary staff (nursery attendants, domestic staff, and maintenance staff), if they are required to live in.

D. Safety Aspects

1. All requirements of the local state fire prevention and health authorities shall be met. An annual inspection by each of the authorities shall be requested by a designated authority of the maternity home and the report shall be submitted to the Division of Licensing and Certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R. S. 46:1401-11.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2697 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1574 (August 2009).

Chapter 69. Child Residential Care

§6901. Purpose

NOTE: This Section has been moved from LAC 67:I.1901.

A. It is the intent of the legislature to protect the health, safety, and well-being of the children of the state who are in out-of-home care on a regular or consistent basis. Toward that end, it is the purpose of Chapter 14 of Title 46 of the Louisiana Revised Statutes of 1950 to establish statewide minimum standards for the safety and well-being of children, to ensure maintenance of these standards, and to regulate conditions in these facilities through a program of licensing. It shall be the policy of the state to ensure protection of all individuals under care in child care facilities and to encourage and assist in the improvement of programs. It is the further intent of the legislature that the freedom of religion of all citizens shall be inviolate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2129 (November 1998), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2698 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1574 (August 2009).

§6903. Authority

NOTE: This Section has been moved from LAC 67:I.1903.

A. Legislative Provisions

1. The State of Louisiana, Department of Social Services, is charged with the responsibility of developing and publishing standards for the licensing of child residential facilities.

2. The licensing authority of the Department of Social Services is established by R.S. 46:1401-1425 and R.S. 46:51 which mandate the licensing of all child care facilities and child placing agencies, including child residential facilities. A child residential facility is defined as any place, facility or

home operated by any institution, society, agency, corporation, person or persons or any other group to provide full-time care (24 hour residential care) for four or more children under the age of 18 years who are not related to the operators, and whose parents or guardians are not residents of the same facility, with or without transfer of custody.

3. To carry out the legislative provisions and meet the needs of children who have been placed in out-of-home care, separate regulations have been developed which are designed for the different types of programs. These programs are established as "modules" to the child residential care regulations as listed below:

a. Therapeutic Wilderness Program; and

b. Controlled Intensive Care Facility or Unit.

4. To obtain a license as a Child Residential Care Facility, an applicant must meet, and adhere to, the licensing standards as stipulated in §§1901-1921. These standards shall be known as core standards.

5. To obtain a license as a Therapeutic Wilderness Program, an applicant must meet the core standards plus the licensing standards as stipulated in the module under §1923. If any core standard is not applicable to the Therapeutic Wilderness Program, it shall be so stated in the module.

6. To obtain a license as a Controlled Intensive Care Facility or Unit, an applicant must meet the core standards plus the licensing standards as stipulated in the module under §1925. If any core standard is not applicable to the Controlled Intensive Care Facility or Unit, it shall be so stated in the module.

7. An applicant may be licensed as a "stand alone" Child Residential Facility, a Therapeutic Wilderness Program or a Controlled Intensive Care Facility.

8. A facility already licensed as a Child Residential Facility may also be licensed to operate a Therapeutic Wilderness Program or a Controlled Intensive Care Unit by meeting the additional appropriate licensing standards. However, the licensed capacity of these units shall be separate from the licensed capacity of the Child Residential Facility.

9. A facility already licensed by another agency or as another type program must meet the licensing standards for Child Residential Facility plus the appropriate module standards.

10. A facility licensed by another agency or as another type program must have a clear separation between the areas to be licensed that will prohibit the residents from intermingling.

B. Penalties

1. All child care facilities, including facilities owned or operated by any governmental, profit, nonprofit, private or church agency, shall be licensed.

2. As stipulated in R.S. 46:1421, whoever operates any child care facility without a valid license shall be fined not less than $75 nor more than $250 for each day of such offense.

C. Inspections

1. According to law, it shall be the duty of the Department of Social Services "through its duly authorized agents, to inspect at regular intervals not to exceed one year, or as deemed necessary by the department, and without previous notice, all child care facilities and child placing agencies subject to the provisions of the Chapter (R.S. 46:1417)."

2. When the department is advised or has reason to believe that any person, agency or organization is operating a nonexempt child residential facility without a license or provisional license, the department shall make an investigation to ascertain the facts.

3. When the department is advised or has reason to believe that any person, agency or organization is operating in violation of the Child Residential Minimum Standards, the department shall complete a complaint investigation. All reports of mistreatment received by the department will be investigated.

D. The Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies (The Class A Child Care Committee)

1. The Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies was created by Act 286 of 1985 to serve three functions:

a. to develop new minimum standards for licensure of Class A facilities ("new" meaning the first regulations written after Act 286 of 1985);

b. to review and consult with the Department of Social Services on all revisions written by the Bureau of Licensing after the initial regulations and to review all standards, rules and regulations for Class A facilities at least every three years;

c. to advise and consult with the Department of Social Services on matters pertaining to decisions to deny, revoke or refuse a Class A license.

2. The committee is composed of 20 members, appointed by the governor, including provider and consumer representatives from all types of child care services and the educational and professional community.

E. Waivers

1. The Secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard upon determination that the economic impact is sufficiently great to make compliance impractical, as long as the health, safety, and well-being of the staff/children are not imperiled. If it is determined that the facility or agency is meeting or exceeding the intent of a standard or regulation, then the standard or regulation may be deemed to be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2129 (November 1998), LR 25:2458 (December 1999), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2698 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1574 (August 2009).

§6905. Procedures

NOTE: This Section has been moved from LAC 67:I.1905.

A. Initial Application

1. New buildings shall be noninstitutional in design and appearance and physically harmonious with the neighborhood in which they are located considering such

issues as scale, appearance, density and population. A child residential facility shall not occupy any portion of a building licensed by another agency.

2. Before beginning operation, it is mandatory to obtain a license from the Department of Social Services, Bureau of Licensing. The following steps should be followed.

a. Prior to purchasing, leasing, etc., carefully check all local zoning and building ordinances for the area in which you are planning to locate. Guidelines from the Office of Public Health, Sanitarian Services; the Office of State Fire Marshal, Code Enforcement and Building Safety; and the city fire department (if applicable) should be obtained.

b. After securing property, obtain an application form issued by:

Department of Social Services
Bureau of Licensing
P.O. Box 3078
Baton Rouge, LA 70821-3078
Phone: (504)922-0015
FAX: (504)922-0014

c. After the facility's location has been established, complete and return the application form. It is necessary to contact the following offices prior to building or renovating a facility:

i. Office of Public Health, Sanitarian Services;

ii. Office of State Fire Marshal, Code Enforcement and Building Safety;

iii office of city fire department (if applicable);

iv. zoning department (if applicable);

v. city or parish building permit office.

d. Upon receipt of the facility's application by the Bureau of Licensing, a request will be made to the Office of State Fire Marshal, Code Enforcement and Building Safety; office of city fire department (if applicable); Office of Public Health and any known required local agencies to inspect the location as per their standards. It is the applicant's responsibility to obtain these inspections and approvals. A licensing specialist shall visit the facility to conduct a licensing inspection.

e. A license will be issued on an initial application when the following requirements have been met and verification is received by the Bureau of Licensing:

i. approval by the Office of Public Health;

ii. approval by the Office of State Fire Marshal, Code Enforcement and Building Safety;

iii. approval by the city fire department (if applicable);

iv. approval by the city or parish zoning (if applicable);

v. approval by the city or parish building permit (if applicable);

vi. a completed licensure inspection verifying substantial compliance with these standards;

vii. full license fee paid.

3. When a facility changes location, it is considered a new operation and a new application and fee for licensure shall be submitted. All items listed in §1905.A.1.e shall be in compliance for the new location.

4. When a facility changes ownership, a new application and fee shall be submitted. All approvals listed in §1905.A.1.e shall be current. Documentation is required from the previous owner assuring change of ownership, i.e., letter from previous owner, copy of Bill of Sale or a lease agreement.

5. All new construction or renovation of a facility requires approval from agencies listed in §1905.A.1.c and the Bureau of Licensing.

6. The department is authorized to determine the period during which the license shall be effective. A license is valid for the period for which it is issued unless it is revoked for facility's failure to maintain compliance with minimum standards.

7. A license is not transferable to another person or location.

8. If an administrator or member of his immediate family has had a previous license revoked, refused or denied, upon reapplication, the applicant shall provide written evidence that the reason for such revocation, refusal or denial no longer exists. A licensing survey will then be conducted to verify that the reasons for revocation, refusal or denial have been corrected and the administrator/facility is in substantial compliance with all minimum standards.

B. Fees

1. An initial application fee of $25 shall be submitted with all initial license applications. This fee will be applied toward the license fee when the facility is licensed. This fee is to be paid by all initial and change of location providers. The full licensure fee shall be paid on all changes of ownership. All fees shall be paid by certified check or money order only and are nonrefundable.

2. License fees are required prior to issuance or renewal of a license. Fee schedules (based on licensed capacity) are listed below:

a. Four to six children $400

b. Seven to fifteen children$500

c. Sixteen or more children $600

3. Other licensure fees include:

a. a replacement fee of $25 for replacing a license when changes are requested, i.e., change in capacity, name change, age range, etc. (no replacement charge when the request coincides with the regular renewal of a license.);

b. a processing fee of $5 for issuing a duplicate license with no changes.

C. Relicensing

1. A license shall be renewed on an annual basis.

a. The month of issue of the initial license becomes the anniversary month for all renewals. Generally all licenses expire on the last day of the month.

2. Approximately 90 days prior to the annual expiration of a license, a notice and an application form will be mailed to the licensee. The completed application along with the full license fee shall be returned prior to relicensure.

3. A relicensing inspection will be made by staff of the Bureau of Licensing to determine continued compliance with licensing regulations.

4. A current approval from the Office of State Fire Marshal, Code Enforcement and Building Safety; the city fire department (if applicable); and the Office of Public Health, Sanitarian Services shall be received by the Bureau of Licensing. It is the responsibility of the licensee to obtain these inspections and approvals.

5. The Department of Social Services, Bureau of Licensing, shall be notified prior to making changes which might have an effect upon the license, i.e., age range of children served, usage of indoor and outdoor space,

administrator, hours/months/days of operation, ownership, location, etc.

D. Denial, Revocation, or Nonrenewal of License

1. An application for a license may be denied for any of the following reasons:

a. failure to meet any of the minimum standards for licensure;

b. conviction of a felony, as shown by a certified copy of the record of the court of conviction, of the applicant:

i. or if the applicant is a firm or corporation, of any of its members or officers;

ii. or of any staff providing care, supervision, or treatment to a resident of the facility.

2. A license may be revoked or renewal denied for any of the following reasons:

a. cruelty or indifference to the welfare of the children in care;

b. violation of any provision of the minimum standards, rules, regulations, or orders of the Department of Social Services;

c. disapproval from any agency whose approval is required for licensure;

d. nonpayment of licensure fee or failure to submit a licensure application;

e. any validated instance of child abuse, corporal punishment, physical punishment, or cruel, severe or unusual punishment may result in revocation, denial or nonrenewal of the license if the owner is responsible or if the staff member who is responsible remains in the employment of the licensee;

f. the facility is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure;

g. any act of fraud such as falsifying or altering documents required for licensure.

E. Appeal Procedure. If the license is refused or revoked because the facility does not meet minimum requirements for licensure, the procedure is as follows.

1. The Department of Social Services, Bureau of Licensing, by certified letter, shall advise the licensee or applicant of the reasons for the denial or revocation and the right of appeal.

2. The administrator or owner may appeal this decision by submitting a written request with the reasons to the secretary of the Department of Social Services. Write to Department of Social Services, Bureau of Appeals, P.O. Box 2994, Baton Rouge, LA 70821-9118. This written request shall be postmarked within 30 days of the receipt of the notification in §1905.E.1 above.

3. The Bureau of Appeals shall set a hearing to be held within 30 days after receipt of such a request.

4. An appeals hearing officer shall conduct the hearing. Within 90 days after the date the appeal is filed, the hearing officer shall advise the appellant by certified letter of the decision, either affirming or reversing the original decision. If the license is refused or revoked, the facility shall terminate operation immediately.

5. If the facility continues to operate without a license, the Department of Social Services may file suit in the district court in the parish in which the facility is located for injunctive relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1426.

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§6907. Definitions

NOTE: This Section has been moved from LAC 67:I.1907.

Abuse—any one of the following acts which seriously endangers the physical, mental, or emotional health of the child:

1. the infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person;

2. the exploitation or overwork of a child by a parent or any other person;

3. the involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's pornographic displays or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

Administrator—the person responsible for the on-site, daily implementation and supervision of the overall facility's operation.

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

Bureau—the Bureau of Licensing within the Department of Social Services.

Controlled Intensive Care Facility or Unit—a staff secure, intensive therapeutic program of individualized treatment provided on a 24 hour, 7 day a week basis.

Controlled Time-Out—an intervention used only in extreme situations where a child is out of control, and is a danger to him/herself or others, or whose presence is a severe disruption of the therapeutic environment.

Core Standards—the basic licensing standards that all providers must meet in order to obtain a license.

Department—the Department of Social Services.

Director—the person who has program authority.

Discipline—the ongoing practice of helping children or juveniles to develop inner control so that they can manage their own behavior in an appropriate and acceptable manner.

Documentation—written evidence or proof, including signatures of appropriate staff and date, on site and available for review.

Group (or unit)—refers to the number of children or juveniles who share a common space and relate to one primary staff person (who may be assisted by others) on a consistent or daily basis.

Human Service Field—Psychology, Sociology, Special Education, Rehabilitation Counseling, Juvenile Justice, Corrections, Nursing, etc.

License—the legal authority to operate.

Module—the additional licensing standards that must be met, in addition to the core standards, to obtain a license for a particular specialty.

Phases of Behavior Escalation—

1. a change in or an abnormal behavior occurs;

2. there is more agitation and the child begins to disrupt the environment;

3. finally, the child's behavior escalates to the level of possibly harming others or himself/herself at which time a physical restraint may occur;

4. following escalation there is a period of de-escalation.

Residential Parenting Facility—a facility in which teenage mothers and their children reside for the purpose of keeping mother and child together, teaching parenting and life skills to the mother and assisting teenage mothers in obtaining educational or vocational training and skills.

Shall or Must—a mandatory requirement.

Should—a requirement that is urged or advised.

Therapeutic Wilderness Program—an incorporation of a primitive camping program with a nonpunitive environment, and an experience curriculum for residents 9 years of age and older who have difficulty functioning in home, school and community.

Time-Out—an intervention utilized when a child needs to be removed from a situation or circumstance and does not have the ability, at the time, to self monitor and determine readiness to rejoin the group.

Treatment Plan Manager—the individual who is assigned responsibilities as outlined in §1917 "Treatment Planning."

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§6909. Administration and Organization

NOTE: This Section has been moved from LAC 67:I.1909.

A. General Requirements

1. A provider shall allow representatives of DSS in the performance of their mandated duties to inspect all aspects of a program's functioning that impact on children and to interview any staff member or child. DSS representatives shall be admitted immediately and without delay, and shall be given free access to all areas of a facility, including its grounds. If any portion of a facility is set aside for private use by the facility's owner, DSS representatives shall be permitted to verify that no children are present in that portion and that the private areas are inaccessible to children. Any area to which children have or have had access is presumed to be part of the facility and not the private quarters of the owner/operator.

2. A provider shall make any information that the provider is required to have under the present requirements, and any information reasonably related to assessment of compliance with these requirements available to DSS. The child's rights shall not be considered abridged by this requirement.

3. A provider accepting any child who resides in another state shall show proof of compliance with the terms of the Interstate Compact on Juveniles, the Interstate Compact on the Placement of Children and the Interstate Compact on Mental Health. Proof of compliance shall include clearance letters from the Compact officers of each state involved.

B. Other Jurisdictional Approvals. The provider shall comply and show proof of compliance with all relevant standards, regulations and requirements established by federal, state, local and municipal regulatory bodies including initial and annual approval by the following:

1. the Office of Public Health, Sanitarian Services;

2. Office of the State Fire Marshal, Code Enforcement and Building Safety;

3. the city fire department (if applicable);

4. the local governing authority or zoning approval (if applicable);

5. the Department of Education (if applicable).

C. Governing Body. A provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the provider.

1. A provider shall have documents identifying all members of the governing body; their addresses; their terms of membership (if applicable); officers of the governing body (if applicable) and terms of office of all officers (if applicable).

2. When the governing body of a provider is composed of more than one person, the governing body shall hold formal meetings at least twice a year.

3. When the governing body is composed of more than one person, a provider shall have written minutes of all formal meetings of the governing body and bylaws specifying frequency of meetings and quorum requirements.

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

1. ensure the provider's compliance and conformity with the provider's charter;

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

3. ensure the provider is adequately funded and fiscally sound by reviewing and approving the provider's annual budget or cost report;

4. ensure the provider is housed, maintained, staffed and equipped appropriately considering the nature of the provider's program;

5. designate a person to act as administrator/director and delegate sufficient authority to this person to manage the provider;

6. formulate and annually review, in consultation with the administrator/director, written policies concerning the provider's philosophy, goals, current services, personnel practices and fiscal management;

7. have the authority to dismiss the administrator/director;

8. meet with designated representatives of DSS whenever required to do so;

9. inform designated representatives of DSS prior to initiating any substantial changes in the program, services or physical plant of the provider.

E. Administrative File. A provider shall have an administrative file including:

1. organizational chart of the provider;

2. all leases, contracts and purchase-of-service agreements to which the provider is a party;

3. insurance policies: every provider shall maintain in force at all times a comprehensive general liability insurance policy. This policy shall be in addition to any professional liability policies maintained by the provider and shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment;

4. all written agreements with appropriately qualified professionals, or a state agency, for required professional services or resources not available from employees of the provider;

NOTE: The provider shall not contract with outside sources for any direct care staff, including one-on-one trainers or attendants.

5. written policies and procedures governing all aspects of the provider's activities.

F. Accessibility of Executive. The chief administrator or a person authorized to act on behalf of the chief administrator shall be accessible to provider staff or designated representatives of DSS at all times (24 hours per day, 7 days per week).

G. Documentation of Authority to Operate

1. A private provider shall have documentation of its authority to operate under state law.

2. A privately owned provider shall have documents identifying the names and addresses of owners.

3. A corporation, partnership or association shall identify the names and addresses of its members and officers and shall, where applicable, have a charter, partnership agreement, constitution, articles of association or bylaws.

H. Accounting and Record Keeping

1. A provider shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books and records.

2. A provider shall ensure that all entries in records are legible, signed by the person making the entry and accompanied by the date on which the entry was made.

3. All records shall be maintained in an accessible, standardized order and format, and shall be retained and disposed of according to state and federal law.

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

I. Statement of Philosophy and Goals. A provider shall have a written statement describing its philosophy and describing both long-term and short-term goals.

J. Program Description

1. A provider shall have a written program plan describing the services and programs offered by the provider.

2. A provider shall have a written policy regarding participation of children in activities related to fundraising and publicity. Consent of the child and, where appropriate, the child's parent(s) or legal guardian(s) shall be obtained prior to participation in such activities.

3. A provider shall have written policies and procedures regarding the photographing and audio or audio-visual recordings of children.

a. The written consent of the child and, where appropriate, the child's parent(s) or legal guardian(s) shall be obtained before the child is photographed or recorded for research or program publicity purposes.

b. All photographs and recordings shall be used in a manner that respects the dignity and confidentiality of the child.

4. A provider shall have written policies regarding the participation of children in research projects. No child shall participate in any research project without the express written consent of the child and the child's parent(s) or legal guardian(s).

K. Representation at Hearings. A provider shall, when required by law, have a representative present at all judicial, educational or administrative hearings that address the status of a child in care of the provider.

L. Children's Rights

1. All children shall be guaranteed the following rights, unless expressly contraindicated by the treatment plan. A provider shall have a comprehensive written policy on children's rights that assures each of those rights.

a. A child's civil rights are not abridged or abrogated solely as a result of placement in the provider's program.

b. A child has the right to consult freely and privately with his/her parent(s) or legal guardian(s).

c. A child has the right to consult freely and privately with legal counsel, as well as the right to employ legal counsel of his/her choosing.

d. A child is not denied admission, segregated into programs or otherwise subjected to discrimination on the basis of race, color, religion, national origin, sexual orientation, handicap, political beliefs, or any other nonmerit factor.

e. A child has the right to receive preventive, routine and emergency health care.

f. A child has the right to make complaints without fear of reprisal.

g. A child is protected from abuse and neglect.

h. A child has the right to participate in religious services in accordance with his/her faith, but shall not be forced to attend religious services.

i. A child is afforded the opportunity for telephone communication.

j. A child is allowed to send and receive mail.

k. A child is allowed visits to and from his/her family and friends.

l. A child is allowed to possess and use personal money and belongings, including personal clothing.

m. A child is explained the provider's policy on involvement of children in work.

n. A child is afforded opportunities for recreation and leisure.

o. A child has the right to adequate and appropriate food service.

p. A child has access to professional and specialized services as appropriate.

q. A child has the right to a timely (within 30 days of admission) treatment plan.

r. A child has the right to communicate freely and privately with state and local regulatory officials.

2. None of the rights guaranteed above shall be infringed or restricted in any way unless such restriction is necessary to the child's individual treatment plan. No treatment plan shall restrict the access of a child to legal counsel or restrict the access of state or local regulatory officials to a child.

3. Prior to admission, a provider shall clearly explain all of the child's civil rights to both the child and the child's parent(s) or legal guardian(s) and shall clearly explain any restrictions or limitations on those rights, the reasons that make those restrictions medically necessary in the child's individual treatment plan and the extent and duration of those restrictions. Documentation shall consist of a statement of children's civil rights, together with any restrictions thereon, the reasons for those restrictions and the extent and duration of those restrictions, signed by provider staff, the child and the child's parent(s) or legal guardian(s).

M. Confidentiality and Security of Files

1. A provider shall have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released. Records shall be the property of the provider, and the provider as custodian shall secure records against loss, tampering or unauthorized use.

2. A provider shall maintain the confidentiality of all children's case records. Employees of the provider shall not disclose or knowingly permit the disclosure of any information concerning the child or his/her family, directly or indirectly, to any unauthorized person.

3. When the child is of majority age and noninterdicted, a provider shall obtain the child's written, informed permission prior to releasing any information from which the child or his/her family might be identified, except for authorized state and federal agencies.

4. When the child is a minor or is interdicted, the provider shall obtain written, informed consent from the parent(s) or legal guardian(s) prior to releasing any information from which the child might be identified, except for accreditation teams, authorized state and federal agencies.

5. A provider shall, upon written authorization from the child or his/her parent(s) or legal guardian(s), make available information in the case record to the child, his counsel or the child's parent(s) or legal guardian(s). If, in the professional judgment of the administration of the provider, it is felt that information contained in the record would be injurious to the health or welfare of the child, the provider may deny access to the record. In any such case the provider shall prepare written reasons for denial to the person requesting the record and shall maintain detailed written reasons supporting the denial in the child's file.

6. A provider may use material from case records for teaching for research purposes, development of the governing body's understanding and knowledge of the provider's services, or similar educational purposes, provided names are deleted, other identifying information are disguised or deleted, and written authorization is obtained from the child or his/her parent(s) or legal guardian(s).

7. Children's records shall be retained in accordance with state/federal regulations.

N. Child's Case Record. A provider shall have a written record for each child that shall include administrative, treatment and educational data from the time of admission until the time the child leaves the provider. All children's records shall be available for inspection by the Department of Social Services. A child's case record shall include:

1. the name, home address, home telephone number, name of parent(s) or legal guardian(s), home address and telephone number of parent(s) or legal guardian(s) (if different from child's), sex, race, religion, birth date and birthplace of the child;

2. other identification data including documentation of court status, legal status or legal custody and who is authorized to give consents;

3. placement agreement, including proof of compliance with the Interstate Compact on Juveniles, the Interstate Compact on the Placement of Children and the Interstate Compact on Mental Health. Proof of compliance shall include clearance letters from the compact officers of each state involved;

4. child's history including family data, educational background, employment record, prior medical history and prior placement history;

5. a copy of the child's individual service plan and any modifications thereto and an appropriate summary to guide and assist direct service workers in implementing the child's program;

6. quarterly status reports;

7. reports of any incidents of abuse, neglect, accidents or critical incidents, including use of passive physical restraints;

8. reports of any child's grievances and the conclusions or dispositions of these reports. If the child's grievance was in writing, a copy of the written grievance shall be included;

9. a summary of family visits and contacts including dates, the nature of such visits/contacts and feedback from the family;

10. a summary of attendance and leaves from the provider;

11. a summary of court visits;

12. medical and dental records;

13. written summaries from providers of professional or specialized services;

14. discharge summary at time of discharge;

15. a copy of the child's original intake evaluation/assessment. If the child was admitted as an emergency admission, a copy of the emergency admission note shall be included as well;

16. a copy of the physical assessment report;

17. a copy of all annual reports.

O. Medical and Dental Records

1. A provider shall maintain complete health records of a child including:

a. a complete record of all immunizations provided;

b. records of physical, dental and vision examinations;

c. a complete record of any treatment and medication provided for a specific illness or medical emergencies.

2. A provider shall compile a past medical history on every child. This history shall include:

a. allergies, and abnormal reactions to medication;

b. immunization history;

c. history of serious illness, serious injury or major surgery;

d. developmental history;

e. current use of prescribed medication;

f. current or former use of alcohol or nonprescribed drugs;

g. medical history.

P. Personnel File

1. A provider shall have a personnel file for each employee that shall contain:

a. the application for employment/résumé;

b. documentation of contact with three references;

c. all required documentation of appropriate status that includes:

i. current driver's license for operating provider or private vehicles in transporting children;

ii. professional credentials/certification required to hold the position;

d. periodic, at least annual performance evaluations;

e. staff member's starting and termination dates;

f. personnel actions, other appropriate materials, reports and notes relating to the individual's employment with the facility;

g. documentation of satisfactory criminal record check;

h. documentation of employee's orientation and any training received.

2. The staff member shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

3. A provider shall retain the personnel file of an employee for at least three years after the employee's termination of employment.

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§6911. Human Resources

NOTE: This Section has been moved from LAC 67:I.1911.

A. Staff Plan

1. A provider shall have a written plan for recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff members whether directly employed, contract or volunteer.

2. A provider shall have written personnel policies and written job descriptions for each staff position.

3. A provider shall have a written employee grievance procedure.

B. Nondiscrimination. The provider shall have a written nondiscrimination policy that shall ensure the provider does not discriminate in employment of individuals because of race, color, religion, sex, age, national origin, handicap, political beliefs, veteran's status or any non-merit factor in accordance with all state and federal regulations.

C. Staff Medical Requirement

1. Upon offer of employment, all staff shall be required to obtain a statement of good health signed by the physician or physician's designee. A statement of good health dated within three months prior to offer of employment or within one month after date of employment is acceptable. A health statement is due every three years.

2. All persons prior to or at time of employment shall be free of tuberculosis in a communicable state as evidenced by:

a. a negative Mantoux skin test for tuberculosis;

b. a normal chest X-ray if the aforementioned skin test is positive; or

c. a statement from a licensed physician certifying that the individual is noninfectious if the chest X-ray is other than normal.

3. Any employee who has a positive Mantoux skin test for tuberculosis, in order to remain employed, shall complete an adequate course of therapy as prescribed by a licensed physician or shall present a signed statement from a licensed physician stating that therapy is not indicated.

D. Screening

1. A provider's screening procedures shall address the prospective employee's qualifications, as related to the appropriate job description.

a. Prior to employment, each prospective employee shall complete an employment application. The application/résumé shall contain complete information about an applicant's education, employment history, and criminal background, including any arrests or convictions.

b. No provider shall knowingly employ or continue in employment any person convicted of a felony or any crime involving a juvenile victim.

2. Prior to employing any person, a provider shall obtain three written references for each prospective staff member or telephone notes from contact with these references.

3. A provider shall maintain documentation of satisfactory criminal record check, as required by R.S. 15:587.1. A criminal record check shall be requested by the provider prior to the employment of any person who will have supervisory or disciplinary authority over children.

E. Orientation

1. A provider's orientation program shall provide a minimum of 24 hours of training in the following topics for all direct care staff within one week of the date of employment:

a. philosophy, organization, program, practices and goals of the provider;

b. instruction in the specific responsibilities of the employee's job;

c. implementation of treatment plans;

d. the provider's emergency and safety procedures including medical emergencies;

e. detecting and reporting suspected abuse and neglect;

f. reporting critical incidents;

g. children's rights;

h. health practices;

i. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

j. basic skills required to meet the health needs and problems of the children;

k. crisis de-escalation and the management of aggressive behavior including acceptable and prohibited responses;

l. passive physical restraint which is to include a practice element in the chosen method;

m. safe administration and handling of all medications including psychotropic drugs, dosages and side effects.

2. The employee shall sign a statement of understanding certifying that such training has occurred.

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

4. All new direct care employees shall receive certification in CPR and First Aid within the first 30 days of employment.

F. Training

1. A provider shall document that all support and direct care employees receive training on an annual basis in the following topics:

a. provider's administrative procedures and programmatic goals;

b. provider's emergency and safety procedures including medical emergencies;

c. children's rights;

d. detecting and reporting suspected abuse and neglect.

2. Direct care employees shall receive additional annual training to include but not be limited to the following topics:

a. implementation of treatment plans;

b. reporting critical incidents;

c. health practices;

d. detecting signs of illness of dysfunction that warrant medical or nursing intervention;

e. basic skills required to meet the health needs and problems of the children;

f. crisis de-escalation and the management of aggressive behavior including acceptable and prohibited responses;

g. passive physical restraint which is to include a practice element in the chosen method;

h. safe administration and handling of all medication including psychotropic drugs, dosages and side effects.

3. All direct care staff shall have documentation of current certification in CPR and First Aid.

G. Supervision and Evaluation

1. A provider shall complete an annual performance evaluation of all staff members. For any person who interacts with children, a provider's performance evaluation procedures shall address the quality and nature of a staff member's relationships with children.

2. A provider shall be responsible and have the authority for the supervision of the performance of all persons involved in any service delivery/direct care to children.

H. Staffing Requirements

1. A provider shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to perform the following functions:

a. administrative;

b. fiscal;

c. clerical;

d. housekeeping, maintenance and food service;

e. direct child service and treatment planning;

f. supervisory;

g. recordkeeping and reporting;

h. social service;

i. ancillary service;

j. treatment plan management.

2. A provider shall ensure that all staff members are properly certified, licensed as legally required and appropriately qualified for their position.

a. Director: the director shall have a bachelor's degree plus one year experience relative to the population being served.

b. Treatment plan manager: the treatment plan manager shall have one of the following:

i. a bachelor's degree in a human service field plus a minimum of three years' experience with the relevant population;

ii. a master's degree in a human service field plus a minimum of one year with the relevant population.

3. A provider shall ensure that an adequate number of qualified direct service staff are present with the children as necessary to ensure the health, safety and well-being of children. Staff coverage shall be maintained in consideration of the time of day, the size and nature of the provider, the ages and needs of the children, and shall assure the continual safety, protection, direct care and supervision of children.

a. The provider shall have at least one adult staff present for every six children when children are present and awake.

b. The provider shall have at least one adult staff present and awake for every 12 children when children are present and asleep. In addition to required staff, at least one staff person shall be on call in case of emergency.

c. When children are at school, work or recreation outside the facility, the provider shall have a plan ensuring the availability and accessibility of direct care staff to handle emergencies or perform other necessary direct care functions.

d. At least one child care staff person for every five infants or toddlers shall be present in a residential parenting facility to provide care and supervision to children in the absence of teenage mothers.

e. A residential parenting facility shall not permit a teenage mother to provide care or supervision to any child other than her own in the absence of the child's mother or child care staff.

f. Children of staff members and children of residents living at the residential parenting facility shall be counted in all child care/staff ratios.

4. A provider shall make sufficient provisions for housekeeping and maintenance to ensure that direct service staff are able to adequately perform direct care functions.

5. A provider utilizing live-in staff shall have sufficient relief staff to ensure adequate off duty time for live-in staff.

I. Volunteers/Student Interns. A provider that utilizes volunteers or student interns on a regular basis shall be responsible for the actions of the volunteers and interns and shall have a written plan detailing the scope of the volunteers'/interns' work with the children. This plan shall be given to all volunteers and interns. The plan shall indicate that all volunteers and interns shall:

1. have direct supervision by a paid staff member. They shall never be left alone or in charge of a child or group of children without a paid staff member present;

2. have orientation and training in the philosophy of the facility and the needs of children and methods of meeting those needs;

3. have three documented reference checks as required for regular paid staff.

J. Staff Communications. A provider shall establish procedures to assure adequate communication among staff to provide continuity of services to the child. This system of communication shall include recording and sharing of daily information noting unusual circumstances, individual and group problems of children, and other information requiring continued action by staff. Documentation shall be legible, signed and dated by staff.

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§6913. Quality of Life

NOTE: This Section has been moved from LAC 67:I.1913.

A. Family Involvement

1. A provider shall have a written description of strategies used in the provider's program to foster ongoing positive communication and contact between children and their families, their friends and others significant in their lives.

2. A provider shall have evidence that the child's parent(s) or legal guardian(s), when appropriate, and the placing agency have been informed in writing of:

a. the philosophy and goals of the provider;

b. behavior management and disciplinary practices of the provider;

c. the provider's arrangements for children's participation in religious observances;

d. any specific treatment or treatment strategy employed by the provider to be implemented for a particular child;

e. visiting hours, visiting rules and procedures, arrangements for home visits and procedures for communicating with children by mail or telephone;

f. a procedure for registering complaints with the provider, the contracting/funding agency and the licensing agency concerning the child's care or treatment;

g. the name, telephone number and address of a staff person who may be contacted by the family or the legally responsible person to ask questions or register concerns on an ongoing basis.

B. Telephone Communication. A provider shall allow a child to receive and place telephone calls in privacy subject only to reasonable rules and to any specific restrictions in the child's treatment plan. There shall be no restrictions on communication between a child and the child's legal counsel. Any restriction on telephone communication in a child's treatment plan shall be formally approved by the treatment plan manager.

C. Mail

1. A provider shall allow children to receive mail unopened, uncensored and unread by staff unless contraindicated by the child's treatment plan. This restriction shall be reviewed every 30 days by the treatment plan manager. No treatment plan shall restrict the right to write letters in privacy and to send mail unopened, uncensored and unread by any other person. Correspondence from a child's legal counsel shall not be opened, read or otherwise interfered with for any reason.

2. A provider shall ensure that children have access to all materials necessary for writing and sending letters and shall, when necessary, ensure that children who wish to correspond with others are given any required assistance.

D. Visits. A provider shall allow a child to visit or be visited by family and friends subject only to reasonable rules and to any specific restrictions in the child's treatment plan.

1. Special restrictions shall be imposed only to prevent serious harm to the child. The reasons for any special restrictions shall be recorded in the child's treatment plan.

2. Special restrictions shall be reviewed every 30 days by the treatment plan manager and, if restrictions are renewed, the reasons for renewal shall be recorded in the child's treatment plan.

3. No treatment plan shall restrict home visits without approval from the legal custodian.

E. Routines. A provider shall have a written set of daily routines for children designed to provide for reasonable consistency and timeliness in daily activities, in the delivery of essential services to children and in the provision of adequate periods of recreation, privacy, rest and sleep.

F. Money and Personal Belongings

1. A provider shall permit and encourage a child to possess his/her own money either by giving an allowance/ by providing opportunities for paid work, unless otherwise indicated by the child's treatment plan, and reviewed every 30 days by the treatment plan manager.

a. Money earned, or received either as a gift or an allowance by a child, shall be deemed to be that child's personal property.

b. Limitations may be placed on the amount of money a child may possess or have unencumbered access to when such limitations are considered to be in the child's best interests and are duly recorded in the child's treatment plan.

c. A provider shall, as appropriate to the child's age and abilities, provide training in budgeting, shopping and money management.

d. Children's monetary restitution for damages shall only occur when there is clear evidence of individual responsibility for the damages and the restitution is approved by the treatment team. The child and his/her parent(s) or legal guardian(s) shall be notified in writing within 24 hours of any claim for restitution and shall be provided with specific details of the damages, how, when and where the damages occurred, and the amount of damages claimed. If the amount is unknown, an estimate of the damages shall be provided and an exact figure provided within 30 days. The child and his/her parent(s) or legal guardian(s) shall be given a reasonable opportunity to respond to any claim for damages.

2. A provider shall allow a child to bring his/her personal belongings to the program and to acquire belongings of his/her own in accordance with the child's treatment plan. However, the provider may, as necessary, limit or supervise the use of these items while the child is in care. Where extraordinary limitations are imposed, the child shall be informed by staff of the reasons, and the decisions and reasons shall be recorded in the child's case record. Reasonable provisions shall be made for the protection of the child's property.

G. Work

1. A provider shall have a written description regarding the involvement of children in work including:

a. description of any unpaid tasks required of children;

b. description of any paid work assignments including the pay scales for such assignments;

c. description of the provider's approach to supervising work assignments;

d. assurance that the conditions and compensation of such work are in compliance with applicable state and federal laws.

2. A provider shall demonstrate that any child's work assignments are designed to provide a constructive experience are not used as a means of performing vital provider functions at low cost. All work assignments shall be in accordance with the child's treatment plan.

3. A provider shall assign as unpaid work for children only housekeeping tasks similar to those performed in a normal family home. Any other work assigned shall be compensated, at such rate and under such conditions as the child might reasonably be expected to receive for similar work in outside employment. The provider shall ensure that all such employment practices comply fully with state and federal laws and regulations. No child shall be employed in any industrial or hazardous occupation, nor under any hazardous conditions.

4. When a child engages in off-grounds work, the provider shall document that:

a. such work is voluntary and in accordance with the child's treatment plan;

b. the treatment plan manager approves such work;

c. the conditions and compensation of such work are in compliance with applicable state and federal laws;

d. such work does not conflict with the child's program.

H. Recreation

1. A provider shall have a written plan for insuring that a range of indoor and outdoor recreational and leisure opportunities are provided for children. Such opportunities shall be based on both the individual interests and needs of the children and the composition of the living group.

2. A provider shall be adequately staffed and have appropriate recreation spaces and facilities accessible to children. Recreation equipment and supplies shall be of sufficient quantity and variety to carry out the stated objectives of the provider's recreation plan.

3. A provider shall utilize the recreational resources of the community whenever appropriate. The provider shall arrange the transportation and supervision required for maximum usage of community resources. Access to such community resources shall not be denied or infringed except as may be necessary to the child's treatment plan; and any such restrictions shall be specifically described in the treatment plan, together with the reasons such restrictions are necessary and the extent and duration of such restrictions.

I. Religion

1. A provider shall have a written description of its religious orientation, particular religious practices that are observed and any religious restrictions on admission. This description shall be provided to the child and the child's parent(s) or legal guardian(s).

a. Every child shall be permitted to attend religious services in accordance with his/her faith. The provider shall, whenever possible, arrange transportation and encourage participation by those children who desire to participate in religious activities in the community.

b. Children shall not be forced to attend religious services.

2. When the child is a minor, the provider shall determine the wishes of the parent(s) or legal guardian(s) with regard to religious observance and instruction at the time of placement and shall make every effort to ensure that these wishes are carried out.

J. Clothing

1. A provider shall ensure that children are provided with clean, well-fitting clothing appropriate to the season and to the child's age, sex and individual needs.

2. Clothing shall be maintained in good repair.

3. All clothing provided to a child shall go with the child at discharge.

4. Clothing shall belong to the individual child and not be shared in common.

K. Independent Life Training. A provider shall have a program to ensure that children receive training in independent living skills appropriate to their age and functioning level. This program shall include instruction in:

1. hygiene and grooming;
2. family life;
3. sex education including family planning and venereal disease counseling;
4. laundry and maintenance of clothing;
5. appropriate social skills;
6. housekeeping;
7. use of transportation;
8. budgeting and shopping;
9. cooking;
10. punctuality, attendance and other employment related matters;

11. use of recreation and leisure time.

L. Food Service

1. A provider shall ensure that a child is, on a daily basis, provided with food of such quality and in such quantity as to meet the recommended daily dietary allowances adjusted for age, gender and activity of the Food Nutrition Board of the National Research Council.

a. Menus shall be written and approved annually in writing by a registered dietician.

b. A provider shall develop written menus at least one week in advance.

c. Written menus and records of foods purchased shall be maintained on file for 30 days. Menus shall provide for a sufficient variety of foods, vary from week to week and reflect all substitutions.

2. A person designated by the administrator/director shall be responsible for the total food service of the provider. This person shall be responsible for:

a. initiating food orders or requisitions;

b. establishing specifications for food purchases and insuring that such specifications are met;

c. storing and handling of food;

d. food preparation;

e. food serving;

f. orientation, training and supervision of food service personnel;

g. maintaining a current list of children with special nutritional needs;

h. having an effective method of recording and transmitting diet orders and changes;

i. recording information in the child's record relating to special nutritional needs;

j. providing information on children's diets to staff.

3. A provider shall ensure that any modified diet for a child shall be:

a. prescribed by the child's physician and treatment plan with a record of the prescription kept on file;

b. planned, prepared and served by persons who have received instruction from the registered dietician who has approved the menu for the modified diet.

4. A provider shall ensure that a child is provided at least three meals or their equivalent daily at regular times with not more than 14 hours between the evening meal and breakfast of the following day.

5. The provider shall ensure that the food provided to a child in care by the provider is in accord with his/her religious beliefs.

6. No child shall be denied food or force-fed for any reason except as medically required pursuant to a physician's written order. A copy of the order shall be maintained in the child's file.

7. When meals are provided to staff, a provider shall ensure that staff members eat the same food served to children in care, unless special dietary requirements dictate differences in diet.

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

9. A provider shall ensure that food served to a child and not consumed is discarded.

10. A provider shall show evidence of effective procedures for cleaning all equipment and work areas.

M. Professional and Special Programs and Services

1. A provider shall ensure services in the following areas to meet the specialized needs of the child:

a. physical/occupational therapy;

b. speech pathology and audiology;

c. psychological and psychiatric services;

d. social work services;

e. individual, group and family counseling.

2. A provider shall ensure that all providers of professional and special services:

a. record all significant contacts with the child;

b. provide quarterly written summaries of the child's response to the service, the child's current status relative to the service and the child's progress;

c. participate, as appropriate, in the development, implementation and review of treatment plans and aftercare plans and in the interdisciplinary team responsible for developing such plans;

d. provide services appropriately integrated into the overall program and provide training to direct service staff as needed to implement treatment plans;

e. provide child assessments/evaluations as needed for treatment plan development and revision.

3. A provider shall ensure that any provider of professional or special services (internal or external to the agency) meets the following:

a. adequately qualified and, where appropriate, currently licensed or certified staff according to state or federal law;

b. adequate space, facilities and privacy;

c. appropriate equipment;

d. adequate supplies;

e. appropriate resources.

N. Health Care. The provider shall have a written plan for providing preventive, routine and emergency medical and dental care for children and shall show evidence of access to the resources outlined in the plan. This plan shall include:

1. ongoing appraisal of the general health of each child;

2. provision of health education, as appropriate;

3. provisions for keeping children's immunizations current;

4. approaches that ensure that any medical treatment administered will be explained to the child in language suitable to his/her age and understanding;

5. an ongoing relationship with a licensed physician, dentist and pharmacist to advise the provider concerning medical and dental care;

6. availability of a physician on a 24-hour, seven days a week basis;

7. reporting of communicable diseases and infections in accordance with law.

O. Medical Care

1. A provider shall arrange a general medical examination by a physician for each child within a week of admission unless the child has received such an examination within 30 days before admission and the results of this examination are available to the provider. This examination shall include:

a. an examination of the child for physical injury and disease;

b. vision, hearing and speech screening;

c. a current assessment of the child's general health.

2. The provider shall arrange an annual physical examination of all children.

3. Whenever indicated, the child shall be referred to an appropriate medical specialist for either further assessment or treatment, including gynecological services for female children.

4. A provider shall ensure that a child receives timely, competent medical care when he/she is ill or injured. A provider shall notify the child's parent or legal guardian, verbally /in writing, within 24 hours of a child's illness or injury that requires treatment from a physician or hospital.

5. Records of all medical examinations, follow-ups and treatment together with copies of all notices to parent(s) or guardian(s) shall be kept in the child's file.

P. Dental Care

1. A provider shall have an organized system for providing comprehensive dental services for all children that shall include:

a. provision for dental treatment;

b. provision for emergency treatment on a 24-hour, seven days a week basis by a licensed dentist;

c. a recall system specified by the dentist, but at least annually.

2. A provider shall arrange a dental exam for each child within 90 days of admission unless the child has received such an examination within six months before admission and the results of this examination are available to the provider.

3. Records of all dental examinations, follow-ups and treatment shall be documented in the child's file.

4. Provider shall notify the child's parent(s) or legal guardian(s), verbally/in writing, within 24 hours when a child requires or receives dental treatment. The notification shall include the nature of the dental condition and any treatment required.

Q. Immunizations. Within 30 days of admission, a provider shall obtain documentation of a child's immunization history, insuring the child has received all appropriate immunizations and booster shots that are required by the Office of Public Health.

R. Medications

1. A provider shall have written policies and procedures that govern the safe administration and handling of all drugs as appropriate to the provider.

2. A provider shall have a written policy governing the self-administration of both prescription and nonprescription drugs.

3. A provider shall ensure that medications are either self-administered or administered by qualified persons according to state law.

4. A provider shall have a written policy for handling medication taken from the facility by children on pass.

5. A provider shall ensure that any medication given to a child for therapeutic and medical purposes is in accordance with the written order of a physician.

a. There shall be no standing orders for prescription medications.

b. There shall be standing orders, signed by the physician, for nonprescription drugs with directions from the physician indicating when he/she is to be contacted. Standing orders shall be updated annually by the physician.

c. Copies of all written orders shall be kept in the child's file.

d. Medication shall not be used as a disciplinary measure, a convenience for staff or as a substitute for adequate, appropriate programming.

6. The provider shall ensure that the prescribing physician is immediately informed of any side effects observed by staff, or any medication errors. Any such side effects or errors shall be promptly recorded in the child's file and the parent(s) or legal guardian(s) notified in writing within 24 hours.

7. Each drug shall be identified up to the point of administration.

8. Discontinued and outdated drugs and containers with worn, illegible or missing labels shall be properly disposed of.

9. Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.

a. Drugs used externally and drugs taken internally shall be stored on separate shelves or in separate cabinets at all locations.

b. All drugs, including refrigerated drugs, shall be kept under lock and key.

10. A provider using psychotropic medications on a regular basis shall have a written description of the use of psychotropic medications including:

a. a description of procedures to ensure that medications are used as ordered by the physician for therapeutic purposes and in accordance with accepted clinical practice;

b. a description of procedures to ensure that medications are used only when there are demonstrable benefits to the child unobtainable through less restrictive measures;

c. a description of procedures to ensure continual physician review of medication and discontinuation of medication when there are no demonstrable benefits to the child;

d. a description of an ongoing program to inform children, staff, and where appropriate, children's parent(s) or legal guardian(s) on the potential benefits and negative side-effects of medication and to involve children and, where appropriate, their parent(s) or legal guardian(s) in decisions concerning medication;

e. no child shall be given any psychotropic medication except on written authorization from a physician, a copy of which shall be kept in the child's file. Such written authorizations shall be reviewed and renewed at least every 90 days.

S. Grievance Procedure for Children

1. A provider shall have a written grievance procedure for children designed to allow children to make complaints without fear of retaliation.

2. The provider shall document that the child and the child's parent(s) or legal guardian(s) are aware of and understand the grievance procedure.

3. The provider shall document the resolution of the grievance in the child's record.

T. Abuse and Neglect

1. A provider shall have comprehensive written procedures concerning child abuse including:

a. a description of ongoing communications strategies used by the provider to maintain staff awareness of abuse prevention, current definitions of abuse and neglect, mandated reporting requirements to the Office of Community Services Child Protection Agency and applicable laws;

b. a procedure for insuring that the child is protected from potential harassment during the investigation;

c. a procedure for disciplining staff members who abuse or neglect children;

d. a procedure for insuring that the staff member involved does not work directly with the child involved or any other child in the program until the investigation is complete.

2. Any case of suspected child abuse or neglect shall be reported immediately to the Bureau of Licensing and other appropriate authorities, according to state law. Written notification shall follow within 24 hours. The child's record shall include:

a. date and time the suspected abuse or neglect occurred;

b. description of the incident;

c. action taken as a result of the incident; and

d. name of the person to whom the report was made.

U. Reports on Critical Incidents

1. Any serious incident, accident or injury to a child, elopements, hospitalizations, overnight absence from the facility without permission, and any other unexplained absence shall be reported to the parent/legal guardian/placing agency within 24 hours. The child's record shall contain:

a. the date and time the incident occurred;

b. a brief description of the incident;

c. the action taken as a result of the incident;

d. the name of the person who completed the report; and the names of the person(s) who witnessed the incident;

e. the name of the person who made the report to the parent/legal guardian or placing agency; and

f. the name of the person to whom the report was made.

2. Any incident which involves the death of a child or any serious threat to the child's health, safety or well-being shall be reported to the parent/legal guardian/placing agency, Bureau of Licensing and other appropriate authorities. Written notification shall follow within 24 hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2137 (November 1998), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2706 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1583 (August 2009).

§6915. Direct Service Management

NOTE: This Section has been moved from LAC 67:I.1915.

A. Admission Policies

1. A provider shall have a written description of admission policies and criteria that shall include the following information:

a. policies and procedures related to intake;

b. the age and sex of children served;

c. the needs, problems, situations or patterns best addressed by the provider's program;

d. any other criteria for admission;

e. criteria for discharge;

f. any replacement requirements on the child, the legally responsible person, DSS or other involved agencies;

g. procedures for insuring that placement within the program is the least restrictive alternative, appropriate to meet the child's needs.

2. A provider shall only accept children for placement from the parent(s), legal guardian(s), custodial agency or a court of competent jurisdiction.

3. The written description of admission policies and criteria shall be available to the parent(s) or legal guardian(s) for any child referred for placement.

4. A provider shall not admit more children into care than the number specified on the provider's license.

5. A provider shall not accept any child for placement whose needs cannot be adequately met by the provider's program.

6. A provider shall not admit any child into care whose presence will be seriously damaging to the ongoing functioning of the provider or to children already in care.

7. When refusing admission to a child, a provider shall notify the referring agency of the reason for refusal of admission in writing. If the child was referred by his/her parent(s) or legal guardian(s) he/she shall be provided written reasons for the refusal. Copies of the written reasons for refusal shall be kept in the provider's administrative file.

8. A provider shall ensure that the child, the child's parent(s) or legal guardian(s) and others, as appropriate, are provided reasonable opportunity to participate in the admission process and decisions. Proper consents shall be obtained before admission.

9. No child shall be admitted unless the provider has first complied with all applicable provisions of the Interstate Compact on Juveniles, the Interstate Compact on Placement of Children and the Interstate Compact on Mental Health. Proof of such prior compliance shall be obtained prior to admission and shall be kept in the child's file.

B. Intake Evaluation

1. The provider shall accept a child into care only when a current, comprehensive intake evaluation/ assessment, not over one year old, has been completed including, health and family history, medical, social, psychological and, as appropriate, developmental, vocational or educational assessment. This evaluation shall contain

evidence that a determination has been made that the child cannot be maintained in a least restrictive environment within the community.

2. In emergency situations necessitating immediate placement into care, the provider shall gather as much information as possible about the child to be admitted and the circumstances requiring placement, formalize this in an "emergency admission note" within two days of admission and then proceed with an intake evaluation as quickly as possible. The intake evaluation shall be completed within 30 days of admission.

C. Clarification of Expectations to Children. The provider shall, consistent with the child's maturity and ability to understand, make clear its expectations and requirements for behavior and provide the child referred for placement with an explanation of the provider's criteria for successful participation in, and completion of the program.

D. Placement Agreement

1. The provider shall ensure that a written placement agreement is completed. A copy of the placement agreement, signed by all parties involved in its formulation, shall be kept in the child's record.

2. The placement agreement shall include, by reference or attachment, at least the following:

a. discussion of the child's and the family's expectations regarding family contact and involvement, the nature and goals of care including any specialized services to be provided, the religious orientation and practices of the child and the anticipated discharge date;

b. a delineation of the respective roles and responsibilities of all agencies and persons involved with the child and his/her family;

c. authorization to care for the child;

d. authorization to obtain medical care for the child;

e. arrangements regarding visits, vacation, mail, gifts and telephone calls;

f. arrangements regarding the nature and frequency of reports to, and meetings involving, the legally responsible person and referring agency;

g. provision for notification of the child's parent(s) or legal guardian(s) in the event of unauthorized absence, illness, accident or any other significant event regarding the child.

3. The provider shall ensure that an assessment of each child is conducted upon placement for illness, fever, rashes, bruises and injury. The child shall be asked if he/she has any physical complaints. The results of this procedure shall be documented and kept in the child's record.

4. The provider shall assign a staff member to orient the child and, where available, the family to life at the facility.

E. Discharge

1. The provider shall have a written policy concerning unplanned discharge. This policy shall ensure that emergency discharges initiated by the provider take place only when the health and safety of a child or other children might be endangered by the child's further placement at the agency. The provider shall have a written report detailing the circumstances leading to each unplanned discharge.

2. When a child is discharged, the provider shall compile a complete written discharge summary within 30 days of discharge. The discharge summary is to be kept in the child's record and shall include:

a. the name and home address of the child and, where appropriate, the child's parent(s) or legal guardian(s);

b. the name, address and telephone number of the provider;

c. the reason for discharge and, if due to child's unsuitability for provider's program, actions provider undertook to maintain placement;

d. a summary of services provided during care including medical, dental and health services;

e. a summary of the child's progress and accomplishments during care;

f. the assessed needs that remain to be met and alternate service possibilities that might meet those needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2141 (November 1998), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2711 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1587 (August 2009).

§6917. Treatment Planning

NOTE: This Section has been moved from LAC 67:I.1917.

A. The Treatment Plan Manager. A provider shall ensure that a qualified treatment plan manager is assigned to each child and given responsibility for and authority over:

1. supervision of the implementation of the child's treatment plan;

2. integration of the various aspects of the child's program;

3. recording of the child's progress as measured by objective indicators and making appropriate changes/ modifications;

4. reviewing and approving quarterly status reports of the successes and failures of the child's program, including the child's educational program, with recommendations for any modifications deemed necessary. These reports may be prepared by designated staff, but the treatment plan manager shall also sign and date the report;

5. insuring the timely release, whenever appropriate, of the child to a least restrictive setting;

6. monitoring any extraordinary restriction of the child's freedom including use of any form of restraint, any special restriction on a child's communication with others and any behavior management plan;

7. asserting and safeguarding the human and civil rights of children and their families and fostering the human dignity and personal worth of each child;

8. helping the child and family to consider alternative services and make a responsible choice regarding whether and when placement is indicated during the evaluation process, that may or may not lead to admission;

9. serving as liaison between the child, provider, family and community during the child's admission to and residence in the facility, or while the child is receiving services from the provider in order to:

a. assist staff in understanding the needs of the child and his/her family in relation to each other;

b. assist staff in understanding social factors in the child's day-to-day behavior, including staff/child relationships;

c. assist staff in preparing the child for changes in his/her living situation;

d. help the family to develop constructive and personally meaningful ways to support the child's experience in the facility, through counseling concerned with problems associated with changes in family structure and functioning, and referral to specific services, as appropriate;

e. help the family to participate in planning for the child's return to home or other community placement.

B. The Treatment Plan

1. A provider shall ensure that a child has a current, (within the prior 12 months) comprehensive, written psychiatric/psychological, social and, as appropriate, educational assessment. This assessment shall be the basis of a comprehensive, time limited, goal oriented individual treatment plan addressing the needs identified by the assessment within 30 days of admission.

a. The assessment shall identify the child's strengths and needs, establish priorities to assist in the development of an appropriate plan and conclude with recommendations concerning approaches and techniques to be used.

b. All methods used in assessing a child shall be appropriate considering the child's age, development and cultural background and dominant language or mode of communication.

2. Individual treatment plans shall be developed by an interdisciplinary team including the treatment plan manager, representatives of the direct service staff working with the child on a daily basis, representatives of other placing/funding agencies, the child, the child's parent(s) or legal guardian(s) and any other person(s) significantly involved in the child's care on an ongoing basis.

3. The provider shall document that, where applicable, the designated representative of the placing agency and the child's parent or legal guardian have been invited to participate in the planning process. When they do not participate, the provider shall document the reasons for nonparticipation.

4. A provider shall include in a child's treatment plan any community resources or programs providing treatment or training to that child, and shall involve representatives of such services and programs in the treatment planning process whenever feasible and appropriate. Any community resource or program involved in a treatment plan shall be appropriately licensed or shall be a part of an approved school program.

5. The completed treatment plan shall be signed by all team participants.

6. A provider shall complete a treatment plan at least annually and shall evaluate the degree to which the goals have been achieved.

7. A provider shall ensure that all persons working directly with the child are appropriately informed of the treatment plan and have access to information from the child's records that is necessary for effective performance of the employee's assigned tasks.

8. A child's treatment plan shall not be composed solely of activities and programs provided by agencies and organizations external to the provider.

9. A provider shall ensure that the treatment plan for each child includes the following components:

a. the findings of the assessment. The assessment shall describe the severity, duration and frequency of the targeted behavior;

b. a statement of goals to be achieved for the child and his/her family;

c. plan for fostering positive family relationships for the child, when appropriate;

d. schedule of the daily activities including training/education for children and recreation to be pursued by the program staff and the child in attempting to achieve the stated goals;

e. any specific behavior management plan;

f. any specialized services that will be provided directly or arranged for, stated in specific behavioral terms that permit the problems to be assessed, and methods for insuring their proper integration with the child's ongoing program activities;

g. overall goals and specific objectives that are time limited;

h. methods for evaluating the child's progress;

i. any restriction to "children's rights" deemed necessary to the child's individual treatment plan. Any such restriction shall be expressly stated in the treatment plan, shall specifically identify the right infringed upon, and the extent and duration of the infringement, and shall specify the reasons such restriction is necessary to the treatment plan, and the reasons less restrictive methods cannot be employed;

j. goals and preliminary plans for discharge;

k. identification of each person responsible for implementing or coordinating implementation of the plan.

C. Education

1. A provider shall ensure that each child has access to appropriate educational services consistent with the child's abilities and need, taking into account his/her age and level of functioning.

2. All children of school age shall be enrolled in and attending a school program approved by the Department of Education or an alternative educational program approved by the local school board.

3. The provider shall notify both the placing agency and the child's parent(s) or legal guardian(s) verbally/in writing within 24 hours of any truancy, expulsion or suspension from school. Notification shall be documented in the child's record.

D. Reports. The chief administrator of a provider or his/her designee shall report in writing to the child's parent or legal guardian at least annually, or as otherwise required by law, with regard to the child's progress with reference to the goals and objectives in the treatment plan. This report shall include a description of the child's medical condition.

E. Arrangement of Children into Groups

1. A provider shall arrange children into groups that effectively address the needs of children.

2. All children shall have privacy during periods of relative quiet and inactivity.

3. All children shall have an opportunity to build relationships within small groups.

4. Children shall be involved in decision making regarding the roles and routines of their living group to the degree possible considering their level of functioning.

F. Behavior Management

1. The provider shall have a written description of the methods of behavior management to be used on facility-wide level, insuring that procedures begin with the least restrictive, most positive measures and follow a hierarchy of acceptable measures. This description shall be provided to all provider staff and shall include:

a. appropriate and inappropriate behaviors of children;

b. consequences of inappropriate behaviors of children;

c. the phases of behavior escalation and appropriate intervention methods to be used at each level.

2. Use of any methods other than those outlined in the written description required above is prohibited unless addressed in an individual behavior management plan approved by the treatment plan manager.

G. House Rules and Regulations. A provider shall have a clearly written list of rules and regulations governing conduct for children in care and shall document that these rules and regulations are made available to each staff member, child and, where appropriate, the child's parent(s) or legal guardian(s).

H. Limitations on Potentially Harmful Responses. A provider shall have a written list of prohibited responses to children by staff members and shall document that this list is made available to each staff member, child and, where appropriate, the child's parent(s) or legal guardian(s). This list shall include the following prohibited responses:

1. any type of physical hitting or other painful physical contact except as required for medical, dental or first aid procedures necessary to preserve the child's life or health;

2. requiring a child to take an extremely uncomfortable position;

3. verbal abuse, ridicule or humiliation;

4. withholding of a meal, except under a physician's order;

5. denial of sufficient sleep, except under a physician's order;

6. requiring a child to remain silent for a long period of time;

7. denial of shelter, warmth, clothing or bedding;

8. assignment of harsh physical work.

I. Limitations on Punishments

1. A provider shall have a written list of prohibited responses to children by staff when such responses are used as punishments and shall document that this list is made available to each staff member, child and, where appropriate, the child's parent(s) or legal guardian(s). This list shall include the following prohibited responses:

a. physical exercise or repeated physical motions;

b. excessive denial of usual services;

c. denial of visiting or communication with family or legal guardian;

d. extensive withholding of emotional response;

e. any other cruel and unusual punishment.

2. A provider shall not punish groups of children for actions committed by an individual.

3. Children shall neither punish nor supervise other children except as part of an organized therapeutic self government program that is conducted in accordance with written policy and is supervised directly by staff. Such programs shall not be in conflict with all regulations regarding behavior management.

4. Punishment shall not be administered by any persons who are not known to the child.

J. Restraints

1. A provider shall not use any form of mechanical, physical or chemical restraint. Passive physical restraint shall only be utilized when the child's behaviors escalate to a level of possibly harming himself/herself or others.

2. Passive physical restraints are only to be performed by two trained staff personnel in accordance with an approved curriculum. A single person restraint can be initiated in a life threatening crisis with support staff in close proximity to provide assistance.

K. Time-Out Procedures

1. A provider using time-out rooms for seclusion of children for brief periods shall have a written policy governing the use of time-out procedures. This policy shall ensure that:

a. the room shall be unlocked;

b. time-out procedures are used only when less restrictive measures have been used without effect; written documentation of less restrictive measures used shall be required;

c. emergency use of time-out shall be approved by the treatment plan manager or administrator for a period not to exceed one hour;

d. time-out used as an individual behavior management plan shall be part of the overall plan of treatment;

e. the plan shall state the reasons for using time-out and the terms and conditions under which time-out will be terminated or extended, specifying a maximum duration of the use of the procedure that shall under no circumstances exceed eight hours;

f. when a child is in time-out, a staff member shall exercise direct physical supervision of the child at all times;

g. a child in time-out shall not be denied access to bathroom facilities, water or meals.

2. Copies of the behavior management policy, the prohibited response policy and the punishment policy, including restraint prohibitions and time out procedures, shall be provided in triplicate upon admission. The child and parent(s) or legal guardian(s) shall sign all three copies. The child and parent(s) or legal guardian(s) shall retain one copy each and the provider shall retain the other copy in the child's record.

3. Copies of the behavior management policy, the prohibited response policy and the punishment policy, including restraint prohibitions and time out procedures, shall be provided in duplicate to each new employee upon hiring. The employee shall sign both copies. The employee shall retain one copy and the provider shall retain the other copy in the employee's personnel record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2143 (November 1998), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2712 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1588 (August 2009).

§6919. Physical Environment

NOTE: This Section has been moved from LAC 67:I.1919.

A. Exterior Space

1. A provider shall maintain all areas of the facility accessible to children in good repair and free from any reasonably foreseeable hazard to health or safety. All structures on the grounds of the facility shall be maintained in good repair.

2. A provider shall maintain the grounds of the facility in good condition.

a. Garbage and rubbish stored outside shall be secured in noncombustible, covered containers and shall be removed on a regular basis.

b. Trash collection receptacles and incinerators shall be separate from play area.

c. Fences shall be in good repair.

d. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters or high speed roads shall be fenced or have natural barriers to protect children.

e. Playground equipment shall be so located, installed and maintained as to ensure the safety of children.

3. Children shall have access to safe, suitable outdoor recreational space and age appropriate equipment.

4. A provider shall have at least 75 square feet of accessible exterior space for each child. The exterior space shall be adequate to accommodate one-half the licensed capacity of the facility.

B. Interior Space

1. The arrangement, appearance and furnishing of all interior areas of the facility shall be similar to those of a normal family home in the community.

2. A provider shall ensure that there is evidence of routine maintenance and cleaning programs in all areas of the facility.

3. Each living unit of a facility shall contain a space for the free and informal use of children. This space shall be constructed and equipped in a manner in keeping with the programmatic goals of the provider.

4. A facility shall have a minimum of 60 square feet of floor area per child in living areas accessible to children and excluding halls, closets, bathrooms, bedrooms, staff or staff's family quarters, laundry areas, storage areas and office areas.

5. A facility shall have an appropriate variety of interior recreational spaces.

C. Dining Areas

1. A facility shall have dining areas that permit children, staff and guests to eat together in small groups.

2. A facility shall have dining areas that are clean, well lit, ventilated and attractively furnished.

D. Sleeping Accommodations

1. A provider shall ensure that each single occupancy bedroom space has a floor area of at least 80 square feet and that each multiple occupancy bedroom space has a floor area of at least 60 square feet for each occupant.

2. A provider shall not use a room with a ceiling height of less than 7 feet 6 inches as a bedroom space. In a room with varying ceiling height, only portions of the room with a ceiling height of at least 7 feet 6 inches are allowed in determining usable space.

3. A provider shall not permit more than four children to occupy a designated bedroom space.

4. No child over the age of 5 years shall occupy a bedroom with a member of the opposite sex.

5. A provider shall not use any room that does not have a window as a bedroom space.

6. Each child shall have his/her own bed. A child's bed shall be no shorter than the child's height and no less than 30 inches wide and shall have a clean, comfortable, nontoxic fire retardant mattress.

7. A provider shall ensure that sheets, pillow, bedspread and blankets are provided for each child.

a. Enuretic children shall have mattresses with moisture resistant covers.

b. Sheets and pillow cases shall be changed at least weekly, but shall be changed more frequently if necessary.

8. Each child shall have a solidly constructed bed. Cots or other portable beds are not to be used on a routine basis.

9. A provider shall ensure that the uppermost mattress of any bunk bed in use shall be far enough from the ceiling to allow the occupant to sit up in bed.

10. Each child shall have his/her own dresser or other adequate storage space for private use and designated space for hanging clothing in proximity to the bedroom occupied by the child.

11. Each child shall have his/her own designated area for rest and sleep.

12. The decoration of sleeping areas for children shall allow some scope for the personal tastes and expressions of the children.

E. Bathrooms

1. A facility shall have wash basins with hot and cold water, flush toilets, and bath or shower facilities with hot and cold water according to child care needs.

a. Bathrooms shall be so placed as to allow access without disturbing other children during sleeping hours.

b. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene unless children are individually given such items. Children shall be provided individual items such as hair brushes, toothbrushes, razors, etc.

c. Tubs and showers shall have slip proof surfaces.

2. A facility shall have toilets and baths or showers that allow for individual privacy unless children in care require assistance.

3. A provider shall ensure that bathrooms have a safe and adequate supply of hot and cold running water.

4. A provider shall ensure that bathrooms contain mirrors secured to the walls at convenient heights and other

furnishings necessary to meet the children's basic hygienic needs.

5. A provider shall ensure that bathrooms are equipped to facilitate maximum self help by children. Bathrooms shall be large enough to permit staff assistance of children if necessary.

6. Toilets, wash basins and other plumbing or sanitary facilities in a facility shall, at all times, be maintained in good operating condition and shall be kept free of any materials that might clog or otherwise impair their operation.

F. Kitchens

1. Kitchens used for meal preparations shall be provided with the necessary equipment for the preparation, storage, serving and clean up of all meals for all of the children and staff regularly served. All equipment shall be maintained in proper working order.

2. A provider shall not use disposable dinnerware at meals on a regular basis unless the facility documents that such dinnerware is necessary to protect the health or safety of children in care.

3. A provider shall ensure that all dishes, cups and glasses used by children in care are free from chips, cracks or other defects and are in sufficient number to accommodate all the children.

4. Animals shall not be permitted in food storage, preparation and dining areas.

G. Laundry Space. A provider shall have a laundry space complete with washer and dryer.

H. Staff Quarters. A provider utilizing live-in staff shall provide adequate, separate living space with a private bathroom for these staff.

I. Administrative and Counseling Space

1. A provider shall provide a space that is distinct from children's living areas to serve as an administrative office for records, secretarial work and bookkeeping.

2. A provider shall have a designated space to allow private discussions and counseling sessions between individual children and staff.

J. Furnishings

1. A provider shall have comfortable customary furniture as appropriate for all living areas. Furniture for the use of children shall be appropriately designed to suit the size and capabilities of these children.

2. A provider shall replace or repair broken, run-down or defective furnishings and equipment promptly.

K. Doors and Windows

1. A provider shall provide insect screening for all windows that can be opened. This screening shall be readily removable in emergencies and shall be in good repair.

2. A provider shall ensure that all closets, bedrooms and bathrooms with doors can be readily opened from both sides.

L. Storage

1. A provider shall ensure that there are sufficient and appropriate storage facilities.

2. A provider shall have securely locked storage space for all potentially harmful materials. Keys to such storage spaces shall only be available to authorized staff members.

M. Electrical Systems

1. A provider shall ensure that all electrical equipment, wiring, switches, sockets and outlets are maintained in good order and safe condition.

2. A provider shall ensure that any room, corridor or stairway within a facility shall be well lit.

3. A provider shall ensure that exterior areas are well lit at night.

N. Heat

1. A provider shall take all reasonable precautions to ensure that heating elements, including exposed hot water pipes, are insulated and installed in a manner that ensures the safety of children.

2. A provider shall not use open flame heating equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2145 (November 1998), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2714 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1591 (August 2009).

§6921. Emergency and Safety

NOTE: This Section has been moved from LAC 67:I.1921.

A. Emergency and Safety Plan. A provider shall have a written overall plan of emergency and safety procedures that shall provide for the following:

1. the evacuation of children to safe or sheltered areas;

2. training of staff and, as appropriate, children in preventing, reporting and responding to fires and other emergencies;

3. an on-going safety program including continuous inspection of the facility for possible hazards, continuous monitoring of safety equipment and investigation of all accidents or emergencies;

4. training of personnel in their emergency duties and the use of any fire fighting or other emergency equipment in their immediate work areas.

B. Drills

1. A provider shall conduct fire drills once per month, one drill per shift every 90 days, at varying times of the day.

2. A provider shall make every effort to ensure that staff and children recognize the nature and importance of fire drills.

C. Notification of Emergencies. A provider shall immediately notify the Bureau of Licensing and other appropriate agencies of any fire, disaster or other emergency that may present a danger to children or require their evacuation from the facility.

D. Access to Emergency Services

1. A provider shall have access to 24-hour telephone service.

2. The provider shall either post telephone numbers of emergency services, including the fire department, police department, medical services, poison control and ambulance services or show evidence of an alternate means of immediate access to these services.

E. General Safety Practices

1. A provider shall not maintain any firearm or chemical weapon in the living units of the facility.

2. A provider shall ensure that all poisonous, toxic and flammable materials are safely stored in appropriate containers labeled as to contents. Such materials shall be

maintained only as necessary and shall be used in a manner that ensures the safety of children, staff and visitors.

3. A provider shall ensure that an appropriately equipped first aid kit is available in the living units and in all vehicles used to transport children.

4. A provider shall prohibit the use of candles in sleeping areas of the children.

5. Power-driven equipment used by a provider shall be safe, and properly maintained. Such equipment shall be used by children only under the direct supervision of a staff member and according to state law.

6. A provider shall have procedures to prevent insect and rodent infestation.

7. A provider shall allow children to swim only in areas determined to be safe and under the supervision of a person certified/trained in American Red Cross Community Water Safety or equivalent.

F. Transportation

1. The provider shall ensure that each child is provided with the transportation necessary for implementation of the child's treatment plan.

2. The provider shall have means of transporting children in cases of emergency.

3. The provider shall ensure and document that any vehicle used in transporting children, whether such vehicle is operated by a staff member or any other person acting on behalf of the provider, is inspected and licensed in accordance with state law and carries current liability insurance.

4. Any staff member of the provider, or other person acting on behalf of the provider, operating a vehicle for the purpose of transporting children shall be currently licensed.

5. The provider shall not allow the number of persons in any vehicle used to transport children to exceed the number of available seats in the vehicle. The provider shall not transport children in the back or the bed of a truck.

6. The provider shall ensure that children being transported in the vehicle are properly supervised while in the vehicle and during the trip.

7. All vehicles used for the transportation of children shall be maintained in a safe condition and in conformity with all applicable motor vehicle laws.

8. Vehicles used to transport children shall not be identified in a manner that may embarrass or in any way produce notoriety for children.

9. The provider shall ascertain the nature of any need or problem of a child that might cause difficulties during transportation, such as seizures, a tendency toward motion sickness or a disability. The provider shall communicate such information to the operator of any vehicle transporting children.

10. The following additional arrangements are required for a provider serving handicapped, nonambulatory children:

a. a ramp device to permit entry and exit of a child from the vehicle shall be provided for all vehicles except automobiles normally used to transport physically handicapped children. A mechanical lift may be utilized if a ramp is also available in case of emergency;

b. in all vehicles except automobiles, wheelchairs used in transit shall be securely fastened to the vehicle;

c. in all vehicles except automobiles, the arrangement of the wheelchairs shall provide an adequate aisle space and shall not impede access to the exit door of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2147 (November 1998), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2716 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1592 (August 2009).

§6923. Therapeutic Wilderness Program

NOTE: This Section has been moved from LAC 67:I.1923.

A. The Therapeutic Wilderness Program shall meet all of the following standards in addition to the core requirements except §§1919 and 1921 (Physical Environment and Emergency and Safety) and any specific exceptions as noted in the module.

B. Staff Qualifications

1. Administrator

a. The administrator shall be selected by the board of directors and shall be accountable to the board of directors for satisfactory performance of duties.

b. The administrator shall be a graduate of a four-year college or university and shall hold at least a bachelor's degree in a human service field.

c. The administrator shall have at least 10 years' verifiable experience in the field of human services.

d. The administrator shall have responsibility for oversight and accountability for the overall program.

2. Director

a. The director shall answer to the administrator for satisfactory performance of duties.

b. The director shall hold at least a bachelor's degree in a human service field.

c. The director shall have at least five years' verifiable experience in a human services field or at least three years' progressively responsible experience in a program for at-risk or troubled youth and in the area of therapeutic wilderness programs.

3. Treatment Plan Manager

a. The treatment plan manager shall be licensed/certified in one of the following fields:

i. medicine;

ii. psychology;

iii. psychiatry;

iv. social work;

v. professional counseling.

b. The treatment plan manager shall have at least three years' experience in the field of therapeutic programming.

C. Administrative Area

1. There shall be permanent buildings including, but not limited to the following:

a. an administrative area with adequate space for administrative staff, counseling staff, clerical staff, supplies, equipment and records;

b. infirmary space that is separate, private, accessible to a bathroom, equipped with adequate beds, medication storage and supplies. This space shall be used for medical purposes only;

c. laundry space supplied with hot and cold running water under pressure, washers, dryers and supplies. The use of commercial equipment is recommended. If household equipment is used, there shall be a ratio of one washer and dryer for every 15 children. Laundry service may be contracted from a commercial service;

d. an indoor food service and dining area, that meets the requirements of the Office of Public Health, Sanitarian Services. This shall include appropriate food storage areas;

e. a shower or bathing area designed to provide adequate hot water and showers. Separate shower facilities shall be provided for co-ed facilities. All showers or bathing facilities shall meet Office of Public Health, Sanitarian Services requirements;

f. adequate toilet and hand washing facilities. All toilets and hand washing facilities shall meet Office of Public Health, Sanitarian Services requirements;

g. adequate indoor space and supplies for the educational program to meet the needs of the children when the wilderness program is conducted during regular school months/hours. Rooms shall provide at least 25 square feet of floor space per child and be equipped with chairs, tables/desks to accommodate the educational component of the program;

h. adequate storage space for equipment, recreational supplies, off-season clothing and bedding, tools and other supplies:

i. if hazardous materials are stored, the area of storage shall be locked to prevent access by children;

ii. children's personal belongings that require storage shall be inventoried and placed under lock until discharge;

i. adequate space for children to seek shelter during hazardous weather conditions or emergencies. Buildings used for sleeping during adverse weather shall contain at least 35 square feet per child and be maintained at a comfortable temperature.

2. All permanent buildings shall be adequately maintained to provide for the safety and well-being of the children.

3. All areas shall be free of debris, noxious plants and uncontrolled weeds and brush.

4. All walkways and heavily traveled common areas shall be safe and adequately maintained.

5. Adequate lighting for walkways shall be provided after dark.

6. Areas shall be selected that prevent offensive conditions, safety hazards and provide adequate drainage.

D. Campsites. Campsites may consist of tents, tepees, cabins, wagon trains, or other nonpermanent structures.

1. Campsites shall be separated from the central administrative areas by a maximum of 1.25 miles if the children walk back and forth to the administrative areas. Vehicle transportation shall be provided if the campsite is located over 1.25 miles from the administrative areas.

2. Sleeping areas shall be:

a. structurally sound, sanitary, in good repair and provide protection against insects and the elements;

b. constructed of durable, flame-resistant, waterproof material, whether it is tents, tepees, wagons, etc.;

c. all tents or tepees used in residential campsites shall be on a raised platform and constructed to prevent the entrance of ground and surface water;

d. the sleeping area shall be protected by screening or netting against admittance of flies and mosquitoes;

e. the area shall provide for cross-ventilation;

f. males and females shall not sleep in the same sleeping unit;

g. same sex counselors are permitted to sleep in housing with children;

h. each temporary sleeping unit shall be limited to no more than 12 persons;

i. all heating equipment shall be maintained and operated in a safe manner to eliminate the possibility of fire and meet requirements of the State Fire Marshal, Code Enforcement and Building Safety;

j. there shall be adequate storage space for each child's personal belongings.

3. Bedding

a. Separate suitable beds shall be provided for each child.

b. All bedding shall be clean and sanitary.

c. Waterproof coverings, in good repair, shall be on all mattresses/pads.

d. All mattresses shall be covered by a protective mattress cover or pad.

e. Linens shall be changed as often as necessary for cleanliness and sanitation, but not less than weekly.

f. There shall be at least 6 feet between heads of sleepers.

g. There shall be at least 36 inches between sides of beds.

h. Triple bunk beds shall not be used.

i. If bunk beds are used, the top bunk shall have sufficient clearance between the bunk and the ceiling to allow the child to sit up in bed.

j. If sleeping bags are used, they shall:

i. be placed on a mattress or a plastic-covered foam rubber pad;

ii. be flame resistant;

iii. be cleaned monthly or as often as necessary to maintain sanitary conditions;

iv. be of sufficient weight and construction to maintain children's comfort in the climate and conditions in which the sleeping bag is used, according to manufacturer's label.

k. Sleeping bags shall be aired every five days.

l. If sleeping bags are used, each child shall be provided with his/her own bag that shall be given to the child upon discharge.

4. Cooking and Eating Areas in Campsite

a. All meals at campsite shall be coordinated with all meals for the day so as to meet the daily nutritional needs of the children as outlined by the Food Nutrition Board of the National Research Council.

b. The eating area shall have flooring that is constructed to prevent the entrance of ground/surface water.

c. The eating and cooking area shall have a covering sufficient to protect against rain and the elements.

d. A table and benches are required for the eating area.

e. The cooking area shall be located so that ground and surface water cannot accumulate or enter.

f. The working area shall have adequate sanitary storage area for cooking utensils, food and cleaning supplies. Cleaning supplies shall be stored separately from food.

g. There shall be appropriate materials for handling hot cookware and for cleaning all cooking and eating utensils.

h. Appropriate cookware and dining utensils for the preparation and consumption of food shall be provided to meet the needs of the children.

i. There shall be a sanitary surface area for food preparation.

j. Proper food sanitation practices shall be written and posted in the cooking area.

5. Toilet facilities shall be provided and shall:

a. include privies, water closets, latrines, chemical toilets, etc.;

b. be in compliance with Office of Public Health, Sanitarian Services requirements and constructed, located and maintained so as to prevent any nuisance or public health hazard;

c. have toilet tissue at each toilet seat at all times;

d. have soap, towels and clean water for purposes of hand washing;

e. allow for individual privacy unless children in care require assistance;

f. be separate in co-ed facilities;

g. be well lit and ventilated;

h. be kept clean and sanitary.

6. A sheltered area, with adequate lighting, shall be provided for personal and recreational activities for the residents. The eating area may serve in this capacity.

7. A personal hygiene area shall be provided with an adequate supply of clean water, soap and towels. Wash basins may be used.

8. An appropriate storage area for tools shall be provided. Tools posing a threat to safety shall be kept in a locked area.

9. A bulletin board shall be erected at each campsite.

10. A fire safety station with adequate fire extinguishers, sand, water, shovels, signaling devices and posted procedures shall be maintained at each campsite within easy access of each tent, tepee or other sleeping area and food preparation area.

11. There shall be potable water at each campsite. The supply shall be adequate for hand washing, cooking and drinking.

12. An emergency access road shall be constructed to each campsite.

13. Durable trash and garbage containers of adequate size with tight fitting lids shall be provided at each campsite.

14. Counselors' sleeping areas shall be located so that no child's sleeping area will be out of calling range.

15. A well equipped Red Cross standard or equivalent first aid kit shall be maintained with each group.

E. Activity and Equipment Requirements

1. The provider shall assure that all equipment used in the program is appropriate for its purposes and is properly maintained.

a. All sports and outdoor equipment used in the program shall be selected on the basis of safety factors and shall be regularly checked or tested to ensure that it is up to the provider's standards that comply at a minimum with applicable national standards for the equipment in use. Materials or equipment that do not meet the standards shall be repaired or discarded promptly, as appropriate.

b. When participants or personnel wish to or are asked to provide their own equipment, the provider shall require that such equipment meet the required standards or provide appropriate equipment as a substitute.

c. The use of chainsaws by clients is prohibited.

d. All firearms are prohibited.

2. A provider engaging in any of the following activities shall do so with appropriate regard for associated safety and technical requirements:

a. initiative and problem solving activities;

b. orienting;

c. hiking or backpacking;

d. camping;

e. group expeditions;

f. community service;

g. environmental projects;

h. running;

i. bicycle touring;

j. remote travel;

k. flat water canoeing or flat water rafting;

l. sailing;

m. ropes courses, climbing towers and artificial wall climbing;

n. other activities with a limited degree of perceived or actual risk for which its staff are appropriately prepared and trained.

3. Prior to initiation of an activity:

a. staff are familiarized with the terrain site or waterways that are to be utilized and have direct experience and up-to-date information about the conditions that are likely to be encountered;

b. participants are provided with complete information about boundaries of the activity, rendezvous times and places and emergency procedures.

4. Terrain, water temperature and other environmental conditions involved in an activity are determined to be appropriate to the skill levels in the group and to contain no unusual hazards or threats.

5. When the activity involves travel or movement such as hiking, running, climbing, canoeing, bicycle touring or similar pursuits, participants are instructed in proper techniques, pacing, need for fluids and sunscreen, appropriate footwear and equipment and potential hazards that should be anticipated.

6. The pace set in a group shall be related to the capacities of the least able or fit member of the group, take into account previous illness or injury and be designed to prevent the occurrence of accidents or illness.

7. Repair kits for equipment used, location devices and reflectors for any dusk or nighttime activity and other protective gear or equipment are provided as appropriate to the activity involved. Personal flotation devices (Type III) shall be worn at all times when on the water.

8. There shall be clear guidelines for the use of fire and governing the uses and storage of any potentially hazardous material or equipment such as propane, axes, knives, etc. in which personnel and participants are trained.

9. Techniques and skills needed for an activity shall be taught progressively. Less skilled participants shall be appropriately supported and supervised. No groups shall travel or engage in an activity without supervision with the exception of planned, unaccompanied activities that are part of the program design.

10. Ropes courses, alpine or climbing towers and artificial wall climbing program components shall meet the following requirements:

a. the facilities and equipment used in the program shall be constructed by or under the supervision of recognized experts in the field;

b. staff shall have been trained by recognized experts in the field and have working knowledge of ropes course and climbing equipment elements, technology and construction and accepted standard usage and inspection of same;

c. there shall be appropriate inspection and safety procedures in place and implemented.

F. Health and Safety

1. General Health Practices

a. The provider shall ensure that each child has a health examination, performed prior to participation in program activities, by a licensed physician that documents:

i. the child can perform each type of adventure activity that he/she will be asked to do;

ii. receipt of a tetanus shot;

iii. notation of asthma, allergies/dietary needs; and

iv. notation of whether the child is on medication that would require the child to avoid the sun/to take other special precautions.

b. The provider shall develop and give to each staff member a written policy for emergency procedures.

2. Emergency and Safety Procedures

a. The provider shall develop and maintain on file a written list of all activities in which children will participate.

b. The provider shall have a written plan for each activity. This plan shall include the following:

i. a description of the activity;

ii. staff requirements;

iii. children's requirements for participation;

iv. equipment necessary for the activity;

v. safety equipment;

vi. emergency and evacuation procedures;

vii. location for activity;

viii. a written plan for search and rescue procedures.

c. The provider shall have a written plan for fire safety and other emergencies that includes the following:

i. provisions for training all staff in fire safety procedures and in the use of equipment and techniques for fighting small fires. Such training shall be documented;

ii. name(s), address(es) and telephone number(s) of local rescue squads, law enforcement agencies and hospitals and guidelines for when and how to contact them.

d. The provider shall develop a method of recording all fires, accidents and other emergencies.

e. The provider shall maintain operable fire extinguishers in each building and at each camp site.

f. Staff safety training requirements:

i. the provider shall ensure that all staff involved in wilderness activities are certified in first aid and cardiopulmonary resuscitation (CPR);

ii. no employee or other individual may be left alone with a child or group of children unless that employee or individual has been certified in CPR and first aid;

iii. for each activity, at least one staff member who is present shall be certified or has had at least one year's experience in the adventure activity for which he or she will be supervising children;

iv. for all water activities, at least one staff is present who is certified in emergency water safety and life saving techniques.

g. The provider shall have a safety review committee or another similar mechanism to include in-house technical and supervisory personnel, that meets monthly, who will conduct ongoing safety reviews, evaluations of all accidents, incidents or patterns of incidents and identify health and safety issues. Documentation of corrective action implemented by the committee addressing health and safety issues identified shall be maintained by the facility. The committee shall establish specific rules and procedures governing the safety of each activity including, but not limited to, outdoor hiking, horseback riding, ropes courses, canoeing and any other adventure/sports/recreation activity in which children participate. The rules and procedures for each type of activity shall be reviewed and approved by a professional in that area to ensure that appropriate safety measures are adopted and followed.

G. Service Program. The agency's overall program shall be designed to help the child develop behaviors, skills and knowledge required to function effectively in life situations through therapeutic adventure-based activities. The program will provide children with outdoor physical, environmental, educational, athletic or other challenging activities within a supportive and therapeutic environment. This will involve physical and psychological challenges that are designed to stimulate competence and personal growth, to expand individual capabilities, to develop self-confidence and insight, and to improve interpersonal skills and relationships.

H. Staff to Child Ratio. Section 1911.H.3.b. regarding child/staff ratio shall not apply to Wilderness Programs. The following standards shall apply.

1. The provider shall ensure that:

a. there are at least two staff persons present at all times (24 hours per day) with a group of two to 12 children;

b. if more than 12 children are involved, the provider shall maintain a one to six/staff to child ratio.

2. Only those staff members who are providing direct care and supervision of the children shall be counted in determining whether required child/staff ratio is met. These staff persons may be regular staff persons or adventure staff persons. Administrative staff are not counted in determining compliance with child/staff ratio unless a portion of their time is dedicated to direct care and there is documentation to support this.

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§6925. Controlled Intensive Care Facility or Unit

NOTE: This Section has been moved from LAC 67:I.1925.

A. Controlled Intensive Care Facilities or Units shall meet all core standards (§§1901-1921), unless specifically replaced or revised, plus the standards as stipulated in this module.

B. Orientation

1. All direct care staff shall receive 40 hours of orientation/training prior to being independently assigned to a particular job. In addition to the topics listed under §1911.E.1, the following topics must be covered:

a. interpersonal relationships;

b. communication skills;

c. child growth and development;

d. social/cultural lifestyles of the population served;

e. procedures for use of time-out including controlled time-out; and

f. procedures for use of locked doors and gates, if allowed.

2. All clerical and support staff, who have minimum contact with residents, shall receive at least 16 hours of orientation/training in topics other than specific job responsibilities, during the first two weeks of employment. At a minimum this orientation/training must cover the following:

a. security procedures;

b. emergency and safety procedure including medical emergencies;

c. the provider's philosophy, organization, program, practices and goals;

d. detecting and reporting suspected abuse and neglect;

e. reporting critical incidents;

f. interpersonal relationships;

g. children's rights; and

h. social/cultural lifestyles of the population served.

3. All volunteers shall receive orientation, prior to beginning work, as listed for clerical staff.

4. All staff with supervisory authority over direct care staff or who have routine contact with residents shall receive orientation/training as listed for direct care staff.

C. Annual Training

1. All supervisory and direct care staff shall receive at least 40 hours of training, in addition to the orientation training, during the first year of employment.

2. All supervisory and direct care staff shall receive at least 40 hours of training each year of employment.

3. All clerical and support staff shall receive at least 16 hours of training each year of employment.

D. Staffing Requirements. Section 1911.H.3 of the core standards shall be replaced with the following for this module.

1. A Controlled Intensive Care Facility or Unit shall have an adequate number of qualified direct care staff on duty and with the children at all times to ensure the health, safety and well being of children and to carry out all treatment plans.

2. The provider shall maintain a direct care staff to children ratio of at least 1:2 when children are present and awake and a staff to children ratio of at least 1:3 when children are present and asleep.

3. Direct care staff shall always be awake while on duty.

4. In addition to required direct care staff, at least one supervisory staff person shall be on call in case of emergency.

5. Any deviation from the staffing ratios as required by this section may only be made as agreed upon by the placing/funding agency and the provider. A provider may not deviate from the required staffing ratio for any placement made by anyone, or any agency, other than an agency of the state of Louisiana. The procedure for an agreement is as follows.

a. The agreement shall be based upon the needs of the children being placed in the facility.

b. A copy of the agreement, signed by both the placing/funding agency and the provider must be on file and a copy mailed to the Bureau of Licensing.

c. The agreement must have an effective beginning date and an ending date. The ending date shall be for no longer than 12 months without a new agreement being signed.

d. An agreement may be canceled by either the placing/funding agency or provider by giving a two week written notice. A copy of this notice shall be mailed to the Bureau of Licensing.

E. Clothing

1. If a Controlled Intensive Care Facility or Unit requests, and is approved to provide uniforms or other clothing to residents, the following procedures must be followed.

a. All uniforms or clothing must be provided by the provider at no cost to the children, their family, the placing or the funding agency. This clothing must be neat, clean and of a type that would normally be worn in the community. Also, no individual child shall be required to wear any distinguishing type clothing or uniform for punishment or for any other negative reason.

b. To be approved to furnish uniforms or other clothing to residents, the provider must obtain a letter of approval from each state agency or court that places children in the facility. These letters of approval must state the type of uniform or clothing to be used and be submitted to the Bureau of Licensing.

c. If approval is granted, all residents, regardless of how or by whom admitted, shall be required to wear the uniform or clothing in accordance with approved treatment policies and procedures.

d. If approval is granted by the Bureau of Licensing, §1913.J.3 of the core standards shall not be enforced.

F. Intake Evaluation. Section 1915.B.1 of the core standards shall be replaced with the following for this module.

1. The Controlled Intensive Care Facility or Unit shall accept a child into care only when a current, comprehensive intake evaluation or assessment has been completed including health, family history, medical, social, psychological, and as appropriate, a developmental and vocational or educational assessment. This evaluation or assessment must have been completed or updated within the last six months. If the child has been hospitalized for treatment, a copy of the last hospitalization report must be provided. This evaluation shall contain evidence that a determination has been made that the child cannot be maintained in a less restrictive environment within the community.

2. An emergency placement of a child into a Controlled Intensive Care Facility or Unit may be made without current evaluations or assessments only as follows.

a. The placing/funding agency verifies that the child requires controlled intensive care.

b. The proper evaluations or assessments are made available to the provider within 15 days.

3. If the proper evaluations or assessments are not made available to the provider within 15 days, the child must be removed.

G. The Treatment Plan

1. Section 1917.A.4 of the core standards shall be revised to require the treatment plan manager to review and approve status reports of the successes and failures of a child at least every 30 days.

2. Section 1917.B.1 of the core standards shall be revised to require an initial treatment plan to be developed within 72 hours of admission. If a master plan is not developed within 15 days of admission, a review of the initial plan must be made at this time. A master plan shall be developed within 30 days of admission.

H. Time-out Procedures. In addition to §1917.K of the core standards concerning time-out procedures, the following shall be required for the use of controlled time-out.

1. If a child becomes uncontrollable and is a danger to her/himself or others he/she may be placed in controlled time-out. If a child is placed in controlled time-out, the procedures are as follows.

a. Controlled time-out may be for no longer than the time it takes for a child to reach a point where he/she is no longer a danger to her/himself or to others.

b. Controlled time-out shall be in increments of no more than 15 minutes each.

c. Direct care staff may not place a child in controlled time-out for more than the initial 15 minute time frame.

d. When direct care staff places a child in controlled time-out, the unit supervisor or case manager must be notified immediately.

e. If a second 15 minute time-out segment is needed, the unit supervisor or case manager must give approval.

f. The unit supervisor or case manager may only approve two additional time-out time frames [the third and fourth 15 minute period].

g. Any further use of controlled time-out must be approved by a licensed mental health professional.

2. Written reports must be prepared and signed by the individuals authorizing each 15 minute time frame of controlled time-out which gives the events that preceded the need for the use of controlled time-out; why there was a need for additional controlled time-out; how the child reacted to controlled time-out, etc.

3. The case or treatment plan manager must prepare an incident report which covers the events that preceded the initial controlled time-out, the progression of events throughout the entire controlled time-out period and the end result of the time-outs. It shall also give any recommendations that may be deemed necessary to prevent the need for repeated use of controlled time-outs for the individual child or the need for changes in the child's individual treatment plan. This report shall be submitted to the administrator of the agency.

4. The door to the controlled time-out room may only be physically held closed by staff so that the child cannot exit the room.

5. The door to the controlled time-out room shall have a view panel that allows staff to observe the child at all times and staff shall keep the child in continuous sight the entire time that he/she is in the room.

6. The room used for controlled time-out shall have at least 60 square feet of floor space and shall have no furniture, obstructions, projections or other devices that could be used as a means to cause harm to the child or as a weapon against staff.

7. As soon as the child is under control and is no longer a threat of harm to him/herself or others, the door to the controlled time-out room must be released.

I. Exterior Space. In addition to §1919.A of the core standards concerning exterior space, the following shall be required if the Controlled Intensive Care Facility or Unit utilizes a security fence with locked gates.

1. The fence shall have a gathering area that is at least 50 feet away from the building.

2. The space shall be of sufficient size to allow for 15 square feet of space per each resident and staff that may be in the building.

3. The fence may not be equipped with razor wire.

4. All staff working in the controlled area must carry keys to the gate at all times.

J. Sleeping Accommodation. Section 1919.D.3 of the core standards shall be replaced with the following for this module.

1. A Controlled Intensive Care Facility or Unit shall not permit more than two children to occupy a designated bedroom space.

2. Any deviation to allow more than two children to occupy a designated bedroom space may only be made as agreed upon by the placing/funding agency and the provider. A provider may not deviate from the required two children to a bedroom for any placement made by anyone, or any agency, other than an agency of the state of Louisiana. The procedure for an agreement is as follows.

a. The agreement shall be based upon the needs of the children placed in the facility.

b. A copy of the agreement, signed by both the placing/funding agency and the provider must be on file and a copy mailed to the Bureau of Licensing.

c. The agreement must have an effective beginning date and an ending date. The ending date shall be for no longer than 12 months without a new agreement being signed.

d. An agreement may be canceled by either the placing/funding agency or provider by giving a two week written notice. A copy of this notice shall be mailed to the Bureau of Licensing.

3. Doors to individual bedrooms shall not be equipped with locks or any other device that would prohibit the door from being opened from either side.

K. Interior Space

1. Doors leading into a facility or unit may be locked only in the direction of ingress.

2. Doors in the line of egress shall not be locked.

3. Any deviation to allow the outermost doors in the line of egress to be locked may only be made after approval has been given by the Office of State Fire Marshal and as agreed upon by the placing/funding agency and the provider. A provider may not deviate from the requirement for unlocked egress doors for any placement made by anyone, or any agency, other than an agency of the state of Louisiana. The procedure for an agreement is as follows.

a. The agreement shall be based upon the needs of the children placed in the facility.

b. A copy of the agreement, signed by both the placing/funding agency and the provider must be on file and a copy mailed to the Bureau of Licensing.

c. The agreement must have an effective beginning date and an ending date. The ending date shall be for no longer than 12 months without a new agreement being signed.

d. An agreement may be canceled by either the placing/funding agency or provider by giving a 30 day written notice. A copy of this notice shall be mailed to the Bureau of Licensing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 25:2458 (December 1999), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2720 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1597 (August 2009).

§6927. Core Requirements

NOTE: This Section has been moved from LAC 67:I.1927.

A. Administration and Organization

1. General Requirements

a. A provider shall have a written policy on client civil rights. This policy shall give assurance that:

i. a client's civil rights are not abridged or abrogated solely as a result of placement in the provider's program;

ii. a client's civil rights are protected through accessibility of legal counsel;

iii. a client is not denied admission, segregated into programs or otherwise subjected to discrimination on the basis of race, religion or ethnic background.

b. A provider shall allow representatives of DHHR in the performance of their mandated duties to inspect all aspects of a program's functioning which impact on clients and to interview any staff member or client.

i. A provider shall make any information which the provider is required to have under the present requirements and any information reasonably related to assessment of compliance with these requirements available to DHHR. The client's rights shall not be considered abridged by this requirement.

c. A provider accepting any client who resides in another state shall comply with the terms of the Interstate Compact on Juveniles, the Interstate Compact on the Placement of Children, and the Interstate Compact on Mental Health.

2. Other Jurisdictional Approvals

a. The provider shall show appropriate evidence of compliance with any relevant standards, regulations, and requirements established by federal, state, local, and municipal regulatory bodies including:

i. the Division of Licensing and Certification;

ii. the Office of Preventive and Public Health Services;

iii. the Office of State Fire Marshal;

iv. the city fire marshal's office, if applicable;

v. the applicable local governing authority;

vi. fiscal and program review agencies within DHHR;

vii. the Department of Education, if applicable.

3. Governing Body

a. A provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the provider.

i. A provider shall have documents identifying all members of the governing body; their addresses; their terms of membership, if applicable; officers of the governing body, if applicable; and terms of office of all officers, if applicable.

ii. When the governing body of a provider is composed of more than one person, the governing body shall hold formal meetings at least twice a year.

iii. When the governing body is composed of more than one person, a provider shall have written minutes of all formal meetings of the governing body and by-laws specifying frequency of meetings and quorum requirements.

4. Responsibilities of a Governing Body

a. The governing body of a provider shall:

i. ensure the provider's compliance and conformity with the provider's charter;

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

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

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

v. ensure the review and approval of an annual external audit;

vi. ensure that the provider is housed, maintained, staffed, and equipped appropriately considering the nature of the provider's program;

vii. designate a person to act as chief administrator and delegate sufficient authority to this person to manage the provider;

viii. formulate and annually review, in consultation with the chief administrator, written policies concerning the

provider's philosophy, goals, current services, personnel practices, and fiscal management;

ix. annually evaluate the chief administrator's performance;

x. have the authority to dismiss the chief administrator;

xi. meet with designated representatives of DHHR whenever required to do so;

xii. inform designated representatives of DHHR prior to initiating any substantial changes in the program, services or physical plant of the provider.

5. Accessibility of Executive

a. The chief administrator or a person authorized to act on behalf of the chief administrator shall be accessible to provider staff or designated representatives of DHHR at all times.

6. Documentation of Authority to Operate

a. A private provider shall have documentation of its authority to operate under state law.

i. A privately owned provider shall have documents identifying the names and addresses of owners.

ii. A corporation, partnership, or association shall identify the names and addresses of its members and officers and shall, where applicable, have a charter, partnership, agreement, constitution, articles of association, or by-laws.

7. Statement of Philosophy

a. A provider shall have a written statement describing its philosophy and describing both long-term and short-term goals.

8. Program Description

a. A provider shall have a written program plan describing the services and programs offered by the provider.

9. Accounting and Recordkeeping

a. A provider shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books, and records.

b. A provider shall demonstrate fiscal accountability through regular recording of its finances and an annual external audit.

c. A provider shall not permit funds to be paid, or committed to be paid, to any person to which any of the members of the governing body, administrative personnel, or members of the immediate families or members of the governing body or administrative personnel have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the provider. The provider shall have a written disclosure of any financial transaction with the facility in which a member of the governing body administrative personnel, or his/ her immediate family is involved.

d. A provider shall ensure that all entries in records are legible, signed by the person making the entry and accompanied by the date on which the entry was made.

e. All records shall be maintained in an accessible, standardized order and to at and shall be retained and disposed of according to state laws.

f. A provider shall have sufficient space, facilities, and supplies for providing effective recordkeeping services.

10. Confidentiality and Security of Files

a. A provider shall have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released. Records shall be the property of the provider, and the provider as custodian, shall secure records against loss, tampering or unauthorized use.

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

c. When the client is of majority age and noninterdicted, a provider shall obtain the client's written, informed permission prior to releasing any information from which the client or his/her family might be identified, except for authorized state and federal agencies and another provider with professional interest in the client.

d. When the client is a minor or is interdicted, the provider shall obtain written, informed consent from the parent(s), tutor, or curator prior to releasing any information from which the client might be identified except for authorized state and federal agencies and another provider with professional interest in the client.

e. A provider shall, upon request, make available information in the case record to the client, the legally responsible person, or legal counsel of the client. If, in the professional judgment of the administration of the provider, it is felt that information contained in the record would be damaging to a client, that information may be withheld from the client except under court order.

f. A provider may use material from case records for teaching or research purposes, development of the governing body's understanding and knowledge of the provider's services, or similar educational purposes, provided that names are deleted and other identifying information is disguised or deleted.

g. Client records shall be retained in accordance with state and/ or federal regulations.

11. Administrative File

a. A provider shall have an administrative file including:

i. documents identifying the governing body;

ii. list of members and officers of the governing body and their addresses and terms of membership, if applicable;

iii. by-laws of the governing body and minutes of formal meetings, if applicable;

iv. documentation of the provider's authority to operate under state law;

v. organizational chart of the provider;

vi. all leases, contracts and purchase-of-service agreements to which the provider is a party;

vii. insurance policies;

viii. annual budgets and audit reports;

ix. master list of all providers used by the provider.

12. Client's Case Record

a. A provider shall have a written record for each client which shall include administrative, treatment, and educational data from the time of admission until the time the client leaves the provider. A client's case record shall include:

i. the name, sex, race, religion, birthdate and birthplace of the client;

ii. other indentification data including court status, legal status, who is authorized to give consents;

iii. client's history including, where applicable, family data, educational background, employment record, prior medical history, and prior placement history;

iv. a copy of the client's individual service plan and any modifications thereto and an appropriate summary to guide and assist direct service workers in implementing the client's program;

v. the findings made in periodic reviews of the plan, including a summary of the successes and failures of the client's program and recommendations for any modifications deemed necessary;

vi. quarterly status reports;

vii. a copy of the aftercare plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan;

viii. when restraint in any form other than passive physical restraint has been used, a signed order for each use of restraint issued by a qualified professional prior to such use;

ix. critical incident reports;

x. reports of any client grievances and the conclusions or disposition of these reports;

xi. a summary of family visits and contacts;

xii. a summary of attendance and leaves from the provider.

13. Medical and Dental Records

a. A provider shall maintain complete health records of a client including: A complete record of all immunizations provided; a record of any medication; records of vision, physical, or dental examinations; and a complete record of any treatment provided for specific illness or medical emergencies.

i. Upon discharge, a provider shall provide a summary of the client's health record to the person or agency responsible for the future planning and care of the client.

b. A provider shall make every effort to compile a complete past medical history on every client. This history shall, whenever possible, include:

i. allergies to medication;

ii. immunization history;

iii. history or serious illness, serious injury or major surgery;

iv. developmental history;

v. current use of prescribed medication;

vi. current use of alcohol or non-prescribed drugs;

vii. medical history.

14. Personnel File

a. A provider shall have a personnel file for each employee which shall contain:

i. the application for employment and/or résumé;

ii. reference letters from former employer(s) and personal references or phone notes on such references;

iii. any required medical examinations;

iv. evidence of applicable professional credentials/certifications according to state law;

v. annual performance evaluations;

vi. personnel actions, other appropriate materials, reports, and notes relating to the individual's employment with the facility;

vii. employee's starting and termination dates;

viii. the staff member shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

b. A provider shall retain the personnel file of an employee for at least three years after the employee's termination of employment.

15. Fund Raising and Publicity

a. A provider shall have a policy regarding participation of clients in activities related to fundraising and publicity.

i. Consent of the client and, where appropriate, the legally responsible person shall be obtained prior to participation in such activities.

b. A provider shall have written policies and procedures regarding the photographing and audio or audio-visual recordings of clients.

i. The written consent of the client and, where appropriate, the legally responsible person shall be obtained before the client is photographed or recorded for research or program publicity purposes.

ii. All photographs and recordings shall be used in a manner which respects the dignity and confidentiality of the client.

16. Research

a. A provider shall have written policies regarding the participation of clients in research projects. These policies shall conform to the National Institute of Mental Health Standards on Protection of Human Subjects.

17. Representation at Hearings

a. A provider shall, when allowed by law, have a representative present at all judicial, educational, or administrative hearings which address the status of a client in care of the provider.

B. Human Resources

1. Staff Plan

a. A provider shall have a written plan for recruitment, screening, orientation, ongoing training, development, supervision, and performance evaluation of staff members.

2. Recruitment

a. A provider shall employ qualified people of both sexes representative of the racial groups served by the provider.

3. Screening

a. A provider's screening procedures shall address the prospective employee's qualifications, ability, related experience, health, character, emotional stability and social skills as related to the appropriate job description.

b. Prior to employing any person and upon obtaining assigned release and the names of the references

from the potential employee, a provider shall obtain written references or phone notes on oral references from three persons.

4. Orientation

a. A provider's orientation program shall provide training for new employees to acquaint them with the philosophy, organization, program, practices, and goals of the facility and shall include instruction in safety and emergency procedures and in the specific responsibilities of the employee's job.

5. Training

a. A provider shall ensure that each direct service worker participates in in-service training each year. Orientation training and activities related to routine supervision of employee's tasks shall not be considered for the purposes of this requirement.

b. A provider shall document that all employees receive training on an annual basis in emergency and safety procedures; the principles and practices of client care; the provider's administrative procedures and programmatic goals; client rights; and procedures and legal requirements concerning the reporting of abuse and critical incidents.

i. Direct service workers shall, in addition, receive training in acceptable behavior management techniques, crisis management and passive physical restraint.

c. A provider shall ensure the immediate accessibility of appropriate first aid supplies in the living units of the provider.

6. Evaluation

a. A provider shall undertake an annual performance evaluation of all staff members.

i. For any person who interacts with clients, a provider's performance evaluation procedures shall address the quality and nature of a staff member's relationship with clients.

7. Personnel Practices

a. A provider shall have written personnel policies and written job descriptions for each staff position.

b. A provider shall have a written employee grievance procedure.

8. Number and Qualifications of Staff

a. A provider shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to ensure that the responsibilities the provider undertakes are carried out and to adequately perform the following functions:

i. administrative functions;
ii. fiscal functions;
iii. clerical functions;
iv. housekeeping, maintenance, and food service functions;
v. direct client service functions;
vi. supervisory functions;
vii. recordkeeping and reporting functions;
viii. social service functions;
ix. ancillary service functions.

b. A provider shall ensure that all staff members are properly certified and/or licensed as legally required.

c. A provider shall ensure that an adequate number of qualified direct service staff are present with the clients as necessary to ensure the health, safety, and well-being of clients. Staff coverage shall be maintained in consideration of the time of day, the size and nature of the provider and the ages and needs of the clients. Adequate number is determined by the level of care procedure and form.

d. A provider shall not knowingly hire, or continue to employ, any person whose health, educational achievement, emotional or psychological makeup impairs his/her ability to properly protect the health and safety of the clients or is such that it would endanger the physical or psychological well-being of the clients. This requirement is not to be interpreted to exclude continued employment in other than direct service capacities of persons undergoing temporary medical or emotional problems.

9. External Professional Services

a. A provider shall obtain any required professional services not available from employees of the provider and shall have documentation of access to such services either in the form of a written agreement with an appropriately qualified professional or written agreements with the state for required resources.

10. Volunteers/Students Interns

a. A provider which utilizes volunteers or student interns on a regular basis, shall have a written plan for using such resources. This plan shall be given to all volunteers and interns. The plan shall indicate that all volunteers and interns shall:

i. be directly supervised by a paid staff member;
ii. be oriented and trained in the philosophy of the facility and the needs of clients, and methods of meeting those needs;
iii. be subject to character and reference checks similar to those performed for employment applicants upon obtaining a signed release and the names of the references from the potential volunteer/intern student;
iv. be aware of and be briefed on any special needs or problems of clients.

11. Staff Communications

a. A provider shall establish procedures to assure adequate communication among the staff to provide continuity of services to the client. This system of communication shall include:

i. a regular review of individual and aggregate problems of clients including actions taken to resolve these problems;
ii. sharing of daily information noting unusual circumstances and other information requiring continued action by staff;
iii. records maintained of all accidents, personal injuries, and pertinent incidents related to implementation of client's individual service plans.

b. Any employee of a provider working directly with clients in care shall have access to information from clients case records that is necessary for effective performance of the employee's assigned tasks.

c. A provider shall establish procedures which facilitate participation and feedback by staff members in policy-making, planning, and program development for clients.

C. Quality of Life

1. Family Involvement

a. A provider shall have a written description of strategies used by the provider's program to foster ongoing positive communications and contact between clients and

their families, their friends, and others significant in their lives.

b. A provider shall have evidence that the client's family and, where appropriate, the legally responsible person have been informed of:

i. the philosophy and goals of the provider;

ii. behavior management and disciplinary practices of the provider;

iii. the provider's arrangements for clients' participation in religious observances;

iv. any specific treatment or treatment strategy employed by the provider to be implemented for a particular client;

v. visiting hours, visiting rules and procedures, arrangements for home visits, and procedures for communicating with clients by mail or telephone;

vi. a procedure for registering complaints concerning the client's care or treatment;

vii. the name, telephone number, and address of a staff person who may be contacted by the legally responsible person to ask questions or register concerns on an ongoing basis.

2. Community Involvement

a. A provider shall have a written plan to foster participation by clients in normal community activities to the degree possible considering the individual client's level of functioning.

i. This plan shall include approaches to appropriately supervised contact between clients and members of the opposite sex, unless such contact is contraindicated by the individual client's service plan.

3. Communication and Visits

a. A provider shall have a written description of rules and procedures concerning:

i. telephone communication by clients;

ii. sending and receiving of mail by clients;

iii. visits to and from a client's family and friends.

4. Telephone Communication

a. A provider shall allow a client to receive and originate telephone calls subject only to reasonable rules and to any specific restrictions in the client's service plan.

b. Any restriction on telephone communication in a client's service plan must be formally approved by the prime worker and shall be reviewed every 30 days by the prime worker.

5. Mail

a. A provider shall allow clients to send and receive mail unopened and unread by staff unless contraindicated by the client's service plan and reviewed every 30 days by the prime worker.

b. A provider shall ensure that clients have access to all materials necessary for writing and sending letters and shall, when necessary ensure that clients who wish to correspond with others are given any required assistance.

6. Visits

a. A provider shall allow a client to visit or be visited by family and friends subject only to reasonable rules and to any specific restrictions in the client's service plan.

i. Special restrictions shall be imposed only to prevent serious harm to the client. The reasons for any special restrictions shall be recorded in the client's service plan.

ii. Special restrictions must be reviewed every 30 days by the prime worker and, if restrictions are renewed, the reasons for renewal shall be recorded in the client's service plan.

7. Routines

a. A provider shall have a written set of daily routines for clients designed to provide for reasonable consistency and timeliness in daily activities, in the delivery of essential services to clients and in the provision of adequate periods of recreation, privacy, rest, and sleep.

8. Money and Personal Belongings

a. A provider shall permit and encourage a client to possess his/ her own money either by giving an allowance and/or by providing opportunities for paid work, unless otherwise indicated by the client's service plan and reviewed every 30 days by the prime worker.

i. Money earned, received as a gift, or received as allowance by a client shall be deemed to be that client's personal property.

ii. Limitations may be placed on the amount of money a client may possess or have unencumbered access to when such limitations are considered to be in the client's best interests and are duly recorded in the client's service plan.

iii. A provider shall, as appropriate to the client's age and abilities, provide training in budgeting, shopping, and money management.

b. A provider shall allow a client to bring his/her personal belongings to the program and to acquire belongings of his/her own in accordance with the client's service plan. However, the provider shall, as necessary, limit or supervise the use of these items while the client is in care. Where extraordinary limitations are imposed, the client shall be informed by staff of the reasons, and the decision and reasons shall be recorded in the client's case record. Reasonable provisions shall be made for the protection of the client's property.

9. Work

a. A provider shall have a written description of the provider's approach to involving client's in work including:

i. description of any unpaid tasks required of clients;

ii. description of any paid work assignments including the pay scales for such assignments;

iii. description of the provider's approach to supervising work assignments;

iv. assurance that the conditions and compensation of such work are in compliance with applicable state and federal laws.

b. A provider shall demonstrate that any client work assignments are designed to provide a constructive experience for clients and are not used as a means of performing vital provider functions at low cost.

i. All work assignments shall be in accordance with the client's service plan.

c. A provider shall assign as unpaid work for clients only housekeeping tasks similar to those performed in a normal community home.

d. When a client engages in off-grounds work, the provider shall document that:

i. such work is voluntary and in accordance with the client's service plan;

ii. the prime worker approves such work;

iii. such work is supervised by qualified personnel;

iv. the conditions and compensation of such work are in compliance with applicable state and federal laws;

v. such work does not conflict with the client's program.

10. Recreation

a. A provider shall have a written plan for ensuring that a range of indoor and outdoor recreational and leisure opportunities are provided for clients. Such opportunities shall be based on both the individual interests and needs of the clients and the composition of the living group.

b. A provider shall utilize the recreational resources of the community whenever appropriate. The provider shall arrange the transportation and supervision required for maximum usage of community resources.

c. A provider which has recreation staff shall ensure that recreation staff are apprised of and, when appropriate, involved in the development and review of service plans.

11. Religion

a. A provider shall have a written description of its religious orientation, particular religious practices that are observed, and any religious restrictions on admission. This description shall be provided to the client; where appropriate, the legally responsible person; and the responsible agency.

i. Every client shall be permitted to attend religious service in accordance with his/her faith. The provider shall, whenever possible, arrange transportation and encourage participation by those clients who desire to participate in religious activities in the community.

ii. Clients shall not be forced to attend religious services.

b. When the client is a minor, the provider shall determine the wishes of the legally responsible person with regard to religious observance and instruction at the time of placement and shall make every effort to ensure that these wishes are carried out.

12. Clothing

a. A provider shall ensure that clients are provided with clean well-fitting clothing appropriate to the season and to the client's age, sex, and individual needs.

i. Clothing shall be maintained in good repair.

ii. All clothing provided to a client shall go with the client at discharge.

iii. Clothing shall belong to the individual client and not be shared in common.

13. Personal Care and Hygiene

a. A provider shall establish procedures to ensure that clients receive training in good habits of personal care, hygiene, and grooming appropriately to their age, sex, and race.

14. Food Services

a. A provider shall ensure that a client is, on a daily basis, provided with food of such quality and in such quantity as to meet the recommended daily dietary allowances adjusted for age, gender, and activity of the Food Nutrition Board of the National Research Council.

b. A person designated by the chief administrator shall be responsible for the total food service of the provider. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained.

i. The person responsible for food service shall: maintain a current list of clients with special nutritional needs; have an effective method of recording and transmitting diet orders and changes; record in the clients' medical records information relating to special nutritional needs; provide nutritional counseling to staff and clients; and manage and coordinate the resources of the dietary services to achieve effective, efficient, and sanitary production.

c. A provider shall ensure that a client is provided at least three meals or their equivalent daily at regular times with not more than 14 hours between the evening meal and breakfast of the following day. Meal times shall be comparable to those in a normal community home.

i. The provider shall ensure that the food provided to a client in care by the provider is in accord with his/her religious beliefs.

ii. A provider shall develop written menus at least one week in advance.

iii. Written menus and records of foods purchased shall be maintained on file for 30 days. Menus shall provide for a sufficient variety of foods and shall vary from week to week.

d. No client shall be denied a meal for any reason except according to a doctor's order.

i. No client shall be forced-fed or otherwise coerced to eat against his/her will except by order of a doctor.

e. When meals are provided to staff, a provider shall ensure that staff members eat substantially the same food served to clients in care, unless age differences or special dietary requirements dictate differences in diet.

f. A provider shall purchase and provide to clients only food and drink of safe quality and the storage, preparation, and serving techniques shall ensure that nutrients are retained and spoilage is prevented.

i. Milk and milk products shall be Grade A and pasteurized.

15. Health Care

a. A provider shall ensure the availability of a comprehensive program of preventive, routine, and emergency medical and dental care, as appropriate, for all clients. The provider shall have a written plan for providing such care. This plan shall include:

i. ongoing appraisal of the general health of each client;

ii. provision of health education, as appropriate;

iii. establishment of an ongoing immunization program;

iv. approaches that ensure that any medical treatment administered will be explained to the client in language suitable to his/her own age and understanding;

v. an ongoing relationship with a licensed physician and dentist to advise the provider concerning medical and dental care;

vi. availability of a physician on a 24-hour a day, seven days a week basis;

vii. the provider shall show evidence of access to the resources outlined in this plan.

b. A provider shall have access to psychiatric and psychological resources, on both an emergency and ongoing basis, as appropriate to the needs of the clients.

16. Medical Care

a. A provider shall arrange a general medical examination by a physician for each client within a week of admission unless the client has received such an examination within 30 days before admission and the results of this examination are available to the provider. This examination shall include:

i. an examination of the client for physical injury and disease;

ii. vision and hearing screening;

iii. a current assessment of the client's general health;

iv. whenever indicated, the client shall be referred to an appropriate medical specialist for either further assessment or treatment;

v. the provider shall arrange an annual physical examination of all clients.

b. A provider must ensure that a client receives timely, competent medical care, in keeping with community standards of medical practice when he/she is ill.

17. Immunizations

a. A provider, after attempting to determine client's immunization history, shall ensure that the client has received all immunizations and booster shots which are required by the Department of Health within 30 days of his/her admission.

18. Medications

a. A provider shall ensure that no medication is given to any client except in accordance with the written order of a physician.

i. There shall be no standing orders for prescription medications.

ii. All orders for prescribed drugs shall terminate after a period not to exceed 90 days.

iii. All orders for non-prescription drugs shall terminate after a period not to exceed one year.

b. The provider shall ensure that the prescribing physician is immediately informed of any side-effects observed by staff or any medication errors.

c. A provider using psychotropic medications on a regular basis shall have a written description of the use of psychotropic medications at the provider including:

i. a description of procedures to ensure that medications are used for therapeutic purposes and in accordance with accepted clinical practice;

ii. a description of procedures to ensure that medications are used only when there are demonstrable benefits to the client unobtainable through less restrictive measures;

iii. a description of procedures to ensure continual review of medication and discontinuation of medication when there are no demonstrable benefits to the client;

iv. a description of an ongoing program to counsel client's and, where appropriately, their families on the potential benefits and negative side-effects of medication and to involve clients and, where appropriate, their families in decisions concerning medication.

d. A provider shall ensure that medications are either self-administered or administered by qualified persons according to state law.

i. A medication shall not be administered to any client for whom the medication has not been ordered.

e. A provider shall ensure that medication is used for therapeutic and medical purposes only and are not administered in excessive dosages.

i. Medication shall not be used as a disciplinary measure, a convenience for staff, or as a substitute for adequate, appropriate programming.

19. Grievance Procedure for Clients

a. A provider shall have a written grievance procedure for clients designed to allow clients to make complaints without fear of retaliation.

i. The provider shall make every effort to ensure that all clients and their legally responsible person are aware of and understand the grievance procedure.

20. Abuse and Neglect

a. A provider shall have comprehensive, written procedures concerning client abuse including:

i. a description of ongoing communications strategies used by the provider to maintain staff awareness of abuse prevention, current definitions of abuse and neglect, reporting requirements and applicable laws;

ii. a procedure ensuring immediate reporting of any suspected incident to the chief administrator or his/her designee and mandating an initial written summary on the incident to the chief administrator or his/ her designee within 24 hours and a complete investigation report within 10 working days;

iii. a procedure for ensuring that the client is protected from potential harassment during the investigation;

iv. a procedure for disciplining staff members who abuse or neglect clients.

21. Reports on Critical Incidents

a. A provider shall have written procedures for the reporting and documentation of deaths of clients, injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents and other situations or circumstances affecting the health, safety, or well-being of a client or clients.

i. Such procedures shall ensure timely verbal and written reports to the chief administrator.

b. When an incident involves abuse or neglect of a client, death of a client, or entails any serious threat to the client's health, safety, or wellbeing, a provider shall:

i. ensure immediate verbal reporting to the chief administrator or his/her designee and a preliminary written report within 24 hours of the incident;

ii. ensure immediate notification of designated representatives of DHHR or other appropriate authorities, according to state law;

iii. ensure immediate, documented attempts to notify the legally responsible person of the client;

iv. ensure immediate attempts to notify other involved agencies and parties, as appropriate;

v. ensure immediate notification of the appropriate law enforcement authority whenever warranted;

vi. ensure follow-up written reports to all appropriate persons and agencies.

D. Direct Service Management

1. Admission Policies

a. A provider shall have a written description of admissions policies and criteria which shall include the following information:

i. policies and procedures related to intake; the policies shall include, at least, due process procedures for admission of minor, determination before admission of appropriate legal status according to appropriate state laws;

ii. the age and sex of clients in care;

iii. the needs, problems, situations or patterns best addressed by the provider's program;

iv. any other criterion for admission;

v. criteria for discharge;

vi. any preplacement requirements on the client, the legally responsible person, DHHR, or other involved agencies;

vii. the provider shall, when applicable, have policies and procedures governing self-admission. Such policies and procedures shall include procedures for notification, as appropriate, of the legally responsible person;

viii. the written description of admissions policies and criteria shall be provided to DHHR and shall be available to the legally responsible person for any client referred for placement;

ix. procedures for ensuring that placement within the program is the least restrictive alternative appropriate to meet the client's needs.

b. A provider shall not refuse admission to any client on the grounds of race or ethnic origin.

c. A provider shall not admit more clients into care than the number specified on the provider's license.

d. A provider shall not accept any client for placement whose needs cannot be adequately met by the provider's program.

e. When refusing admission to a client, a provider shall provide a written statement of the reason for refusal of admission to the designated representative of DHHR.

f. A provider shall ensure that the client; where appropriate, the legally responsible person; and others, as appropriate, are provided reasonable opportunity to participate in the admission process and decisions. Proper consents shall be obtained before admission. Where such involvement of the legally responsible person is not possible, or not desirable, the reasons for their exclusion shall be recorded in the admission study.

2. Intake Evaluation

a. The provider shall accept a client into care only when a current comprehensive intake evaluation has been completed, including social, health, and family history; and, medical, social, psychological and, as appropriate, developmental or vocational or educational assessment. This evaluation shall contain evidence that a determination has been made that the client cannot be maintained in a less restrictive environment within the community.

b. In emergency situations necessitating immediate placement into care, the provider shall gather as much information as possible about the client to be admitted and the circumstances requiring placement; formalize this in an "emergency admission note" within two days of admission; and then proceed with an intake evaluation as quickly as possible. The intake evaluation shall be completed within 30 days of admission.

3. Clarification of Expectations to Client

a. The provider shall, consistent with the client's maturity and ability to understand, make clear its expectations and requirements for behavior, and provide the client referred for placement with an explanation of the provider's criteria for successful participation in and completion of the program.

4. Placement Agreement

a. The provider shall ensure that a written placement agreement is completed. A copy of the placement agreement signed by all parties involved in its formulation shall be kept in the client's record and a copy shall be available to DHHR, the client and, where appropriate, the legally responsible person.

b. A provider shall not admit any client into care whose presence will be seriously damaging to the ongoing functioning of the provider or to clients already in care.

c. The placement agreement shall be developed with the involvement of the client; where appropriate, the legally responsible person; and DHHR. Where the involvement of any of these parties is not feasible or desirable, the reasons for the exclusion shall be recorded. The placement agreement shall include, by reference or attachment, at least the following:

i. discussion of the client's and the family's expectations regarding: family contact and involvement; the nature and goals of care, including any specialized services to be provided; the religious orientation and practices of the client; and the anticipated discharge date and aftercare plan;

ii. a delineation of the respective roles and responsibilities of all agencies and persons involved with the client and his/her family;

iii. authorization to care for the client;

iv. authorization to obtain medical care for the client;

v. arrangements regarding visits, vacation, mail, gifts, and telephone calls;

vi. arrangements as to the nature and frequency of reports to, and meetings involving, the legally responsible person and referring agency;

vii. provision for notification of the legally responsible person in the event of unauthorized absence, illness, accident, or other significant event regarding the client.

d. The provider shall ensure that each client upon placement, is checked for illness, fever, rashes, bruises, and injury. The client shall be asked if he/she has any physical complaints. The results of this procedure shall be documented and kept in the client's record.

e. The provider shall assign a staff member to orient the client, and where available, the family to life at the provider.

5. Discharge and Aftercare

a. Prior to planned discharge of a client, the provider's staff shall formulate an aftercare plan specifying the supports and resources to be provided to the client. Aftercare plans are to be kept in the client's record.

i. Prior to discharge the provider's staff shall ensure that the client is aware of and understands his/her

aftercare plan and the department's representatives shall be notified of the plans.

ii. When the client is being placed in another program following discharge, representatives of the staff shall, confer with representatives of that program prior to the client's discharge to share information concerning the client.

b. The provider shall have a written policy concerning unplanned discharge. This policy shall ensure that emergency discharges initiated by the provider take place only when the health and safety of a client or other clients might be endangered by the client's further placement at the agency.

i. The provider shall give immediate notice of discharge to the legally responsible person, DHHR, and the appropriate educational authorities.

ii. When arranging for placement following an emergency discharge, a provider shall consult with the receiving provider and DHHR to insure that the client is placed in a program that reasonably meets the client's needs.

iii. The provider shall have a written report detailing the circumstances leading to such unplanned discharge.

c. When a client is discharged, a provider shall compile a complete written discharge summary immediately upon discharge, such summary to be included in the client's record. When the client is discharged to another agency, this summary must accompany the client. This summary shall include:

i. the name and home address of the client and, where appropriate, the legally responsible person;

ii. the name, address, telephone number of the provider;

iii. a summary of services provided during care;

iv. a summary of growth and accomplishments during care;

v. the assessed needs which remain to be met and alternate service possibilities which might meet those needs;

vi. a statement of an aftercare plan and identification of who is responsible for follow-up services and aftercare.

E. Individual Service Planning

1. The Prime Worker

a. A provider shall ensure that a prime worker who is an appropriately qualified professional(QP) is assigned to each client and given responsibility for and authority over:

i. supervision of the implementation of the client's service plan;

ii. integration of the various aspects of the client's program;

iii. recording of the client's progress as measured by objective indicators;

iv. reviewing the client's service plan, on a quarterly basis;

v. ensuring the timely release, whenever appropriate, of the client to a less restrictive setting;

vi. monitoring any extraordinary restriction of the client's freedom including use of any form of restraint, any special restriction on a client's communication with other and any potentially harmful treatment or behavior management technique applied to the client.

2. The Service Plan

a. A provider shall, within 30 days of admitting a client, ensure that a comprehensive written psychological, social, and as appropriate, educational assessment of the client has been completed and, on the basis of this assessment, shall develop a comprehensive, time-limited, goal-oriented individual service plan addressing the needs identified by the assessment.

i. The assessment shall identify the client's strengths and needs, establish priorities to assist in the development of an appropriate plan and conclude with recommendations concerning approaches and techniques to be used.

ii. All methods used in assessing a client shall be appropriate considering the client's age, cultural background and dominant language or mode of communication.

iii. Individual service plans shall be developed by an inter-disciplinary team including the prime worker; representatives of the direct service staff working with the client on a daily basis; and other professionals, as indicated.

iv. The provider shall document that, where applicable, the designated representative of DHHR and, where appropriate, the legally responsible person have been invited to participate in the planning process and when they do not participate, shall document the reason, if known, for non-participation.

b. Unless it is clearly not feasible to do so, a provider shall ensure that the service plan and any subsequent revisions are explained to the client and, where appropriate, the legally responsible person in language understandable to these persons.

c. A provider shall ensure that the service plan for each client includes the following components:

i. the findings of the assessment;

ii. a statement of goals to be achieved or worked towards for the client and his/her family;

iii. plan for fostering positive family relationships for the client, when appropriate;

iv. specification for the daily activities, including training/education for 3-21 years of age and recreation, to be pursued by the program staff and the client in order to attempt to achieve the stated goals;

v. specification of specialized services that will be provided directly or arranged for, and measures for ensuring their proper integration with the client's ongoing program activities;

vi. specification of time-limited targets in relation to overall goals and specific objectives;

vii. methods for evaluating the client's progress;

viii. goals and preliminary plans for discharge and aftercare;

ix. identification of all persons responsible for implementing or coordinating implementation of the plan;

x. the completed service plan shall be signed by all team participants.

d. A provider shall review each service plan at least annually and shall evaluate the degree to which the goals have been achieved.

i. The provider shall prepare quarterly status reports on the progress of the client relative to the goals and objectives of the service plan. These reports shall be prepared by designated staff and reviewed and approved by the prime worker.

e. A provider shall ensure that all persons working directly with the client are appropriately informed of the service plan.

3. Education

a. A provider shall ensure that each client has access to appropriately educational services consistent with the client's abilities and need, taking into account his/her age and level of functioning.

i. All clients of school age must either be enrolled in a school system or a program approved by the Department of Education.

4. Reports

a. When the client is a minor, the chief administrator of a provider or his/ her designee shall report in writing to the legally responsible person of the client at least annually, or as otherwise required by law, with regard to the client's progress with reference to the goals and objectives in the service plan. This report shall include a description of the clients' medical condition.

5. Arrangement of Clients into Groups

a. A provider shall have a statement describing the manner in which clients are arranged into groups within the provider and demonstrating that this manner of arranging client's into groups effectively addresses the needs of client's. This statement must be in accordance with the following principles.

i. All clients must have privacy and a place to go during periods of relative quiet and inactivity.

ii. All clients must have an opportunity to form relationships within small groups.

iii. Clients must have an opportunity to form relationships with consistent group of direct service staff.

iv. Clients must be involved in decision-making regarding the roles and routines of their living group to the degree possible considering their level of functioning.

6. Behavior Management

a. The provider shall have a written description of the methods of behavior management to be used on facility-wide level. This description shall include:

i. definition of appropriate and inappropriate behaviors of clients;

ii. acceptable staff responses to inappropriate behaviors;

iii. the description shall be provided to all the provider's staff.

b. A provider shall have clearly written list of rules and regulations governing conduct for clients in care of the provider. These rules and regulations shall be made available to each staff member, each client and, where appropriate, the legally responsible person.

7. Limitations on Potentially Harmful Responses

a. A provider shall prohibit the following responses to clients by staff members:

i. any type of physical hitting or other painful physical contact except as required for medical, dental, or first aid procedures necessary to preserve the client's life or health;

ii. requiring a client to take an extremely uncomfortable position;

iii. verbal abuse, ridicule, or humiliation;

iv. withholding of meal, except under a physician's order;

v. denial of sufficient sleep, except under a physician's order;

vi. requiring the client to remain silent for a long period of time;

vii. denial of shelter, warmth, clothing, or bedding;

viii. assignment of harsh physical work.

8. Limitations on Punishments

a. A provider shall prohibit the following responses to clients by staff members when such responses are used as punishments:

i. physical exercise or repeated physical motions;

ii. excessive denial of usual services;

iii. denial of visiting or communication with family;

iv. extensive withholding of emotional response;

v. any other cruel and unusual punishment.

b. A provider shall not punish groups of clients for actions committed by an individual.

c. Clients shall not punish or supervise other clients except as part of an organized therapeutic self-government program that is conducted in accordance with written policy and is supervised directly be staff.

d. A provider shall ensure that punishment is not delegated to persons who are not known to the client.

9. Restraint

a. A provider shall not use any form of restraint except in accordance with current DHHR policy.

10. Time-Out Procedures

a. A provider using time-out procedures involving placement of clients in an unlocked room for brief periods shall have a written policy governing the use of time-out procedures. This policy shall ensure that:

i. time-out procedures are used only when less restrictive measures are not feasible;

ii. time-out shall be used only in accordance with the client's service plan;

iii. written orders for time-out procedures shall state the reasons for using time-out and the terms and conditions under which time-out will be terminated or extended, specifying a maximum duration of the use of the procedure which shall under no circumstances exceed 12 hours;

iv. emergency use of time-out shall be approved by the chief administrator or his/her designee for a period not to exceed one hour;

v. when a client is in time-out, a staff member shall exercise direct physical supervision of the client;

vi. a client in time-out shall not be denied access to bathroom facilities.

F. Physical Environment

1. Location of New Facilities

a. Any individual or organization seeking initial licensure as a provider shall provide the following documentation to the DHHR at the time of application:

i. evidence that the proposed site location of the provider will be appropriate to clients to be served in terms

of individual needs, program goals, and access to service facilities;

ii. identification of the permitted uses of the site under existing zoning by-laws of the municipality in which the site is located, if applicable;

iii. a copy of the site plan and a sketch of the floor plan of the proposed provider;

iv. a description of the way in which the provider will be physically harmonious with the neighborhood in which it is located considering such issues as scale, appearance, density, and population.

2. Accessibility

a. A provider's building, parking lots, and facilities shall be accessible to and functional for clients, staff members, and the public, as required by applicable federal and state laws and regulations.

3. Exterior Space

a. A provider shall ensure that all structures on the grounds of the facility accessible to clients are maintained in good repair and are free from any excessive hazard to health or safety.

b. A provider shall maintain the grounds of the facility in an acceptable manner and shall ensure that the grounds are free from any hazard to health or safety.

i. Garbage and rubbish which is stored outside shall be stored securely in non-combustible, covered containers and shall be removed on a regular basis.

ii. Trash collection receptacles and incinerators shall be separate from play area and be located as to avoid being a nuisance to neighbors.

iii. Fences shall be in good repair.

iv. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers to protect clients.

v. Playgrounds equipment shall be so located, installed, and maintained as to ensure the safety of clients.

c. A provider shall have access to outdoor recreational space and suitable recreational equipment.

4. Interior Space

a. Each living unit of a provider shall contain a space for the free and informal use of clients. This space shall be constructed and equipped in a manner consonant with the programmatic goals of the provider.

b. A provider shall provide an appropriate variety of interior recreational spaces.

5. Dining Areas

a. A provider shall provide dining areas which permit clients, staff, and as appropriate, guests to eat together in small groups.

b. A provider shall provide dining areas which are clean, well-lighted, ventilated, and attractively furnished.

6. Sleeping Accommodations

a. A provider shall ensure that each single occupancy bedroom space has a floor area of at least 80 square feet and that each multiple occupancy bedroom space has a floor area of at least 60 square feet for each occupant.

b. A provider shall not use a room with a ceiling height of less than 7 feet 6 inches as a bedroom space, unless, in a room with varying ceiling height, the portions of the room where the ceiling is at least 7 feet 6 inches allow a usable space with floor areas as required above.

c. Provider shall not permit more than four clients to occupy a designated bedroom space unless properly documented reasons necessitate it.

d. No client over the age of 5 years shall occupy a bedroom with a member of the opposite sex, unless the persons occupying the bedroom are a married couple or properly documented medical reasons require it.

e. A provider shall not use any room which does not have a window as a bedroom space.

f. Each client in care of a provider shall have his/her own bed; a double bed may be provided for a married couple. A client's bed shall be no shorter than the client's height and no less than 30 inches wide and shall have a clean, comfortable, non-toxic fire-retardant mattress.

g. A provider shall ensure that sheet, pillow bedspread, and blankets are provided for each client.

i. Enuretic clients shall have mattresses with moisture-resistant covers.

ii. Sheets and pillow cases shall be changed at least weekly but shall be changed more frequently, if necessary.

h. A provider shall provide clients with solidly constructed beds. Cots or other portable beds are not to be used on a routine basis.

i. A provider shall ensure that the uppermost mattress of any bunk bed in use shall be far enough from the ceiling to allow the occupant to sit up in bed.

j. A provider shall provide each client in care with his/her own dresser or other adequate storage space for private use, and designated space for hanging clothing in proximity to the bedroom occupied by the client.

k. Each client in care of a provider shall have his/her own designated area for rest and sleep.

l. The decoration of sleeping area for clients shall allow some scope for the personal tastes and expressions of the clients.

7. Bathrooms

a. A provider shall have an adequate number of wash basins with hot and cold water, flush toilets and bath or shower facilities with hot and cold water according to client care needs.

i. Bathrooms shall be so placed as to allow access without disturbing other clients during sleeping hours.

ii. Each bathroom shall be properly equipped with toilet paper, towels, soap, and other items required for personal hygiene unless clients are individually given such items.

iii. Tubs and showers shall have slip-proof surfaces.

b. A provider shall provide toilets and baths or showers which allow for individual privacy unless clients in care require assistance.

c. A provider shall ensure that bathrooms have a safe and adequate supply of hot and cold water. This water shall be potable.

d. A provider shall ensure that bathrooms contain mirrors secured to the walls at convenient heights and other furnishings necessary to meet the client's basic hygienic needs.

e. A provider shall ensure that bathrooms are equipped to facilitate maximum self-help by clients. Bathrooms shall be large enough to permit staff assistance of children, if necessary.

f. Toilets, wash basins, and other plumbing and sanitary facilities in a facility shall be kept free of any materials that might clog or otherwise impair their operation.

8. Kitchens

a. Kitchens used for meal preparations shall be provided with the necessary equipment for the preparation, storage, serving and clean up of all meals for all of the clients and staff regularly served by such kitchen. All equipment shall be maintained in working order.

b. A provider shall not use disposable dinnerware at meals on a regular basis unless the facility documents that such dinnerware is necessary to protect the health and safety of clients in care.

c. A provider shall ensure that all dishes, cups, and glasses used by clients in care are free from chips, cracks, or other defects.

i. All reusable eating and drinking utensils shall be sanitized after a thorough washing and rinsing.

d. Animals shall not be permitted in food storage, preparation, and dining areas.

9. Staff Quarters

a. A provider utilizing live-in staff shall provide adequate, separate living space with a private bathroom for these staff.

10. Administrative and Counseling Space

a. A provider shall provide a space which is distinct from client's living areas to serve as an administrative office for records, secretarial work, and bookkeeping.

b. A provider shall have a designated space to allow private discussions and counseling sessions between individual clients and staff.

11. Furnishing

a. A provider shall have comfortable customary furniture as appropriate for all living areas. Furniture for the use of clients shall be appropriately designed to suit the size and capabilities of these clients.

b. A provider shall ensure that there is evidence of routine maintenance and cleaning programs in all areas of the provider.

c. A provider shall replace or repair broken, run-down or defective furnishings and equipment promptly.

i. Outside doors, windows, and other features of the structure necessary for safety and comfort of clients shall be secured for safety within 24 hours of being found to be in a state of disrepair. Total repair shall be effected as soon as possible.

12. Doors and Windows

a. A provider shall ensure that any designated bedroom where the bedroom space is not equipped with a mechanical ventilation system, must be provided with windows which have an openable area at least 5 percent as large as the total floor area of the bedroom space.

b. A provider shall provide insect screening for all opened windows. This screening shall be readily removable in emergencies and shall be in good repair.

c. A provider shall ensure that all closets, bedrooms, and bathrooms which have doors are provided with doors that can be readily opened from both sides.

13. Storage

a. A provider shall ensure that there are sufficient and appropriate storage facilities.

b. A provider shall have securely locked storage space for all potentially harmful materials. Keys to such storage spaces shall only be available to authorized staff members.

14. Electrical Systems

a. A provider shall ensure that all electrical equipment, wiring, switches, sockets, and outlets are maintained in good order and safe condition.

b. A provider shall ensure that any room, corridor, or stairway within a provider shall be sufficiently illuminated.

c. A provider shall provide adequate lighting of exterior areas to ensure the safety of clients and staff during the night.

15. Heat

a. A provider shall take all reasonable precautions to ensure that heating elements, including exposed hot water pipes, are insulated and installed in a manner that ensures the safety of the clients.

b. A provider shall maintain the spaces used by clients at temperatures in accordance with federal and state laws.

c. A provider shall not use open flame heating equipment.

16. Finishings and Surfaces

a. A provider shall not utilize any excessively rough surface or finish where this surface or finish may present a safety hazard to clients.

b. A provider shall not have walls and ceilings surfaced with materials containing asbestos.

c. A provider shall not use lead paint for any purpose within the provider or on the exterior or grounds of the provider, nor shall the provider purchase any equipment, furnishings, or decorations surfaced with lead paint.

i. A provider which accepts clients for placement who are under six years of age, mentally retarded, or severely emotionally disturbed shall have evidence that the provider has been found to be free of lead paint hazards.

G. Emergency and Safety

1. Emergency and Safety Plan

a. A provider shall have a written overall plan of emergency and safety procedures.

i. The plan shall provide for the evacuation of clients to safe or sheltered areas.

ii. The plan shall include provisions for training staff and, as appropriate, clients in preventing, reporting, and responding to fires and other emergencies.

iii. The plan shall provide means for an on-going safety program including continuous inspection of the provider for possible hazards, continuous monitoring of safety equipment, and investigation of all accidents or emergencies.

iv. The plan shall include provisions for training personnel in their emergency duties and in the use of any fire-fighting or other emergency equipment in their immediate work areas.

2. Drills

a. A provider shall conduct emergency drills at least once every three months and at varying times of the day.

i. A provider shall make every effort to ensure that staff and clients recognize the nature and importance of such drills.

3. Notification of Emergencies

a. A provider shall immediately notify DHHR and other appropriate agencies of any fire, disaster, or other emergency which may present a danger to clients or require their evacuation from the facility.

4. Access to Emergency Services

a. A provider shall have access to 24-hour telephone service.

i. The provider shall have either post telephone numbers of emergency services, including fire department, police, medical services, poison control, and ambulance, or else who evidence of an alternate means of immediate access to these services.

5. General Safety Practices

a. A provider shall not maintain any firearm or chemical weapon in the living units of the facility.

b. A provider shall ensure that all poisonous, toxic, and flammable materials are safely stored in appropriate containers labeled as to contents. Such materials shall be maintained only as necessary and shall be used in such a manner as to ensure the safety of clients, staff, and visitors.

c. A provider shall ensure that an appropriately equipped first- aid kit is available in the provider's buildings and in all vehicles used to transport clients.

6. Transportation

a. The provider shall ensure that each client is provided with the transportation necessary for implementing the client's service plan.

b. The provider shall have means of transporting clients in cases of emergency.

c. Any vehicle used in transporting clients in care of the provider, whether such vehicle is operated by a staff member or any other person acting on behalf of the provider, shall be properly licensed and inspected in accordance with state law.

d. Any staff member of the provider or other person acting on behalf of the provider operating a vehicle for the purpose of transporting clients shall be properly licensed to operate that class of vehicle according to state law.

e. The provider shall not allow the number of persons in any vehicle used to transport clients to exceed the number of available seats in the vehicle.

f. All vehicles used for the transportation of clients shall be maintained in a safe condition and be in conformity with all applicable motor vehicle laws.

g. Identification of vehicles used to transport clients in care of a provider shall not be of such nature to embarrass or in any way produce notoriety for clients.

h. The provider shall ascertain the nature of any need or problem of a client which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness or a disability. The provider shall communicate such information to the operator of any vehicle transporting clients in care.

i. A provider shall ensure that porches, elevated walkways, and elevated play areas within the facility meet ANSI standards.

j. Every required exit, exit access and exit discharge in a provider's buildings shall be continuously maintained free of all obstructions or impediments to immediate use in the case of fire or other emergency.

k. A provider shall prohibit the use of candles in sleeping areas of the clients.

l. Powerdriven equipment used by a provider shall be kept in safe and good repair. Such equipment shall be used by clients only under to direct supervision of a staff member and according to state law.

m. A provider shall have procedures to prevent insect and rodent infestation.

n. A provider shall allow clients to swim only in areas determined to be safe and under supervision of a person with a current water safety instructor certificate or senior lifesaving certificate from the Red Cross or its equivalent.

o. The following additional arrangements are required for a provider serving handicapped, non-ambulatory clients:

i. a ramp device to permit entry and exit of a client from the vehicle must be provided for all vehicles, except automobiles, normally used to transport physically handicapped clients. A mechanical lift may be utilized provided that a ramp is also available in case of emergency;

ii. in all vehicles except automobiles, wheelchairs used in transit shall be securely fastened to the vehicle;

iii. in all vehicles except automobiles, the arrangement of the wheelchairs shall provide adequate aisle space and shall not impede access to the exit door of the vehicle.

H. Emergency Preparedness

1. The residential home, also known as an intermediate care facility for the mentally retarded (ICF-MR), shall have an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan and is designed to manage the consequences of declared disasters or other emergencies that disrupt the residential home's ability to provide care and treatment or threatens the lives or safety of the residential home residents. The residential home shall follow and execute its approved emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

2. At a minimum, the residential home shall have a written plan that describes:

a. the evacuation of residents to a safe place either within the residential home or to another location;

b. the delivery of essential care and services to residential home residents, whether the residents are housed off-site or when additional residents are housed in the residential home during an emergency;

c. provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the residential home or at another location;

d. a plan for coordinating transportation services required for evacuating residents to another location; and

e. procedures to notify the resident's family, guardian or primary correspondent if the resident is evacuated to another location.

3. The residential home's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The residential home's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the residential home's performance during the planned drill.

4. The residential home's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

5. The plan shall be available to representatives of the Office of the State Fire Marshal.

6.a. In the event a residential home evacuates, temporarily relocates, or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and sustains damages due to wind, flooding, or power outages longer than 48 hours, the residential home shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section.

i. The purpose of these surveys is to assure that the residential home is in compliance with the licensing standards including, but not limited to, the areas of the structural soundness of the building, the sanitation code, and staffing requirements.

ii. The Health Standards Section will determine the facility's access to the community service infrastructure such as hospitals, transportation, physicians, professional services, and necessary supplies.

b. If a residential home evacuates, temporarily relocates, or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and does not sustain damages due to wind, flooding or power outages longer than 48 hours, the residential home may be reopened.

7. Before reopening at its licensed location, the residential home must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must contain, at a minimum:

a. pertinent plan provisions and how the plan was followed and executed;

b. plan provisions that were not followed;

c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;

d. contingency arrangements made for those plan provisions not followed; and

e. a list of injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

8. Before reopening, the residential home must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for reopening subject to the facility's compliance with any other applicable rules.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to reopen.

9. If it is necessary for a residential home to temporarily relocate beds and/or increase the number of beds in the home as a result of a declared disaster, the residential home may request a waiver from the licensing agency to operate outside of its licensed location for a time period not to exceed 90 days in order to provide needed services to its clients. Extension requests will be considered on a case-by-case basis and must include a plan of action which specifies timelines in which the beds will either be moved back to the original licensed location or permanently relocated as specified in Subparagraphs 10.a-b.

10. The permanent relocation of residential home beds as a result of a declared disaster or other emergency must be approved by the Office for Citizens with Developmental Disabilities and the Bureau of Health Services Financing, Health Standards Section in order to assure that:

a. the new location has either the same number or fewer of the previously licensed beds; and

b. the location of the residents' family members is taken into consideration in the selection of the new site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2260 (December 2006), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2722 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1599 (August 2009).

§6929. Residential Home Module

NOTE: This Section has been moved from LAC 67:I.1929.

A. Organization and Administration

1. Capacity

a. A provider shall have a capacity of 17 or more clients.

2. Human Resources

a. Staff Coverage

i. A provider shall have adequate and trained direct service staff coverage considering the ages, needs, and functioning levels of clients.

b. Client-Living Services

i. A provider shall ensure that direct services staff performing client-living services are administratively responsible to a person whose training and experience is appropriate to the provider's program.

3. Quality of Life

a. Normalization

i. A provider shall ensure that:

(a). clients of grossly different ages, developmental levels, and social needs shall not be housed in close physical or social proximity, unless such housing is planned to promote the growth and development of all those housed together;

(b). clients who are mobile-nonambulatory, deaf, blind, epileptic, and so forth, shall be integrated with peers of comparable social and intellectual development, and shall not be segregated on the basis of their handicaps.

4. Recreation and Activities Programs

a. A provider shall have a written plan for providing recreational services based on the individual needs, interests, and functioning levels of clients served.

i. Periodic surveys of a client's recreational interests, records of the client's extent and level of participation in recreation and activities programs and reports evaluating and summarizing the client's needs, strengths, and progress relative to recreation and activities shall be maintained in the client's case record.

ii. There shall be evidence that recreation staff are appropriately informed of client's needs, problems, and service plans; communicate routinely with other direct service staff concerning clients; and have means of providing in-put.

b. A provider shall have sufficient, adequately qualified recreation staff; adequate recreation spaces and facilities accessible to clients regardless of their disabilities; and recreation equipment and supplies of sufficient quantity and variety to carry out the stated objectives of the provider's recreation plan.

5. Food Services

a. A provider shall have an organized, adequately staffed system of food services supervised by a qualified dietitian or an appropriately qualified person. This dietitian or person shall be responsible for:

i. menu planning;

ii. initiating food orders or requisitions;

iii. establishing specifications for food purchases and insuring that such specifications are met;

iv. storing and handling of food;

v. food preparation;

vi. food serving;

vii. maintaining sanitary standards in compliance with state and local regulations; and

viii. orientation, training, and supervision of food service personnel.

b. A provider shall ensure that any modified diet for a client shall be:

i. prescribed by the client's physician and service plan with a record of the prescription kept on file;

ii. planned, prepared, and served by persons who have received adequate instruction;

iii. periodically reviewed and adjusted as needed.

c. A provider shall ensure that food is served to clients in appropriate quantity; at appropriate temperatures; in a form consistent with the development level of the client; and with appropriate utensils.

d. A provider shall ensure that dry or staple food items are stored at least 12 inches above the floor, in a ventilated room not subject to sewage of waste water backflow, or contamination by condensation, leakage, rodents, or vermin.

e. A provider shall ensure that perishable foods are stored at the proper temperatures to conserve nutritive values.

f. A provider shall ensure that food served to a client and not consumed is discarded.

g. A provider shall show evidence of effective procedures for cleaning all equipment and work area.

i. Hand washing facilities, including hot and cold water, soap, and paper towels, shall be provided adjacent to food service work areas.

h. A provider shall ensure that all clients, including the mobile nonambulatory, eat or are fed in dining rooms, except where contraindicated for health reasons or by the client's service plan.

i. Table service shall be provided for all clients who can and will eat at table, including clients in wheelchairs.

ii. Dining areas in a facility shall be equipped with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client.

iii. Dining rooms in a facility shall be adequately supervised and staffed for the direction of self-help dining procedures, and to assure that each client receives an adequate amount of food.

iv. Clients shall be provided with systematic training to develop appropriate eating skills, utilizing adaptive equipment where it serves the development process.

v. Direct-care staff shall be trained in and shall utilize proper feeding techniques.

vi. Clients shall eat in an upright position unless medically contraindicated.

vii. Clients shall eat in a manner consistent with their developmental needs.

6. Health Care

a. A provider shall have an organized system of health and medical care services and shall provide adequate personnel, space, facilities, and equipment for the provision of such services.

i. The provider shall have access to electroencephalographic services.

b. A provider shall ensure:

i. tuberculosis control, in accordance with the State Sanitary Code as appropriate to the provider's population; and

ii. reporting of communicable diseases and infections in accordance with law.

c. A provider shall show evidence that hospital and laboratory services used by the provider are properly licensed and/or certified.

i. Physicians shall participate, when appropriate, in the continuing interdisciplinary evaluation of individual clients for the purposes of initiation, monitoring, and follow-up of service plans.

7. Nursing Services

a. A provider shall ensure that clients are provided with nursing services in accordance with their needs.

b. Nursing services to client shall include as appropriate registered nurse participation in:

i. the preadmission study;

ii. the service plan and any reviews and revisions of the service plan;

iii. the development of aftercare plans;

iv. the referral of clients to appropriate community resources;

v. training in habits in personal hygiene, family life, sex education (including family planning and venereal disease counseling);

vi. control of communicable diseases and infections, through identification and assessment; reporting to medical authorities; and implementation of appropriate protective and preventive measures;

vii. modification of the nursing part of the service plan, in terms of the client's daily needs, at least annually for adults and more frequently for children, in accordance with developmental changes.

c. A registered nurse shall participate, as appropriate, in the planning and implementation of training of direct service personnel including training in:

i. detecting signs of illness of dysfunction that warrant medical or nursing intervention;

ii. basic skills required to meet the health needs and problems of the client;

iii. first aid in the vent of accident or illness.

d. A provider shall have available sufficient, appropriately qualified nursing staff, which may include currently licensed practical nurses and other supporting personnel, to carry out the various nursing service activities.

i. The individual responsible for delivery of nursing services shall have knowledge and experience in the field of developmental disabilities.

ii. Nursing service personnel at all levels of experience and competence shall be assigned responsibilities in accordance with their qualifications; delegated authority commensurate with their responsibility; and provided appropriate professional nursing supervision.

8. Pharmacy Services

a. A provider shall ensure that pharmacy services are provided under the direction of a qualified licensed pharmacist.

i. There shall be a formal arrangement for qualified pharmacy service, including provision for emergency service.

b. A provider shall have a current pharmacy manual that includes policies and procedures, and defines the functions and responsibilities relating to pharmacy services; this manual shall be revised annually to keep abreast of current developments in services in management techniques.

i. There shall be a formulary system approved by the responsible physician and pharmacist, and by other appropriate provider staff.

c. The pharmacist shall:

i. receive the original, or a direct copy of the physician's drug treatment order;

ii. maintain for each client an individual record of all medications (prescription and nonprescription) dispensed, including quantities and frequency of refills;

iii. participate, as appropriate, in the continuing interdisciplinary evaluation of individual clients for the purposes of initiation, monitoring, and follow-up of service plans;

iv. establish quality specifications for drug purchases and ensure that they are met.

d. Qualified pharmacy or medical personnel shall:

i. regularly review the record of each client on medication for 'potential adverse reactions, allergies, interactions, contraindications, rationality, and laboratory test modifications.

ii. advise the physician of any recommended changes, stating the reasons for such changes and providing an alternate drug regimen.

e. Poisons, drugs used externally, and drugs taken internally shall be stored on separate shelves or in separate cabinets at all locations.

f. Medications that are stored in a refrigerator containing things other than drugs shall be kept in a separate compartment with proper security.

g. If there is a drug storeroom separate from the pharmacy, there shall be a perpetual inventory of receipts and issues of all drugs by such storeroom.

h. Discontinued and outdated drugs, and containers with worn, illegible or missing labels, shall be returned to the pharmacy for proper disposition.

i. There shall be an effective drug recall procedure that can be readily implemented.

j. There shall be a procedure for reporting adverse drug reactions to the federal Food and Drug Administration.

k. A provider shall have written policies and procedures that govern the safe administration and handling of all drugs developed by the responsible pharmacist, physician, nurse, and other professional staff, as appropriately to the provider.

l. A provider shall have a written policy governing the self-administration of both prescription and nonprescription drugs.

m. The compounding, packaging, labeling, and dispensing of drugs including samples and investigational drugs, shall be done by the pharmacist, or under his supervision, with proper controls and records.

n. Each drug shall be identified up to the point of administration.

o. Whenever possible, drugs that require dosage measurement shall be dispensed by the pharmacist in a form ready to be administered to the client.

p. Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.

q. All drugs shall be kept under lock and key except when authorized personnel are in attendance.

r. The security requirements for drugs of federal and state laws shall be satisfied in storerooms, pharmacies, and living units.

9. Dental Services

a. A provider shall have an organized system for providing comprehensive diagnostic dental services for all clients which include a complete extra and intra-oral examinations, utilizing all diagnostic aids necessary to properly evaluate the client's oral condition, within a period of 1month following admission unless such an examination shall be in the client's case record.

b. A provider shall have access to comprehensive dental treatment services for all clients which include:

i. provision for dental treatment;

ii. provision for emergency treatment on a 24-hour, seven-days a-week basis by a qualified dentist;

iii. a recall system that will assure that each client is reexamined at specified intervals in accordance with his/her needs, but at least annually.

c. A provider shall have a dental hygiene program that includes imparting information regarding nutrition and diet control measures to clients and staff, instruction of clients and staff in living units in proper oral hygiene methods, and instruction of family in maintenance of group oral hygiene, where appropriate.

d. A summary dental progress report shall be entered in the client's unit record at state intervals.

e. A copy of the permanent dental record shall be provided to a provider to which a client is transferred.

f. There shall be available sufficient, appropriately qualified dental personnel and necessary supporting staff to carry out the dental services program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S.40:2151-2163, R.S.46:1401-1424, R. S.28:1-2, R.S.28:380-451.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2735 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1612 (August 2009).

§6931. Direct Services Management

NOTE: This Section has been moved from LAC 67:I.1931.

A. Professional and Special Programs and Services

1. A provider shall have access to the following services in accordance with the needs of clients:

a. physical and/or occupational therapy;

b. speech pathology and audiology;

c. psychological services;

d. social work services;

e. training and habilitation services.

2. A provider shall ensure that all providers of professional and special services:

a. provide services directly through personal contact with the client;

b. provide services indirectly through contact with staff members and others working with the client;

c. develop and record appropriate plans, goals, and objectives for the client and, as appropriate, the client's family;

d. record all significant contacts with the client;

e. periodically provide written summaries of the client's response to the service, the client's current status relative to the service and the client's progress to be maintained in the client's case record;

f. participate, as appropriate, in the development, implementation, and review of service plans and aftercare plans and in the interdisciplinary team responsible for developing such plans;

g. provide services appropriately integrated into the overall program.

3. A provider shall ensure that any professional or special service provided by the provider has:

a. adequately qualified and, where appropriate, appropriately licensed or certified staff according to state and federal law;

b. adequate space and facilities;

c. appropriate equipment;

d. adequate supplies;

e. appropriate resources.

4. A provider shall ensure that any professional or special service provided by a person or agency outside the provider meets all relevant requirements contained herein.

B. Physical Therapy and/or Occupational Therapy

1. Physical therapy and occupational therapy staff shall provide treatment training programs that are designed to:

a. preserve and improve abilities for independent functioning such as range of motion, strength, tolerance, coordination, and activities of daily living;

b. prevent, insofar as possible, irreducible or progressive disabilities, through means such as the use of orthopedic and prosthetic appliances, assertive and adaptive devices, positioning, behavior adaptations, and sensory stimulation.

2. The therapist shall function closely with the client's primary physician and with other medical specialists.

3. Physical and occupational therapy personnel shall be:

a. assigned responsibilities in accordance with their qualifications;

b. delegated authority commensurate with their responsibilities;

c. provided appropriate professional direction and consultation.

C. Speech Pathology and Audiology

1. Speech pathology and audiology services available to the provider shall include:

a. screening and evaluation of clients with respect to speech and hearing functions;

b. comprehensive audiological assessment of client as indicated by screening results, to include tests of puretone air and bone conduction, speech audiometry, and other procedures, as necessary, and to include assessment of the use of visual cues;

c. assessment of the use of amplification;

d. provision for procurement, maintenance, and replacement of hearing aids, as specified by a qualified audiologist;

e. comprehensive speech and language evaluation of residents, as indicated by screening results, including appraisal of articulation, voice, rhythm, and language;

f. treatment service, interpreted as an extension of the evaluation process, that include: direct counseling with the client; consultation with appropriate staff for speech improvement and speech education activities; collaboration with appropriate staff to develop specialized programs for developing the communication skills of clients in comprehension, and expression, and participation in in-service training programs for direct care and other staff.

2. Adequate, direct and continuing supervision shall be provided personnel, volunteers, or supportive personnel utilized in providing speech pathology and audiology services.

D. Psychological Services

1. A provider shall provide psychological services, as appropriate to the needs of the clientele, including strategies to maximize each client's development of:

a. perceptual skills;
b. sensorimotor skills;
c. self-help skills;
d. communications skills;
e. social skills;
f. self direction;
g. emotional stability;
h. effective use of time (including leisure time);
i. cognitive skills.

2. There shall be available sufficient, appropriately qualified psychological services staff, and necessary supporting personnel, to carry out the following functions:

a. psychological services to clients, including evaluation, consultation, therapy, and program development;

b. administration and supervision of psychological services;

c. participation in direct service staff training.

3. Psychologists providing services to the provider shall have at least a Master's degree from an accredited program and appropriate experience or training.

E. Social Work Services

1. Social services as part of an interdisciplinary spectrum of services, shall be provided to the clients through the use of social work methods directed toward:

a. maximizing the social functioning of each client;

b. enhancing the coping capacity of his family;

c. asserting and safeguarding the human and civil rights of clients and their families and fostering the human dignity and personal worth of each client.

2. During the evaluation process, which may or may not lead to admission, social workers shall help the client and family to consider alternative services and make a responsible choice as to whether and when placement is indicated.

3. During the client's admission to and residence in the provider or while the client is receiving services from the provider, social workers shall, as appropriate, provide liaison between the client, the provider, the family, and the community in order to:

a. assist staff in understanding the needs of the client and his/her family in relation to each other;

b. assist staff in understanding social factors in the client's day-to-day behavior, including staff-client relationships;

c. assist staff in preparing the client for changes in his/her living situation;

d. help the family to develop constructive and personally meaningful ways to support the client's experience in the provider through counseling concerned with problems associated with changes in family structure and functioning, and referral to specific services, as appropriate;

e. help the family to participate in planning for the client's return to home or other community placement.

4. After the client leaves the provider, the provider's social workers shall provide systematic follow-up to assure referral to appropriate community providers.

F. Training and Habilitation Services

1. Training and habilitation services defined as the facilitation of or preventing the regression of intellectual, sensorimotor, and affective development of the client shall be available to all clients, regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps.

2. Individual evaluations of clients relative to training and habilitation shall:

a. be based upon the use of empirically reliable and valid instruments, whenever such tools are available;

b. provide the basis for prescribing an appropriate program of training experiences for the client;

c. identify priority areas to be addressed.

3. There shall be evidence of training and habilitation services activities designed to meet the training and habilitation objectives set for every client.

4. There shall be a functional training and habilitation record for each client maintained by, and available to, the training and habilitation staff.

5. Appropriate training and habilitation programs shall be provided to clients with hearing, vision, perceptual, or motor impairments, in cooperation with appropriate staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S.40:2151-2163, R. S.46:1401-1424, R. S.28:1-2, R. S.28:380-451.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2738 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1615 (August 2009).

§6933. Physical Environment

NOTE: This Section has been moved from LAC 67:I.1933.

A. Exterior Space

1. A provider shall have at least 75 square feet of accessible exterior space for each client.

B. Interior Space

1. A provider shall have a minimum of 60 square feet of floor area for each client in interior living areas accessible to clients and excluding halls, closets, bathrooms, offices, staff quarters, laundry areas, storage areas, and any other areas not accessible to or usable by clients for normal social and recreational activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 36:477, 40:2151-2163, R.S. 46:1401-1424, R.S. 28:1-2, R.S. 28:380-451.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2739 (December

2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1616 (August 2009).

§6935. Fee

NOTE: This Section has been moved from LAC 67:I.1935.

A. There shall be an annual fee for the license as determined by the Division of Licensing and Certification based on capacity if a client or clients under the age of 18 years are cared for in the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 40:2151-2163, R.S. 46:1401-1424, R.S. 28:1-2, R.S. 28:380-451.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009).

§6951. Purpose

NOTE: This Section has been moved from LAC 67:I.1951.

A. It is the intent of the legislature to protect the health, safety, and well-being of the children of the state who are in out-of-home care on a regular or consistent basis. Toward that end, it is the purpose of Chapter 14 of Title 46 of the Louisiana Revised Statutes of 1950 to establish statewide minimum standards for the safety and well being of children, to ensure maintenance of these standards, and to regulate conditions in these facilities through a program of licensing. It shall be the policy of the state to ensure protection of all individuals under care in child care facilities and to encourage and assist in the improvement of programs. It is the further intent of the legislature that the freedom of religion of all citizens shall be inviolate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1410 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1564 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009).

§6953. Authority

NOTE: This Section has been moved from LAC 67:I.1953.

A. Legislative Provisions

1. The Louisiana Committee on Private Child Care is charged with the responsibility of developing standards for the licensing of Class "B" facilities.

2. The licensing authority of the Department of Social Services is established by R.S. 46:1401 et seq., and R.S. 46:51 which mandate the licensing of all child care facilities and child placing agencies, including child residential facilities. A Class "B" child residential facility is defined as any place, facility or home operated by any institution, society, agency, corporation, person or persons or any other group to provide full-time care (24-hour residential care) for four or more children under the age of 18 years who are not related to the operators, and whose parents or guardians are not residents of the same facility, with or without transfer of custody, and no state or federal funds received for the care of the children.

B. Penalties

1. All child care facilities, including facilities owned or operated by any governmental, profit, nonprofit, private or church agency, shall be licensed.

2. As stipulated in R.S. 46:1421, whoever operates any child care facility without a valid license shall be fined not less than $75, nor more than $250 for each day of such offense.

C. Inspections

1. According to law, it shall be the duty of the Department of Social Services "through its duly authorized agents, to inspect at regular intervals not to exceed one year, or as deemed necessary by the department, and without previous notice, all child care facilities and child placing agencies subject to the provisions of the Chapter". (R.S. 46:1417).

2. When the department is advised or has reason to believe that any person, agency or organization is operating a child residential facility without a license, the department shall make an investigation to ascertain the facts.

3. When the department is advised or has reason to believe that any person, agency or organization is operating in violation of the Class "B" Child Residential Care Minimum Standards, the department shall complete a complaint investigation. All reports of mistreatment received by the department will be investigated.

D. The Louisiana Committee on Private Child Care (Class "B" Child Care Committee)

1. The Louisiana Committee on Private Child Care was created by Act 286 of 1985 to serve two functions.

a. Develop minimum standards for licensure of Class "B" facilities.

b. Consult with the department on matters pertaining to decisions to revoke or refuse to grant a Class "B" license.

2. The committee is composed of seven members, elected by the Class "B" licensed facilities in the state, representing different types of Class "B" licensed facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1565 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009).

§6955. Procedures

NOTE: This Section has been moved from LAC 67:I.1955.

A. Initial Application

1. New buildings shall be non-institutional in design and appearance and physically harmonious with the neighborhood in which they are located, considering such issues as scale, appearance, density and population. A child residential facility shall not occupy any portion of a building licensed by another agency.

2. Before beginning operation, it is mandatory to obtain a license from the Department of Social Services, Bureau of Licensing. The following steps should be followed.

a. Prior to purchasing, leasing, etc., carefully check all local zoning and building ordinances for the area in which you are planning to locate. Guidelines from the Office of Public Health, Sanitarian Services; the Office of State Fire Marshal, Code Enforcement and Building Safety; and the city fire department (if applicable) should be obtained.

b. After securing property, obtain an application form issued by:

Department of Social Services
Bureau of Licensing
P.O. Box 3078
Baton Rouge, LA 70821-3078
Phone: (225) 922-0015
Fax: (225) 922-0014

c. After the facility's location has been established, complete and return the application form. It is necessary to contact the following offices prior to building or renovating a facility:

i. Office of Public Health, Sanitarian Services;

ii. Office of State Fire Marshal, Code Enforcement and Building Safety;

iii. office of city fire department (if applicable);

iv. zoning department (if applicable); and

v. city or parish building permit office.

d. Upon receipt of the facility's application by the Bureau of Licensing, a request will be made to the Office of State Fire Marshal, Code Enforcement and Building Safety; office of city fire department (if applicable); Office of Public Health and any known required local agencies to inspect the location as per their standards. It is the applicant's responsibility to obtain these inspections and approvals. A licensing specialist shall visit the facility to conduct a licensing inspection.

e. A license will be issued on an initial application when the following requirements have been met and verification is received by the Bureau of Licensing:

i. approval by the Office of Public Health, Sanitarian Services;

ii. approval by the Office of State Fire Marshal, Code Enforcement and Building Safety;

iii. approval by the city fire department (if applicable);

iv. approval by the city or parish zoning (if applicable);

v. approval by the city or parish building permit (if applicable);

vi. a completed licensure inspection verifying substantial compliance with these standards; and

vii. full license fee paid.

3. When a facility changes location, it is considered a new operation and a new application and fee for licensure shall be submitted. All items listed in §7955.A.2.e shall be in compliance for the new location.

4. When a facility changes ownership, a new application and fee shall be submitted. All approvals listed in §7955.A.2.e shall be current. Documentation is required from the previous owner assuring change of ownership; e.g., letter from previous owner, copy of bill of sale or a lease agreement.

5. All new construction or renovation of a facility requires approval from agencies listed in §7955A.2.c and the Bureau of Licensing.

6. The department is authorized to determine the period during which the license shall be effective. A license is valid for the period for which it is issued unless it is revoked for the facility's failure to maintain compliance with minimum standards.

7. A license is not transferable to another person or location.

8. If an administrator or member of his immediate family has had a previous license revoked, refused or denied, upon reapplication, the applicant shall provide written evidence that the reason for such revocation, refusal or denial no longer exists. A licensing survey will then be conducted to verify that the reasons for revocation, refusal or denial have been corrected and the administrator/facility is in substantial compliance with all minimum standards.

B. Fees

1. An initial application fee of $25 shall be submitted with all initial license applications. This fee will be applied toward the license fee when the facility is licensed. This fee is to be paid by all initial and change of location providers. The full licensure fee shall be paid on all changes of ownership. All fees shall be paid by certified check or money order only and are nonrefundable.

2. License fees are required prior to issuance or renewal of a license. However, Class "B" child care facilities or agencies owned or operated by a church or religious organization are exempt from license fees. Fee schedules (based on licensed capacity) are listed below:

a. 4 to 6 children—$400;

b. 7 to 15 children—$500; and

c. 16 or more children—$600.

3. Other licensure fees include:

a. replacement fee of $25 for replacing a license when changes are requested, i.e., change in capacity, name change, age range, etc. (There is no replacement charge when the request coincides with the regular renewal of a license.); and

b. processing fee of $5 for issuing a duplicate license with no changes.

C. Relicensing

1. A license shall be renewed on an annual basis. The month of issue of the initial license becomes the anniversary month for all renewals. Generally, all licenses expire on the last day of the month.

2. Approximately 90 days prior to the annual expiration of a license, a notice and an application form will be mailed to the licensee. The completed application along with the full license fee, if applicable, shall be returned prior to relicensure.

3. A relicensing inspection will be made by staff of the Bureau of Licensing to determine continued compliance with licensing regulations.

4. A current approval from the Office of State Fire Marshal, Code Enforcement and Building Safety; the city fire department (if applicable); and the Office of Public Health, Sanitarian Services shall be received by the Bureau of Licensing. It is the responsibility of the licensee to obtain these inspections and approvals.

5. The Department of Social Services, Bureau of Licensing, shall be notified prior to making changes which might have an effect upon the license, i.e., age range of children served, usage of indoor and outdoor space,

administrator, hours/months/days of operation, ownership, location, etc.

D. Denial, Revocation, or Non-Renewal of License

1. An application for a license may be denied for any of the following reasons:

a. failure to meet any of the minimum standards for licensure; or

b. conviction of a felony by any of these persons, as shown by a certified copy of the record of the court of conviction:

i. the applicant;

ii. any members or officers if the applicant is a firm or corporation; or

iii. any staff providing care, supervision, or treatment to a resident of the facility.

2. A license may be revoked or renewal denied for any of the following reasons:

a. cruelty or indifference to the welfare of the children in care;

b. violation of any provision of the minimum standards, rules, regulations, or orders of the Department of Social Services;

c. disapproval from any agency whose approval is required for licensure;

d. nonpayment of licensure fee or failure to submit a licensure application;

e. any validated instance of child abuse, corporal punishment, physical punishment, or cruel, severe or unusual punishment may result in revocation, denial or nonrenewal of the license if the owner is responsible or if the staff member who is responsible remains in the employment of the licensee;

f. the facility is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure; or

g. any act of fraud such as falsifying or altering documents required for licensure.

E. Appeal Procedure. If the license is refused or revoked because the facility does not meet minimum requirements for licensure, the procedure is as follows.

1. The Department of Social Services, Bureau of Licensing, by certified letter, shall advise the licensee or applicant of the reasons for the denial or revocation and the right of appeal.

2. The administrator or owner may appeal this decision by submitting a written request with the reasons to the Secretary of the Department of Social Services. Write to Department of Social Services, Bureau of Appeals, P.O. Box 2944, Baton Rouge, LA 70821. This written request shall be postmarked within 30 days of the receipt of the notification in §7955.E.1 above.

3. The Bureau of Appeals shall set a hearing after receipt of such a request.

4. An appeals hearing officer shall conduct the hearing. The hearing officer shall advise the appellant by certified letter of the decision, either affirming or reversing the original decision. If the license is refused or revoked, the facility shall terminate operation immediately.

5. If the facility continues to operate without a license, the Department of Social Services may file suit in the district court in the parish in which the facility is located for injunctive relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1565 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009).

§6957. Definitions

NOTE: This Section has been moved from LAC 67:I.1957.

Abuse and Neglect Reporting—any suspected abuse and/or neglect of a child in a child care center must be reported in accordance with Louisiana Revised Statutes 14:403. This statement shall be visibly posted in the center with the local child protection phone number.

Administrator—the person responsible for the on-site, daily implementation and supervision of the overall facility's operation. The administrator shall have a Bachelor's degree in a social services field and four years of experience in a similar type of child care facility, or a Master's degree and two years of related experience.

Bedroom Space—a distinct area used as a sleeping area for clients; a dormitory-style bedroom may be broken into several bedroom spaces by the use of partitions. A facility shall have a minimum of 60 square feet of floor area per child in living areas accessible to children and excluding halls, closets, bathrooms, bedrooms, staff or staff's family quarters, laundry areas, storage areas and office areas.

Client—a person who receives service from a provider.

Client's Service Plan—a daily care plan based on the assessment of a client's psychological, social and educational evaluations.

Curator—a person appointed by the court when an individual is interdicted to act as guardian with either limited or full powers over the individual's estate and/or person, depending upon the needs of the individual interdicted.

DSS—Department of Social Services.

Discipline—a system of rules governing conduct which usually prescribes consequences for the violation of particular rules.

Direct Service Management—the act of controlling the various aspects of a provider involving direct services to clients in order to ensure effective care and treatment.

Direct Service Worker—any employee of a provider who works directly with clients as a major function of his/her job.

Family—the natural or adoptive father, mother, brother(s) and sister(s), but "family" may be interpreted broadly to include any person, whether related to the client by blood or not, who resides in the client's home and takes part in the client's family life.

Governing Body—a person or persons with the ultimate responsibility for conducting the affairs of a provider as, for example, the board of directors.

Legally Responsible Person—as appropriate, the parent(s) or tutor of a minor or the curator of an interdicted client.

License—a written certification, whether provisional, extended or regular, of a provider's authorization to operate under state law.

Living Unit—an integral living space utilized by a particular group of clients who reside in that space.

Parent(s)—natural or adoptive mother and father of a client.

Passive Physical Restraint—the least amount of direct physical contact required on the part of a staff member to prevent a client from harming himself/herself or others.

Provider—any 24-hour residential facility, whether public or private, that services clients.

Psychotropic Medication—prescription medication given for the purpose of producing specific changes in mood, thought processes, or behavior. They exert specific effects on brain function and can be expected to bring about specific clinically beneficial responses in clients for whom they are prescribed. The term as used in this policy does not include all drugs which affect the central nervous system or which may have behavioral effects; e.g., anticonvulsants or hormones.

Restraint—the extraordinary restriction of a client's freedom or freedom of movement.

Service Plan—a comprehensive, time-limited goal-oriented, individualized plan for care, treatment and education of a client in the care of a provider. The service plan is based on a current comprehensive evaluation of the client's needs.

Social Worker—a Master's level professional.

Time-Out Procedure—the isolation of a client for a period of less than 30 minutes in an unlocked room.

Training—any activity outside the normal routine of the provider which promotes the development of skills related to client care, increases the knowledge of the person involved in a related field or fosters the development of increased professionalism.

Treatment Strategy—an orientation or set of clinical techniques included in a particular therapeutic model and used to meet a diagnosed need of a client in care over and above the provisions of basic care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1567 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2742 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1619 (August 2009).

§6959. Administration and Organization

NOTE: This Section has been moved from LAC 67:I.1959.

A. Class "B" facilities must comply with all regulations set by the Office of the State Fire Marshal, the Office of Public Health, local zoning laws and all laws regarding child abuse or neglect. Client-staff ratios and minimum space requirements will be enforced by the Department of Social Services. Class "B" facilities must comply with regulations restricting hiring felons, prohibiting racial discrimination and prohibiting the use of corporal punishment without parental permission. Class "B" facilities must comply with additional regulations promulgated by the Louisiana Committee on Private Child Care. Core regulations must promote safe physical facilities, adequate supervision and qualified staff, healthful food service, procedures for nighttime care, and procedures for the disposition of complaints.

B. General Requirements

1. A provider shall follow federal and state laws on client civil rights. No residential facility shall discriminate based on race, color, creed or national origin or ancestry. However, this shall not restrict the hiring or admission policies of a church or religious organization which may give preference in hiring or admission to members of the church or denomination.

2. It shall be the duty of the department, through its duly authorized agents, to inspect at regular intervals not to exceed one year, or as deemed necessary by the department and without previous notice, all residential child care facilities subject to the provisions of Chapter 14 of Title 46. The department shall also develop and facilitate coordination with and among other authorized agencies making inspections at regular intervals. The facility shall be open to inspection only during working hours by parents or legal guardians of clients in care and by authorized inspection personnel.

3. The provider is required to show evidence of compliance with the regulations set by the Louisiana Committee on Private Child Care. Documentation indicating compliance with a standard will not be required when it is obvious that the standard is met.

C. Other Jurisdictional Approvals. The provider shall show appropriate evidence of compliance with all relevant standards, regulations and requirements established by federal, state, local and municipal regulatory bodies including DSS Licensing Bureau, Office of Health Services, Office of the State Fire Marshal, city fire marshal's office (if applicable), applicable local zoning ordinances (if applicable) and Department of Education (if applicable).

D. Governing Body

1. A provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the provider.

2. A provider shall have documents identifying all members of the governing body; their addresses; their terms of membership, if applicable; officers of the governing body, if applicable; and terms of office of all officers, if applicable.

3. When the governing body of a provider is composed of more than one person, the governing body shall hold formal meetings at least twice a year. A provider shall have written minutes of all formal meetings of the governing body, and by-laws specifying the frequency of meetings and quorum requirements.

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

1. ensure the provider's compliance and conformity with the provider's charter;

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

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

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

5. ensure that the provider is housed, maintained, staffed and equipped appropriately considering the nature of the provider's program;

6. designate a person to act as chief administrator and delegate sufficient authority to this person to manage the provider;

7. formulate and annually review, in consultation with the chief administrator, policies concerning the provider's

philosophy, goals, current services, personnel practices and fiscal management;

8. annually evaluate the chief administrator's performance;

9. have the authority to dismiss the chief administrator;

10. meet with representatives of DSS whenever required to do so;

11. inform representatives of DSS prior to initiating any substantial changes in the program, services, or physical plant of the provider.

F. Accessibility of Executive. The chief administrator or a person authorized to act on behalf of the chief administrator shall be accessible to provider staff or representatives of DSS at all times.

G. Documentation of Authority to Operate

1. A private provider shall have documentation of its authority to operate under state law.

2. A privately owned provider shall have documents identifying the names and addresses of owners.

3. A corporation, partnership or association shall identify the names and addresses of its members and officers and shall, where applicable, have a charter, partnership agreement, constitution, articles of association or by-laws.

H. Statement of Philosophy and Goals. A provider shall have a written statement describing its philosophy and both long-term and short-term goals.

I. Program Description. A provider shall have a written program plan describing the services and programs offered by the provider.

J. Accounting and Recordkeeping

1. A provider should establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books and records.

2. A provider shall ensure that all entries in records are legible, signed by the person making the entry and accompanied by the date on which the entry was made.

3. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of according to state and federal laws.

K. Confidentiality and Security of Files

1. A provider shall have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released. Records shall be the property of the provider and the provider, as custodian, shall secure records against loss, tampering or unauthorized use.

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

3. A provider shall obtain written authorization of the client and the client's parent(s), tutor or curator, as applicable, prior to releasing the client's confidential records to anyone other than authorized state or federal agencies or another provider to whom the client may be released.

4. A provider shall, upon request, make available information in the case record to the client, the legally responsible person or legal counsel of the client. If, in the professional judgment of the administration of the provider, it is felt that information contained in the record would be damaging to a client, then that information may be withheld except under court order.

5. A provider may use material from case records for teaching or research purposes, development of the governing body's understanding and knowledge of the provider's services, or similar educational purposes, provided that the client's name and other identifying information is disguised or deleted.

L. Administrative File. A provider shall have an administrative file including:

1. documents identifying the governing body;

2. list of members and officers of the governing body and their addresses and terms of membership, if applicable;

3. documentation of the provider's authority to operate under state law;

4. organizational chart of the provider;

5. insurance policies; and

6. master list of all consulting professional providers used by the provider.

M. Client's Case Record. A provider shall have a written record for each client which shall include administrative, treatment, and educational data from the time of admission until the time the client leaves the provider. A client's case record shall include:

1. name, sex, race, religion, birth date and birthplace of the client;

2. other identification data including court status, legal status, who is authorized to give consents;

3. client's history including, if applicable, family data, educational background, employment record, prior medical history and prior placement history;

4. copy of the client's individual service plan and any modifications thereto, and an appropriate summary to guide and assist direct service workers in implementing the client's program; and

5. findings made in periodic reviews of the plan, including summary of the successes and failures of the client's program and recommendations for any modifications deemed necessary.

N. Medical and Dental Records

1. A provider shall maintain complete health records of a client including:

a. report of admission physical examination;

b. complete record of all immunizations provided;

c. record of medications;

d. records of vision, physical or dental examinations;

e. complete record of any medical treatment provided for specific illness or medical emergencies; and

f. authorization signed by the parent or legal guardian for medical care, immunizations and hospitalization, when indicated.

2. Upon discharge the provider shall provide a summary of the client's health record to the person or agency responsible for the future planning and care of the client.

3. A provider shall make every effort to compile a complete past medical history on every client. This history shall, whenever possible, include:

a. allergies to medication;

b. immunization history;

c. history of serious illness, serious injury or major surgery;

d. developmental history;

e. current use of prescribed medication;

f. current use of alcohol or nonprescribed drugs; and

g. medical history.

O. Personnel File

1. A provider shall have a personnel file for each employee which shall contain:

a. application for employment and/or résumé;

b. three reference letters from former employer(s) and personal references or phone notes on such references;

c. any medical examinations required by the provider;

d. criminal record and fingerprinting report (LA 15.587.1) and citizenship report (I-9). No felon shall be employed in a Class "B" facility unless approved in writing by a district judge of the parish and the local district attorney. This statement shall be kept on file at all times by the child care facility and shall be produced upon request to any law enforcement officer;

e. evidence of applicable professional credentials/ certifications according to state law;

f. annual performance evaluations;

g. personnel actions, other appropriate materials, reports and notes relating to the individual's employment with the facility; and

h. employee's starting and termination dates.

2. The staff member shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

3. A provider shall retain the personnel file of an employee for at least three years after the employee's termination of employment.

P. Fund Raising and Publicity

1. A provider shall have a policy regarding participation of clients in activities related to fund raising and publicity.

2. Consent of the client and, if applicable, the legally responsible person shall be obtained prior to participation in fund raising activities.

3. A provider shall have policies and procedures regarding the photographing and audio or audio-visual recording of clients.

4. The written consent of the client and, if applicable, the legally responsible person shall be obtained before the client is photographed or recorded for research or program publicity purposes.

5. All photographs and recordings shall be used in a manner which respects the dignity and confidentiality of the client.

Q. Representation at Hearings. A provider shall, when allowed by law, have a representative present at all judicial, educational or administrative hearings which address the status of the client in care of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1567 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2743 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1620 (August 2009).

§6961. Human Resources

NOTE: This Section has been moved from LAC 67:I.1961.

A. Staff Plan. A provider should have a policy for recruitment, supervision and training.

1. Screening

a. A provider's screening procedures should address the prospective employee's qualifications, ability, related experience, character, and social skills as related to the appropriate job description.

b. Prior to employing any person and upon obtaining a signed release and the names of references from the potential employee, a provider shall obtain written references or phone notes on oral references from three persons.

c. All center staff shall be required to obtain within two weeks before or 30 days after beginning work and at least every three years thereafter a written statement from a physician certifying that the individual is:

i. in good health and physically able to care for clients; and

ii. free from infectious and contagious diseases.

d. Prior to or 30 days after the time of employment all persons shall be free of tuberculosis in a communicable state as evidenced by a negative skin test or a negative chest X-ray. Evidence that an employee is free of active tuberculosis is required on an annual basis thereafter.

e. The director or any center staff shall not remain at work if he/she has any sign of a contagious disease.

f. A provider shall not knowingly hire, or continue to employ, any person whose health impairs his/her ability to properly protect the health and safety of the clients or is such that it would endanger the physical or psychological well being of the clients. This requirement is not to be interpreted to exclude the hiring or continued employment of persons undergoing temporary medical or emotional problems if the health and safety of the clients can be assured through reasonable accommodation of the employee's condition.

2. Orientation. A provider's orientation program shall provide training for new employees to acquaint them with the philosophy, organization, program, practices and goals of the facility, and shall include instruction in safety and emergency procedures and in the specific responsibilities of the employee's job.

3. Training

a. A provider is encouraged to provide in-service training each year. Orientation training and activities related to routine supervision of the employee's task shall not be considered as in-service training.

b. All staff are to maintain a current certification of CPR training. New employees will have 90 days to comply. Documentation will be a copy of certificates on file at the facility.

4. Evaluation

a. A provider should undertake an annual performance evaluation of all staff members.

b. For any person who interacts with clients, a provider's evaluation procedures shall address the quality and nature of a staff member's relationships with clients.

B. Personnel Practices. A provider shall have written personnel policies and written job descriptions for each staff position.

C. Number and Qualifications of Staff

1. A provider shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to ensure that the responsibilities the provider undertakes are carried out and to adequately perform the following functions:

a. administrative functions;

b. fiscal functions;

c. clerical functions;

d. housekeeping, maintenance and food service functions;

e. direct client service functions;

f. supervisory functions;

g. record keeping and reporting functions;

h. social service functions; and

i. ancillary service functions.

2. A provider shall ensure that all staff members are properly certified and/or licensed as legally required.

3. A provider shall ensure that an adequate number of qualified direct service staff are present with the clients as necessary to ensure the health and well-being of clients. Staff coverage shall be maintained in consideration of the time of day, the size and nature of the provider and the ages, needs and functioning levels of the clients.

4. A provider shall ensure that direct services staff who perform client-living services are administratively responsible to a person whose training and experience is appropriate to the provider's program.

D. External Professional Services. A provider shall obtain any required professional services not available from employees.

E. Volunteers/Student Interns. A provider which utilizes volunteers or student interns on a regular basis shall have a written plan for using such resources. This plan shall be given to all volunteers and interns. The plan shall indicate that all volunteers and interns shall be:

1. directly supervised by a paid staff member;

2. oriented and trained in the philosophy of the facility and the needs of clients and the methods of meeting those needs;

3. subject to character and reference checks similar to those performed for employment applicants upon obtaining a signed release and the names of the references from the potential volunteer/intern student; and

4. aware of and briefed on any special needs or problems of clients.

F. Staff Communications

1. A provider shall establish procedures to assure adequate communication among staff to provide continuity of services to the client. This system of communication shall include:

a. a regular review of individual and aggregate problems of clients including actions taken to resolve these problems;

b. sharing of daily information, noting unusual circumstances, and other information requiring continued action by staff; and

c. records maintained of all accidents, personal injuries and pertinent incidents related to implementation of clients' individual service plans.

2. Any employee of a provider working directly with clients in care shall have access to information from clients' case records that is necessary for effective performance of the employee's assigned tasks.

3. A provider shall establish procedures which facilitate participation and feedback by staff members in policymaking, planning and program development for clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

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§6963. Quality of Life

NOTE: This Section has been moved from LAC 67:I.1963.

A. Family Involvement

1. A provider should create a policy that encourages ongoing positive communication and contact between clients and their families, their friends and others significant in their lives.

2. A provider should discuss the following with the client's family, other legally responsible persons and significant others, when appropriate:

a. the philosophy and goals of the provider;

b. behavior management and disciplinary practices of the provider;

c. any specific treatment or treatment strategy employed by the provider that is to be implemented for a particular client;

d. visiting hours, visiting rules and procedures, arrangements for home visits and procedures for communicating with clients by mail or telephone;

e. the name, telephone number and address of a staff person who may be contacted by the legally responsible person to ask questions or register concerns on an ongoing basis;

f. a procedure for registering complaints concerning the client's care or treatment. All cases of client abuse or neglect or suspicion of abuse or neglect must be reported to the Child Protection Agency in the DSS Office of Community Services for investigation.

3. Visits to parents and relatives in their own homes should be encouraged, unless they are not of benefit to the client, in order to maintain not only family ties but also ties in the neighborhood and community.

4. A written description of these family involvement strategies is suggested.

B. Normalization. A provider shall ensure that:

1. clients of grossly different ages, developmental levels and social needs shall not be housed in close physical or social proximity, unless such housing is planned to promote the growth and development of all those housed together;

2. clients who are nonambulatory, deaf, blind, epileptic, etc., shall be integrated with peers of comparable social and intellectual development and shall not be segregated on the basis of their handicaps.

C. Community Involvement

1. The client should have opportunities to participate in community life when individual treatment has progressed, so that community activities can become part of the treatment plan.

2. The client might participate in activities sponsored by school, church, and national and local youth agencies (Girl Scouts, Boy Scouts, 4-H Clubs, etc.).

3. The client should have help, when necessary, to conform to community standards.

4. Mass excursions, transportation in vehicles labeled with the name of the center, wearing of uniforms, etc., are undesirable if they call attention to the clients and make them feel different from others.

5. Community interest in clients and efforts in their behalf (parties, entertainment, invitations to visit other families, etc.) should be carefully evaluated to ascertain that they are of benefit to the clients and do not exploit their dependency status.

D. Communication and Visits

1. Telephone Communication

a. A provider shall allow a client to receive and originate telephone calls, subject only to reasonable rules and to any specific restriction in the client's service plan.

b. Any restriction on telephone communication in a client's service plan must be formally approved and shall be reviewed every 30 days.

2. Mail

a. A provider shall allow clients to send and receive mail unopened and unread by staff, unless contraindicated by a restriction in the client's service plan which shall be reviewed every 30 days.

b. A provider shall ensure that clients have access to all materials necessary for writing and sending letters and shall, when necessary, ensure that clients who wish to correspond with others are given any required assistance.

3. Visits

a. A provider shall allow a client to visit or be visited by family and friends, subject only to reasonable rules and to any specific restrictions in the client's service plan.

b. Special restrictions shall be imposed only to prevent serious harm to the client. The reasons for any special restrictions shall be recorded in the client's service plan.

c. Special restrictions must be reviewed every 30 days. If restrictions are renewed, the reasons for renewal shall be recorded in the client's service plan.

d. A written description of these rules and procedures is suggested.

E. Routines

1. A provider shall have a written set of daily routines for clients that are designed to provide for reasonable consistency and timeliness in daily activities, in the delivery of essential services to clients and in the provision of adequate periods of recreation, privacy, rest and sleep.

2. Routines should be determined in relation to needs and convenience of both clients and adults living together.

3. Routines should be sufficiently adaptable to a particular client's physical and emotional capacity to conform to them or to allow for special situations.

F. Money and Personal Belongings

1. A provider shall permit and encourage a client to possess his/her own money, either by giving an allowance and/or providing opportunities for paid work, unless otherwise indicated.

2. Money earned, received as a gift or received as allowance by a client shall be deemed to be that client's personal property.

3. Limitations may be placed on the amount of money a client may possess or have unencumbered access to when such limitations are considered to be in the client's best interests.

4. A provider should, as appropriate to the client's age and abilities, provide training in budgeting, shopping and money management.

5. A provider shall allow a client to bring his/her personal belongings to the program and to acquire belongings of his/her own in accordance with the client's service plan. However, the provider shall, as necessary, limit or supervise the use of these items while the client is in care. When extraordinary limitations are imposed, the client shall be informed by staff of the reasons.

6. The security of having and keeping possessions of one's own contributes to a sense of autonomy and identity. Clients should have a safe place for their belongings. Individual storage space should be provided for their collections, play equipment, and other "treasures." Clients with particularly valuable keepsakes may need staff help to keep them safe.

G. Work

1. Each client should be assigned daily or weekly chores that provide opportunities to learn to assume responsibility and to get satisfaction from contributing to work that must be done, according to age, health, interest, ability, and readiness.

2. The chores should be similar to those of family members in the neighboring community. Clients should not be depended upon to do work for which staff should be employed. There should be a limit on the amount of work expected.

3. Staff should approve and supervise all chore assignments. Clients should be encouraged to complete chores, but not forced. Policy for this situation should be covered under the provider's behavior management practices.

4. Clients may be given jobs for which they receive payment, which should be clearly differentiated from duties expected of any client in the course of daily living.

5. When a client engages in off-grounds work, the provider should ensure that:

a. such work is voluntary and in accordance with the client's abilities;

b. the work has been approved by staff;

c. such work is supervised by qualified personnel;

d. the conditions and compensation of such work are in compliance with applicable state and federal laws; and

e. such work does not conflict with the client's service plan.

H. Recreation and Activities

1. Recreation cannot be separated from the total living experience of the client. Play is a learning experience as important as formal education. A recreation program should offer indoor and outdoor activities in which participation can be encouraged and motivated on the basis of individual interests and needs.

2. A provider should provide recreational services based on the individual needs, interests and functioning levels of the clients served.

3. A provider should utilize the recreational resources of the community whenever appropriate. The provider should arrange the transportation and supervision required for maximum usage of community resources.

4. Exercise promotes health and physical development. When clients improve in fitness, their self-concept also improves. Active group play and competitive activities can be balanced by quiet or independent pursuits.

5. A residential care provider should provide adequate recreational equipment and yard space to meet the needs and abilities of its clients. Recreational equipment should be selected in accordance with the number of clients, their ages and needs, and should allow for imaginative play, creativity, and development of leisure skills and physical fitness.

6. Clients should have time to be alone and to engage in solitary activities that they enjoy, such as reading, drawing, playing with dolls, puppets and other toys, working on collections, roller-skating and bicycling. There should be opportunities for group activities to develop spontaneously, such as group singing, dancing, storytelling, listening to records, games, etc. Use of television may have to be governed by rules about hours when viewing is allowed and about choice of programs.

I. Birthdays. Each client's birthday should be celebrated individually in an appropriate manner in the group living unit.

J. Religion

1. A provider should clearly explain its religious orientation, particular religious practices which are observed, and any religious restrictions on admission. This description shall be provided to the client; the legally responsible person, when appropriate; and the responsible agency.

2. The nonsectarian agency has responsibility to provide opportunities for the client who wants to have an appropriate religious affiliation and religious experiences in accordance with the religious preferences of the parents.

3. The agency under religious auspices, whose religious program is an integral part of its service, should make it clear that its service is so based. Clients whose parents want them to make use of such a service should be able to do so.

4. Clients and families who do not choose to participate in religious activities should not be expected to do so in any residential center.

K. Clothing

1. A provider shall ensure that clients are provided with clean, well-fitting clothing appropriate to the season and to the client's age, sex and individual needs. Clothing shall be maintained in good repair.

2. All clothing provided to a client shall go with the client at discharge.

3. Clothing shall belong to the individual client and not be shared in common.

4. Clothing contributes to the client's feeling of worth and dignity. It represents being valued by adults, respect for individuality and having someone who cares for him or her. Clothing should be provided in a manner that helps the client develop self-esteem and a sense of personal responsibility.

L. Personal Care and Hygiene

1. A provider shall establish procedures to ensure that clients receive training in good habits of personal care, hygiene and grooming, appropriate to their age, sex, and race.

2. Each client should have the personal help that all persons need at times, regardless of age, in waking, dressing, deciding what to wear, combing hair, caring for clothing, grooming, getting ready for meals or school, keeping appointments, going to bed, etc.

M. Food Services

1. It is preferable to have one person in charge of food service who is familiar with nutrition, food service and management. The person responsible for food service should be aware of clients with special nutritional needs, and manage the resources of the dietary services to achieve effective food delivery.

2. A provider shall ensure that a client is provided at least three meals or their equivalent daily at regular times with not more than 14 hours between the evening meal and breakfast of the following day. Meal times shall be comparable to those in a normal community home.

3. A provider should develop written menus at least one week in advance.

4. Records of foods purchased shall be maintained on file for 30 days. Menus should provide for a sufficient variety of foods and shall vary from week to week.

5. No client shall be denied a meal for any reason except according to a doctor's order.

6. No client shall be forced-fed or aggressively coerced to eat against his/her will except by order of a doctor.

7. When meals are provided to staff, a provider shall ensure that staff members eat substantially the same food served to clients in care, unless age differences or special dietary requirements dictate differences in diet.

8. A provider shall purchase and provide to clients only food and drink of safe quality, and the storage, preparation and serving techniques shall ensure that nutrients are retained and spoilage is prevented.

9. Milk and milk products shall be Grade A and pasteurized.

N. Health Care

1. A provider shall ensure the availability of a comprehensive program of preventive, routine and emergency medical and dental care, as appropriate, for all clients.

2. The provider shall show evidence of access to the following health care aspects:

a. ongoing appraisal of the general health of each client;

b. provision for health education, as appropriate;

c. establishment of an ongoing immunization program;

d. approaches that ensure that any medical treatment administered will be explained to the client in language suitable to his/her age and understanding;

e. an ongoing relationship with a licensed physician and dentist to advise the provider concerning medical and dental care;

f. availability of a physician or fully equipped clinic on a 24-hour a day, seven-day a week basis;

g. provision for a dental examination as soon as practical after acceptance of the client for care and for treatment, including necessary prophylaxis, orthodontia, repairs and extractions when indicated, and for annual re-examinations; and

h. access to psychiatric and psychological resources, on both an emergency and ongoing basis, as appropriate to the needs of clients.

O. Medical Care

1. A provider shall arrange a general medical examination by a physician for each client within two weeks of admission unless the client has received such an examination within 30 days before admission and results of this examination are available to the provider. This examination shall include:

a. an examination of the client for physical injury and disease;

b. vision and hearing screening; and

c. a current assessment of the client's general health.

2. Each client taken into care should be immunized against common contagious diseases, including vaccination for smallpox and immunization against diphtheria, tetanus, poliomyelitis, whooping cough, measles and rubella.

3. Whenever indicated, the client shall be referred to an appropriate medical specialist for either further assessment or treatment, i.e., if indicated, neurological examination and psychiatric evaluation, and tuberculin test, including chest X-ray.

4. A provider must ensure that a client receives competent medical care in keeping with community standards of medical practice when he/she is ill. A physical examination shall be arranged when poor health is indicated.

5. When there has been insufficient time to prepare a client for placement, and if an adequate medical history can be obtained, the routine physical examination, as well as routine medical procedures, such as immunization, may be postponed.

P. Dental Services

1. A provider should have an organized system for providing comprehensive diagnostic dental services for all clients, which includes a complete extra- and intra-oral examination, utilizing all diagnostic aids necessary to properly evaluate the client's oral condition within a period of one month following admission, unless such an examination is in the client's case record.

2. A provider shall have access to comprehensive dental treatment services for all clients which include:

a. provision for dental treatment;

b. provision for emergency treatment on a 24-hour, seven-day-a-week basis by a qualified dentist;

c. a recall system that will assure that each client is re-examined at specified intervals in accordance with his/her needs, but at least annually.

3. A copy of the permanent dental record shall be provided to a provider when a client is transferred.

Q. Mental Health Services

1. A provider shall have access to the following services in accordance with the needs of clients:

a. psychological services;

b. psychiatric services; and

c. social work services.

2. A provider shall ensure that all providers of professional and special services:

a. provide services directly through personal contact with the client;

b. provide services indirectly through contact with staff members and others working with the client;

c. develop and record appropriate plans, goals and objectives for the client and, as appropriate, the client's family;

d. record all significant contacts with the client;

e. periodically provide written summaries of the client's response to the service, the client's current status relative to the service, and the client's progress, to be maintained in the client's case record;

f. participate, as appropriate, in the development, implementation and review of service plans and aftercare plans and in the interdisciplinary team responsible for developing such plans;

g. provide services appropriately integrated into the overall program.

3. A provider shall ensure that any professional or special service provided by the provider has:

a. adequately qualified and, when appropriate, appropriately licensed or certified staff according to state or federal law;

b. adequate space and facilities;

c. appropriate equipment;

d. adequate supplies; and

e. appropriate resources.

4. A provider shall ensure that any professional or special service provided by a person or agency outside the provider meets all relevant requirements contained herein.

R. Psychological Services

1. A provider should provide psychological services, as appropriate, to the needs of the clientele, including strategies to maximize each client's development of perceptual skills, sensorimotor skills, self-help skills, communication skills, social skills, self-direction, emotional stability, effective use of time (including leisure time), and cognitive skills.

2. Psychologists providing services to the provider shall have at least a Master's degree from an accredited program and appropriate experience or training.

S. Psychiatric Services

1. The services of a psychiatrist should be available for diagnosis, consultation and treatment of clients with mental health needs.

2. Psychiatric consultation should be available to other staff members working with clients in developing a program that promotes mental health and in helping all appropriate staff members understand and use mental health concepts in working with clients and their families.

3. Use should be made of mental health services and client guidance facilities in the community, whenever they are available, for clients and parents.

T. Social Work Services

1. Social services as part of an interdisciplinary spectrum of services shall be provided to the clients through the use of social work methods directed toward:

a. maximizing the social functioning of each client;

b. enhancing the coping capacity of the client's family; and

c. asserting and safeguarding the human and civil rights of clients and their families and fostering the human dignity and personal worth of each client.

2. During the evaluation process, which may or may not lead to admission, social workers shall help the client and family to consider alternative services and make a responsible choice as to whether and when placement is indicated.

3. During the client's admission to and residence in the provider, or while the client is receiving services from the provider, social workers shall, as appropriate, provide liaison between the client, the provider, the family and the community in order to:

a. assist staff in understanding the needs of the client and his/her family in relation to each other;

b. assist staff in understanding social factors in the client's day-to-day behavior, including staff-client relationships;

c. assist staff in preparing the client for changes in his/her living situation;

d. help the family to develop constructive and personally meaningful ways to support the client's experience in the provider through counseling concerned with problems associated with changes in family structure and functioning and referral to specific services, as appropriate; and

e. help the family to participate in planning for the client's return to the home or other community placement.

4. After the client leaves the provider, the provider's social workers should provide systematic follow-up to assure referral to appropriate community providers, when possible.

U. Medications

1. A provider shall ensure that no medication is given to any client except in accordance with the written order of a physician.

2. There shall be no standing orders for prescription medications.

3. All orders for prescribed drugs shall terminate after a period not to exceed 90 days.

4. All orders for non-prescription drugs shall terminate after a period not to exceed one year.

5. The provider shall ensure that the prescribing physician is immediately informed of any side effects observed by staff or of any medication errors.

6. A provider supervising the self-administration of psychotropic medications shall have a written description of the use of psychotropic medications except when supervised directly by the prescribing certified clinical professional or his agent, i.e., clinical social worker.

7. A provider shall ensure that medications are either self-administered or administered by qualified persons according to state law.

8. A medication shall not be administered to any client for whom the medication has not been ordered.

9. Medications shall not be used as a disciplinary measure, a convenience for staff or as a substitute for adequate, appropriate programming.

10. All medications, prescription and non-prescription, should not be accessible to clients and should be administered by qualified persons according to state law.

V. Grievance Procedure for Clients

1. A provider should create a positive climate and opportunities for clients to make complaints without fear of retaliation.

2. The provider should make every effort to ensure that all clients and their legally responsible person are aware of and understand the grievance procedure.

W. Abuse and Neglect. A provider shall have comprehensive, written procedures concerning client abuse, including:

1. a description of ongoing communications strategies used by the provider to maintain staff awareness of abuse prevention, current definitions of abuse and neglect, current reporting requirements and applicable laws;

2. a procedure ensuring immediate reporting of any suspected incident to the chief administrator or his/her designee and mandating an initial written summary on the incident to the chief administrator or his/her designee within 24 hours;

3. a procedure for ensuring that the client is protected from potential harassment during the investigation; and

4. a procedure for disciplining staff members who abuse or neglect clients.

X. Reports on Critical Incidents

1. A provider shall require social service staff to report and document deaths of clients, injuries, fights or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents and other situations or circumstances affecting the health, safety or well-being of a client or clients.

2. Such procedures shall ensure verbal and written reports to the chief administrator.

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

a. ensure immediate verbal reporting to the chief administrator or his/her designee and a preliminary written report within 24 hours of the incident;

b. ensure immediate notification of representatives of DSS and other appropriate authorities, according to state law;

c. ensure immediate, documented attempts to notify the legally responsible person of the client;

d. ensure immediate attempts to notify other involved agencies and parties, as appropriate; and,

e. ensure follow-up written reports to all appropriate persons and agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1571 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2746 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1623 (August 2009).

§6965. Direct Service Management

NOTE: This Section has been moved from LAC 67:I.1965.

A. Admission Policies

1. A provider shall have a written description of admission policies and criteria which shall include the following information:

a. the age and sex of clients in care;

b. the needs, problems, situations or patterns best addressed by the provider's program;

c. any other criterion for admission;

d. criteria for discharge;

e. any preplacement requirements on the client, the legally responsible person, DSS, or other involved agencies;

f. procedures for ensuring that placement within the program is the least restrictive alternative appropriate to meet the client's needs.

2. The provider shall, when applicable, have policies and procedures governing self-admission. Such policies and procedures shall include procedures for notification, as appropriate, of the legally responsible person.

3. A provider shall not refuse admission to any client on the grounds of race or ethnic origin.

4. A provider shall not admit more clients into care than the number specified on the provider's license.

5. A provider shall not accept any client for placement whose needs cannot be adequately met by the provider's program.

6. A provider shall ensure that the client; the legally responsible person, when appropriate; and others, as appropriate, are provided reasonable opportunity to participate in the admission process and decisions. Proper consents shall be obtained before admission.

7. When such involvement of the legally responsible person is not possible or not desirable, the reasons for their exclusion shall be recorded in the admission study.

B. Intake Evaluation

1. The provider shall accept a client into care only when a current comprehensive intake evaluation has been completed, including health and family history and medical, social, psychological and, as appropriate, developmental or vocational or educational assessment.

2. In emergency situations necessitating immediate placement into care, the provider shall:

a. gather as much information as possible about the client to be admitted and the circumstances requiring placement;

b. formalize this in an "emergency admission note" within two days of admission; and,

c. proceed with an intake evaluation as quickly as possible. The intake evaluation shall be completed within 30 days of admission.

C. Clarification of Expectations to Client. The provider shall, consistent with the client's maturity and ability to understand, make clear its expectations and requirements for behavior and provide the client referred for placement with an explanation of the provider's criteria for successful participation in and completion of the program.

D. Placement Agreement

1. The provider shall ensure that a written placement agreement is completed. A copy of the placement agreement, signed by all parties involved in its formulation, shall be kept in client's record.

2. A provider shall not admit any client into care whose presence will be seriously damaging to the ongoing functioning of the provider or to clients already in care.

3. The placement agreement should be developed with the involvement of the client and the legally responsible person. The placement agreement shall include, by reference or attachment, at least the following:

a. discussion of the client's and the family's expectations regarding family contact and involvement;

b. nature and goals of care, including any specialized services to be provided;

c. religious orientation and practices of the client;

d. anticipated discharge date and aftercare plan;

e. delineation of the respective roles and responsibilities of all agencies and persons involved with the client and his/her family;

f. authorization to care for the client;

g. authorization to obtain medical care for the client;

h. arrangements regarding visits, vacation, mail, gifts and telephone calls;

i. arrangements as to the nature and frequency of reports to and meetings involving the legally responsible person and referring agency;

j. provision for notification of the legally responsible person in the event of unauthorized absence, illness, accident or any other significant event regarding the client.

4. The provider shall ensure that each client upon placement is checked for illness, fever, rashes, bruises and injury. The client shall be asked if he/she has any physical complaints. The results of this procedure shall be documented and kept in the client's record.

5. The provider shall assign a staff member to orient the client and, where available, the family to life at the provider.

E. Discharge and After Care

1. Prior to planned discharge of a client, the provider's staff should formulate an aftercare plan discussing the supports and resources to be provided to the client and the legally responsible person.

a. Prior to discharge, the provider's staff should ensure that the client is aware of and understands his/her aftercare plan.

b. When a client is being placed in another program following discharge, representatives of the staff shall confer

with representatives of that program prior to the client's discharge to share information concerning the client.

2. The provider shall have a written policy concerning unplanned discharge. This policy shall ensure that emergency discharges initiated by the provider take place only when the health and safety of a client or other clients might be endangered by the client's further placement at the agency.

a. The provider shall give immediate notice of unplanned discharge to the legally responsible person and shall promptly notify appropriate education authorities.

b. When arranging for placement following an emergency discharge, a provider shall consult with the receiving provider to ensure that the client is placed in a program that reasonably meets the client's needs, if possible.

c. The provider shall have a written report detailing the circumstances leading to each unplanned discharge.

3. Within 30 days of discharge of a client, a provider shall compile a written discharge summary to be included in the client's record. When the client is discharged to another agency, this summary should accompany the client. This summary should include:

a. name and home address of the client and, when appropriate, the legally responsible person;

b. name, address, telephone number of the provider;

c. summary of services provided during care;

d. summary of growth and accomplishments during care;

e. assessed needs which remain to be met, and alternate service possibilities which might meet those needs; and

f. statement of an aftercare plan and identification of who is responsible for follow-up services and aftercare.

F. Individual Service Planning

1. A provider shall ensure that a direct service staff who is an appropriately qualified professional is assigned to each client and given responsibility for and authority over:

a. supervision of the implementation of the client's service plan;

b. integration of the various aspects of the client's program;

c. recording of the client's progress as measured by objective indicators;

d. reviewing the client's service plan on a quarterly basis; and

e. monitoring any extraordinary restriction of the client's freedom, including use of any form of restraint, any special restriction on a client's communication with others and any potentially harmful treatment or behavior management technique applied to the client.

2. Service Plan

a. A provider shall, within 30 days of admitting a client, ensure that a comprehensive written psychological, social and, as appropriate, educational assessment of the client has been completed and, on the basis of this assessment, shall develop a comprehensive, time-limited, goal-oriented individual service plan addressing the needs identified by the assessment.

b. Unless it is clearly not feasible to do so, a provider shall ensure that the service plan and any subsequent revisions are explained to the client and, where appropriate, the legally responsible person in language understandable to these persons.

c. The social service staff shall review each plan at least annually and shall evaluate the degree to which the goals have been achieved.

d. The social service worker shall prepare quarterly status reports on the progress of the client relative to the goals and objectives of the service plan. These reports shall be prepared by designated staff and reviewed and approved.

e. A social service worker shall ensure that all persons working directly with the client are appropriately informed of the service plan.

3. Education

a. A provider should ensure that each client has access to appropriate educational services consistent with the client's abilities and needs, taking into account his/her age and level of functioning.

b. All clients of school age must either be enrolled in a school system or a program approved by the Department of Education.

G. Arrangement of Clients into Groups. A provider should conscientiously consider the manner in which clients are arranged into groups within the provider, and document that this manner of arranging clients into groups effectively addresses the needs of clients. This statement should be in accordance with the following guidelines.

1. All clients must have privacy and a place to go for periods of relative quiet and inactivity.

2. All clients must have an opportunity to build relationships within small groups.

3. Clients must have an opportunity to form relationships with a consistent group of direct service staff.

H. Behavior Management

1. Clients should be given opportunities to learn gradually to assume responsibilities and make decisions for phases of daily living that they are able to carry out by themselves. They should have the assistance and guidance of workers whom they trust and respect, and with whom they have a positive relationship, while learning self-control and self-direction in a widening sphere of daily life.

a. Discipline is the educational process by which professionals help a client have the experiences that enable the client to learn to live in reasonable conformity with accepted standards of social behavior and to do so by progressively acquiring and applying self-control rather than relying on external pressures.

b. Every provider should develop policies and procedures to govern all disciplinary actions. Staff should be fully aware of these policies and their implications through staff development and written materials.

c. Each client should know the basic rules that include not hurting others, not destroying things and not disrupting ongoing activities.

d. Good discipline involves being clear and specific as to limits on behavior, showing the client what is permitted

and what is not, and giving feedback on actions that are right or wrong.

e. Responsibility for discipline should be given to the worker who takes care of the clients and supervises their daily activities.

2. Punishment

a. Punishment should be used only in situations where other means are ineffective and when clients can benefit from the experience of facing the consequences of unacceptable behavior not as an end in itself, but as a part of a learning process.

b. Punishment is one form of intervention by the staff in situations in which the client fails to behave as expected or required, or fails to maintain self-control. The staff should have clear reasons for choosing punishment. It is usually more effective to offer an intervention activity that can be positively enforced rather than an intervention that could prove to be a negative reinforcement to a client.

c. Timing or any punishment should be related to the occurrence of the offense and should not extend over so long a period that it loses meaning for the client.

d. Group punishment for misbehavior of one or more members is not desirable. It can have the negative long-range effect of embittering the clients who are unfairly punished and may disturb group cohesiveness. The group may become hostile to the individual client who may feel alone and rejected by them. The group may also direct its hostility to the staff member. Humiliating or degrading punishment, which undermines the client's respect (including ridicule, sarcasm, shaming, scolding or punishment in the presence of the group or another staff member), should be avoided.

i. Corporal punishment, including slapping, spanking, paddling, belting, hitting or forcing the client to march, stand or kneel rigidly in one spot, or causing any kind of physical discomfort, shall not be used other than when approved by the client's parent or guardian in writing. All state laws must be followed when approved corporal punishment is administered.

ii. Physical restraint of a client by a worker is at times necessary for the protection of the client or others.

3. Misbehavior

a. To be effective, worker intervention should be determined by an understanding of the particular client, the immediate situation, the particular living group of the client, the client's capacity at the time to learn from the experience and the treatment plan.

b. Some situations require purposeful non-interference, i.e., nothing should be done. Others call for active intervention, such as reasoning and discussion of the incident, changing the situation, disapproval, physical restraint or punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

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§6967. Physical Environment

NOTE: This Section has been moved from LAC 67:I.1967.

A. Accessibility. A provider's building, parking lots and facilities shall be accessible to and functional for clients, staff members and the public, as required by applicable federal and state laws and regulations.

B. Exterior Space

1. A provider shall ensure that all structures on the grounds of the facility accessible to clients are maintained in good repair and are free from any excessive hazard to health or safety.

2. A provider shall maintain the grounds of the facility in an acceptable manner and shall ensure that the grounds are free from any hazard to health or safety.

a. Garbage and rubbish that is stored outside shall be stored securely in non-combustible, covered containers and shall be removed on a regular basis.

b. Trash collection receptacles and incinerators shall be stored separate from the play area, and be located as to avoid being a nuisance to neighbors.

c. Fences shall be in good repair.

d. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters or high-speed roads, shall be fenced off or have natural barriers to protect clients.

e. Playground equipment shall be so located, installed and maintained as to ensure the safety of clients.

3. A provider shall have access to outdoor recreational space and suitable recreational equipment.

C. Interior Space

1. Each living unit of a provider should contain a space for the free and informal use of clients. This space shall be constructed and equipped in a manner consistent with the programmatic goals of the provider.

2. A provider shall provide an appropriate variety of interior recreational spaces.

3. A provider shall ensure the immediate accessibility of appropriate first aid supplies in the living units.

4. Dining Areas

a. A provider shall provide dining areas which permit clients, staff and, as appropriate, guests to eat together in small groups.

b. A provider shall provide dining areas which are clean, well-lighted, ventilated and attractively furnished.

5. Sleeping Accommodations

a. A provider should ensure that each client has a safe and comfortable bedroom space appropriate to age, mental health and supervision requirements. Floor space should provide appropriate freedom of movement. In evaluating bedroom floor space, easy access to large adjoining areas should be considered.

b. A provider shall not use a room with a ceiling height of less than 7 feet as a bedroom space, except in a room with varying ceiling height in which the portions of the room where the ceiling is at least 7 feet allow a useable space.

c. A provider should not permit more than four clients to occupy a designated bedroom space, unless necessitated by supervision requirements.

d. No client over the age of five years shall occupy a bedroom with a member of the opposite sex, unless the persons occupying the bedroom are a married couple, or properly documented medical reasons require it.

e. A provider shall not use any room which does not have a window as a bedroom space.

f. Each client in care of a provider shall have his/her own bed. A client's bed shall be no shorter than the client's height and no less than 30 inches wide, and shall have a clean, comfortable, non-toxic, fire-retardant mattress.

g. A provider shall ensure that sheets, a pillow, a bedspread and blankets are provided for each client.

i. Enuretic clients shall have mattresses with moisture-resistant covers.

ii. Sheets and pillowcases shall be changed at least weekly, but shall be changed more frequently if necessary.

h. A provider shall provide clients with solidly constructed beds. Cots or other portable beds are not to be used on a routine basis.

i. A provider shall ensure that the uppermost mattress of any bunk bed in use shall be far enough from the ceiling to allow the occupant to sit up in bed.

j. A provider shall provide each client in care with his/her own dresser or other adequate storage space for private use, and designated space for hanging clothing in proximity to the bedroom occupied by the client.

k. Each client in care of a provider shall have his/her own designated area for rest and sleep.

l. The decoration of sleeping areas for clients shall allow some scope for the personal tastes and expressions of the clients.

6. Bathrooms

a. A provider shall have an adequate number of washbasins with hot and cold water, flush toilets and bath or shower facilities with hot and cold water, according to client care needs.

i. Bathrooms shall be so placed as to allow access without disturbing other clients during sleeping hours.

ii. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene, unless clients are individually given such items.

iii. Tubs and showers shall have slip-proof surfaces.

b. A provider shall provide toilets and baths or showers which allow for individual privacy, unless clients in care require assistance.

c. A provider shall ensure that bathrooms have a safe and adequate supply of hot and cold running water. This water shall be potable.

d. A provider shall ensure that bathrooms contain mirrors secured to the walls at convenient heights, and other furnishings necessary to meet the clients' basic hygienic needs.

e. A provider shall ensure that bathrooms are equipped to facilitate maximum self-help by clients. Bathrooms shall be large enough to permit staff assistance of children if necessary.

f. Toilets, washbasins and other plumbing or sanitary facilities in a facility shall at all times be maintained in good operating condition, and shall be kept free of any materials that might clog or otherwise impair their operation.

7. Kitchens

a. Kitchens used for meal preparations shall be provided with the necessary equipment for the preparation, storage, serving and cleanup of all meals for all the clients and staff regularly served by such kitchen. All equipment shall be maintained in working order.

b. A provider shall not use disposable dinnerware at meals on a regular basis, unless the facility documents that such dinnerware is necessary to protect the health or safety of clients in care.

c. A provider shall ensure that all dishes, cups and glasses used by clients in care are free from chips, cracks or other defects.

8. Staff Quarters. A provider utilizing live-in staff shall provide adequate, separate living space with private bathroom for these staff.

9. Administrative and Counseling Space

a. A provider shall provide a space that is distinct from the clients' living areas to serve as an administrative office for records, secretarial work and bookkeeping.

b. A provider shall have a designated space to allow private discussions and counseling sessions between individual clients and staff.

10. Furnishings

a. A provider shall have comfortable, customary furniture as appropriate for all living areas. Furniture for the use of clients shall be appropriately designed to suit the size and capabilities of these clients.

b. A provider shall ensure that there is evidence of routine maintenance and cleaning programs in all areas of the provider.

c. A provider shall replace or repair broken, run-down or defective furnishings and equipment promptly.

11. Doors and Windows

a. A provider shall ensure that any designated bedroom in which the bedroom space is not equipped with a mechanical ventilation system is provided with windows that have an openable area at least 5 percent as large as the total floor area of the bedroom space.

b. A provider shall provide insect screening for all opened windows. This screening shall be readily removable in emergencies and shall be in good repair.

c. A provider shall ensure that all closets used by clients, and bedrooms and bathrooms which have doors, are provided with doors that can be readily opened from both sides.

12. Storage

a. A provider shall ensure that there are sufficient and appropriate storage facilities.

b. A provider shall have securely locked storage space for all potentially harmful materials. Keys to such storage spaces shall only be available to authorized staff members.

13. Electrical Systems

a. A provider shall ensure that all electrical equipment, wiring, switches, sockets and outlets are maintained in good order and safe condition.

b. A provider shall ensure that any room, corridor or stairway within a facility is sufficiently illuminated.

c. A provider shall provide adequate lighting of exterior areas to ensure the safety of clients and staff during the night.

14. Heat

a. A provider shall take all reasonable precautions to ensure the heating elements, including exposed hot water pipes, are insulated or installed in a manner that ensures the safety of clients.

b. A provider shall maintain the spaces used by clients at reasonable temperatures.

c. A provider shall not use open flame heating equipment.

15. Water. A provider shall ensure that hot water accessible to clients is regulated to a temperature not in excess of 110 degrees F., unless a variance is granted.

16. Finishes and Surfaces

a. A provider shall not utilize any excessively rough surface or finish where this surface or finish may present a safety hazard to clients.

b. A provider shall not have walls or ceilings surfaced with materials containing asbestos.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1577 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2753 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1630 (August 2009).

§6969. Emergency and Safety

NOTE: This Section has been moved from LAC 67:I.1969.

A. Emergency and Safety Plan

1. A provider should have a plan for emergency and safety procedures.

2. The plan should provide for the evacuation of clients to safe or sheltered areas.

3. The plan should include provisions for training of staff and, as appropriate, clients in preventing, reporting and responding to fires and other emergencies.

4. The plan should provide means for an ongoing safety program including continuous inspection of the provider for possible hazards, continuous monitoring of safety equipment and investigation of all accidents or emergencies.

B. Emergency Drills

1. A provider shall conduct emergency drills at least once every three months and at varying times of the day.

2. A provider shall make every effort to ensure that staff and clients recognize the nature and importance of such drills.

C. Access to Emergency Services

1. A provider shall have access to 24-hour telephone service.

2. The provider shall either have posted telephone numbers of emergency services, including fire department, police, medical services, poison control and ambulance, or be able to show evidence of an alternate means of immediate access to these services.

D. General Safety Practices

1. A provider shall not maintain any firearm or chemical weapon in the living units of the facility.

2. A provider shall ensure that all poisonous, toxic and flammable materials are safely stored in appropriate containers labeled as to contents. Such materials shall be maintained only as necessary and shall be used in such a manner as to ensure the safety of clients, staff and visitors.

3. A provider should ensure that an appropriately equipped first-aid kit is available in the provider's building.

4. Every required exit, exit access and exit discharge in a provider's building shall be continuously maintained free of all obstructions or impediments to immediate use in the case of fire or other emergency.

5. A provider shall prohibit the use of candles in sleeping areas of the clients.

6. Power-driven equipment used by a provider shall be kept in safe and good repair. Such equipment shall be used by clients only under the direct supervision of a staff member and according to state law.

7. A provider shall have procedures to prevent insect and rodent infestation.

E. Transportation

1. The provider shall ensure that each client is provided with the transportation necessary for implementing the client's service plan.

2. The provider shall have means of transporting clients in case of emergency.

3. Any vehicle used in transporting clients in care of the provider, whether such vehicle is operated by a staff member of any other person acting on behalf of the provider, shall be properly licensed and inspected in accordance with state law.

4. The provider shall not allow the number of persons in any vehicle used to transport clients to exceed the number of available seats in the vehicle.

5. All vehicles used for the transportation of clients shall be maintained in a safe condition and be in conformity with all applicable motor vehicle laws.

6. Identification of vehicles used to transport clients in care of a provider shall not be of such nature to embarrass or in any way produce notoriety for clients.

7. The provider shall ascertain the nature of any need or problem of a client which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness or a disability. The provider shall communicate such information to the operator of any vehicle transporting clients in care.

8. The following additional arrangements are required in all vehicles except automobiles for a provider serving handicapped, non-ambulatory clients.

a. A ramp device to permit entry and exit of a client from the vehicle must be provided for all vehicles that are

normally used to transport physically handicapped clients. A mechanical lift may be utilized, provided that a ramp is also available in case of emergency.

b. Wheelchairs used in transit shall be securely fastened to the vehicle.

c. The arrangement of the wheelchairs shall provide an adequate aisle space and shall not impede access to the exit door of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1579 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2754 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1632 (August 2009).

Kristy H. Nichols
Secretary

0908#105

Notices of Intent

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 102—Louisiana Physical Education Content Standards (LAC 28:LIII.Chapters 5, 7, 9, 11 and 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 102—Louisiana Physical Education Content Standards*: Chapters 5, 7, 9, 11, and 15. The proposed policy change to *Bulletin 102—Louisiana Physical Education Content Standards* is the result of R.S. 17:17.4, which requires the development of physical education curricula in all public elementary and secondary schools in the state. The proposed change makes additions and deletions to existing standards and benchmarks. New grade-level expectations (GLEs) are to replace the contents of Chapter 15 in *Bulletin 102*.

Title 28
EDUCATION
Part LIII. Bulletin 102—Louisiana Physical Education Content Standards
Subpart 3. Cluster Levels

Chapter 5. Grades K-2—Primary Cluster Level

§501. Standard 1

A. Standard 1 demonstrates competency in many movement forms and proficiency in a few movement forms.

1. Intent. The intent of this standard is to enable students to demonstrate mature locomotor and non-locomotor skills and combine these movements in smooth and rhythmical sequences in a variety of conditions.

B. Benchmarks

1-P-1	Performs locomotor and non-locomotor skills at a basic level progressing to simple sequences utilizing shapes, levels, directions, pathways, and ranges.	(2,4)
1-P-2	Demonstrates ways to manage body weight in a variety of situations alone or within a group.	(1,3,4)
1-P-3	Performs manipulative skills using a variety of equipment in different environmental conditions.	(1,2,4,5)
1-P-4	Performs basic rhythmic skills alone, with a partner or within a group.	(1,2,5)
2-P-1	Integrates other content areas through movement.	(1,2,3,4,5)
2-P-2	Demonstrates and uses a variety of relationships with objects.	(1,2,4)
2-P-3	Identifies fundamental movement patterns.	(1,2,4)
2-P-4	Establishes a beginning movement vocabulary.	(1,2,4)
2-P-5	Applies appropriate concepts to performance.	(1,2,4)

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1177 (June 2002), amended LR 35:

§503. Standard 2

A. - A.1 …

B. Benchmarks

1-E-1	Demonstrates mature forms in locomotor, non-locomotor, and manipulative skills.	(1,3,5)
1-E-2	Combines a variety of motor skills for specific sports with a stationary and/or moving partner.	(1,3,5)
1-E-3	Exhibits ability to manipulate objects with the skills necessary to participate in games and lead-up activities (e.g., engages in simple games requiring manipulative skills).	(2,3,5)
1-E-4	Demonstrates the ability to perform rhythmic movement patterns and dances (e.g., performs rhythmic body movements and communicates ideas and feelings with and without music).	(1,4)

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1179 (June 2002), amended LR 35:

§703. Standard 2

A. Standard 2 applies movement concepts and principles to the learning and development of motor skills.

1. Intent. The intent of this standard is for students to use critical elements to refine personal performance of fundamental motor skills and selected specialized motor skills. They should be able to identify and apply concepts that impact the quality of movement performance in increasingly complex movement situations.

B. Benchmarks

2-E-1	Integrates movement concepts with other content areas (e.g., measuring distances and timing races or events).	(2,4)
2-E-2	Applies critical elements to improve personal performance in fundamental and selected specialized motor skills (e.g., describes and demonstrates body positions for each part of an overhand throw).	(1,4)

2-E-3	Recognizes and describes critical elements of more complex movement patterns (e.g., describes the use of the arms, as well as the legs, in performing jumping for distance and height).	(1.4)
2-E-4	Employs the concept of efficient and effective practice to improve skills in appropriate settings (e.g., repeating the skill of basketball lay-ups in a gym or playground setting).	(2.5)

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1179 (June 2002), amended LR 35:

§705. Standard 3

A. - A.1…

B. Benchmarks

3-E-1	Describes the physical benefits of participation in health-related activities.	(1,5)
3-E-2	Identifies several moderate to vigorous physical activities that provides personal pleasure and participates in them (e.g., participates in youth league soccer after school, or joins in a pick-up game of basketball).	(1,4,5)
3-E-3	Selects and participates regularly in physical activities for the purpose of improving skill and health (engages in activities that promote cardiovascular fitness).	(2,4)

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1179 (June 2002), amended LR 35:

§707. Standard 4

A. - A.1. …

B. Benchmarks

4-E-1	Identifies several activities related to each component of health-related fitness.	(1,4)
4-E-2	Participates in self-assessment for health-related fitness.	(1,2,4)
4-E-3	Selects an activity program that is designed to improve health-related fitness.	(2)
4-E-4	Adopts personal goals based upon results of fitness assessments.	(1,2,3,4,5)
4-E-5	Achieves reasonable levels in all components of health-related fitness.	(1,2,3,4,5)

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1179 (June 2002), amended LR 35:

§711. Standard 6

A. - A.1. …

B. Benchmarks

6-E-1	Displays positive attitudes toward self and others through physical activity.	(1,5)
6-E-2	Demonstrates tolerance for individual differences.	(1,5)
6-E-3	Explores the role of history in physical activities /games and sports of the United States and other countries.	(1,4,5)

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1180 (June 2002), amended LR 35:

§713. Standard 7

A. - A.1. …

B. Benchmarks

7-E-1	Exhibits positive feelings about participation in physical activity.	(1,5)
7-E-2	Engages in the challenge of new activities.	(1,3,4)
7-E-3	Participates enthusiastically in independent and interactive physical activities.	(1,2,3,5)
7-E-4	Participates in and designs games, gymnastics and/or dance to increase participation and enjoyment of activities.	(1,2,3,4,5)
7-E-5	Acknowledges the role of games, sports, and dance in getting to know and understand self and others.	(1,4,5)

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1180 (June 2002), amended LR 35:

Chapter 9. Grades 6-8—Middle School Cluster Level

§901. Standard 1

A. Standard 1 demonstrates competency in many movement forms and proficiency in a few movement forms.

B. The middle school student is expected to demonstrate competence in a variety of movement forms. As a result of an increased ability to vary skills, students are able to participate successfully in dance activities, outdoor pursuits, and modified versions of team and individual sports. To do this, students should demonstrate competence in the basic skills and their application to modified versions of these movement forms.

C. Benchmarks

1-M-1	Demonstrates the ability to combine locomotor, non-locomotor, and manipulative skills.	(3)
1-M-2	Exhibits basic strategies related to specific lead-up games.	(1,2,4)
1-M-3	Demonstrates basic competency in more complex motor skills and advanced specialized skills related to specific sports activities (e.g., modified versions of team or individual sports).	(2,4)
1-M-4	Demonstrates the ability to create rhythmic movement patterns.	(1,2,4,5)
1-M-5	Demonstrates strategies for net and invasion games.	(1,2,4,5)

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1180 (June 2002), amended LR 35:

§903. Standard 2

A. Standard 2 applies movement concepts and principles to the learning and development of motor skills.

B. Middle school students' increasing competence affords them opportunities to develop more advanced

knowledge and understanding. This is exemplified through their application of more advanced movement, knowledge of critical elements of advanced movement skills, and the identification of biomechanical principals important to highly skilled performance. Concepts of practice indicative of the increasing complexity of discipline-specific knowledge that can beidentified and applied to movement.

C. Benchmarks

2-M-1	Analyzes and applies basic concepts to improve movement, dance, fitness, game and sports skills being practiced.	(2,4)
2-M-2	Demonstrates how practicing movement skills improves performance and compares differences in successful throws from first attempts to last attempts.	(4)
2-M-3	Analyzes and applies advanced movement and game strategies.	(2,4)
2-M-4	Recognizes and applies principles necessary for safe and skilled physical performance.	(2,4)

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1181 (June 2002), amended LR 35:

§905. Standard 3

A. Standard 3 exhibits a physically active lifestyle.

B. The middle school student should participate in at least one physical activity outside of the school setting on a regular basis. It is the intent of this standard to increase awareness of the opportunities for participation and interest in participating in a superfluous of different kinds of physical activity experiences. Students should be able to independently set physical activity goals and participate in individualized programs of physical activity and exercise based on the results of fitness assessments, personal fitness goals and interest. Greater and more specific understanding of long-term health benefits and understanding the relationship of health maintenance to the quality of lifelong health is expected.

C. Benchmarks

3-M-1	Identifies opportunities in the school and community for regular participation in physical activity.	(2,3,4)
3-M-2	Explores a variety of new physical activities for personal interest in and out of physical education class.	(2,3,4)
3-M-3	Establishes and pursues personal physical activity goals through regular physical activity.	(1,2,3,4)
3-M-4	Describes the elements of a healthy lifestyle.	(1,2,3,4)

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1181 (June 2002), amended LR 35:

§907. Standard 4

A - B. …

C. Benchmarks

4-M-1	Participates in and sustains moderate to vigorous physical activity in a variety of settings.	(4)
4-M-2	Develops individual goals for each of the health-related fitness components.	(2,4)
4-M-3	Participates in self-assessment for health-related fitness and meets the standards for that particular test for their appropriate age group.	(3,4)
4-M-4	Analyzes and applies basic principles of training to improve health-related fitness.	(2,4)

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1181 (June 2002), amended LR 35:

§911. Standard 6

A - B. …

C. Benchmarks

6-M-1	Analyzes, describes and participates in simple forms of dances and games of various cultures from around the world.	(3,4)
6-M-2	Recognizes commonalties and differences in people of different genders, cultures, ethnicity, abilities and skill levels, and seeks to learn more about both.	(2,4,5)
6-M-3	Recognizes the role of sport, games and dance in getting to know and understand others of like and different backgrounds.	(3,5)

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1182 (June 2002), amended LR 35:

§913. Standard 7

A - B. …

C. Benchmarks

7-M-1	Participates in challenging activities and in activities requiring the utilization of newly acquired skills.	(2,4)
7-M-2	Identifies the social, emotional and physical benefits of participation in physical activities.	(1,4)
7-M-3	Demonstrates enjoyment from participation in physical activities.	(5)

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1182 (June 2002), amended LR 35:

Chapter 11. Grades 9-12—High School Cluster Level

§1101. Standard 1

A - B. …

C. Benchmarks

1-H-1	Demonstrates proficiency in applying advanced skills, strategies and rules for specific activities.	(1,2,3,4,5)
1-H-2	Develops outdoor and lifelong leisure pursuits.	(1,3,4,5)

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1183 (June 2002), amended LR 35:

§1103. Standard 2

A - B. …

C. Benchmarks

2-H-1	Synthesizes previously learned skills and incorporates them into dynamic physical activity settings.	(1,2,3,4)
2-H-2	Identifies and applies critical elements to enable the development of movement competence/proficiency.	(1,2,3,4)

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1183 (June 2002), amended LR 35:

§1105. Standard 3

A - B. …

C. Benchmarks

3-H-1	Utilizes available community resources to promote an active lifestyle.	(1,2,3,4,5)
3-H-2	Participates in lifetime recreational activities specific to fitness components.	(1,2,3,4,5)
3-H-3	Participates regularly in physical activities that contribute to improved physical fitness and wellness.	(3,4,5)

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1183 (June 2002), amended LR 35:

§1107. Standard 4

A - B. …

C. Benchmarks

4-H-1	Participates in a variety of health-enhancing physical activities in both school and non-school settings.	(3,4,5)
4-H-2	Identifies and evaluates personal physiological response to exercise.	(2,3,4)
4-H-3	Designs health-related fitness programs based on accurately assessed fitness profiles.	(1,2,3,4,5)

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1183 (June 2002), amended LR 35:

§1109. Standard 5

A - B. …

C. Benchmarks

5-H-1	Demonstrates safe and appropriate use and care of equipment and facilities.	(1,3,4)
5-H-2	Identifies the inherent risks associated with physical activity in extreme environments.	(1,2,4,5)
5-H-3	Initiates and models independent and interdependent personal behaviors in physical activity settings.	(1,2,5)

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1184 (June 2002), amended LR 35:

§1113. Standard 7

A - B. …

C. Benchmarks

7-H-1	Participates for enjoyment in a variety of physical activities in competitive and recreational settings.	(1,2,4,5)
7-H-2	Identifies positive aspects of participation in several different physical and social activities with others.	(1,2,4,5)
7-H-3	Illustrates benefits of physical education on social and emotional well-being.	(1,2,5)

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1184 (June 2002), amended LR 35:

Subpart 5. Cluster Level Charts

Chapter 15. Grade-Level Expectations

§1501. Kindergarten Grade-Level Expectations

A. Standard 1

1. Benchmark 1-P-1

a. 1-P-1.1 Demonstrate an awareness of personal and general space while moving in different directions.

b. 1-P-1.2 Demonstrate correct form for the locomotor skills of walk, run, jump, hop, and gallop.

c. 1-P-1.3 Demonstrate selected elements of space awareness movement concepts for levels and directions, such as low, medium, high, up/down, forward/backward, right/left, clockwise/counter-clockwise.

2. Benchmark 1-P-2

a. 1-P-2.1 Maintain balance on preferred and non-preferred leg in a variety of positions and levels for a minimum of five seconds.

b. 1-P-2.2 Walk forward and sideways (feet should not cross) on a two inch line for a distance of ten feet.

c. 1-P-2.3 Demonstrate climbing up and down steps using alternating feet.

d. 1-P-2.4 Demonstrate the ability to support body weight while hanging, without feet touching the ground.

3. Benchmark 1-P-3

a. 1-P-3.1 Demonstrate the ability to strike an object using a variety of body parts.

b. 1-P-3.2 Demonstrate the ability to roll a ball.

c. 1-P-3.3 Demonstrate the ability to catch a tossed ball using the hands and/or body.

d. 1-P-3.4 Demonstrate the ability to kick a stationary object.

e. 1-P-3.5 Demonstrate the ability to throw an object underhand.

f. 1-P-3.6 Demonstrate the ability to bounce a ball continuously using two hands.

4. Benchmark 1-P-4

a. 1-P-4.1 Perform locomotor and non-locomotor movements to a steady beat.

b. 1-P-4.2 Clap hands to a simple, rhythmic beat.

B. Standard 2

1. Benchmark 2-P-1

a. 2-P-1.1 Identify parts of the body (e.g.. head, knee, shoulder, back, elbow, hips, and ankle).

b. 2-P-1.2 Demonstrate the ability to incorporate language arts, math, social studies, and science concepts through movement activities (e.g., recognition of letters, numbers, animal movements).

2. Benchmark 2-P-2

a. 2-P-2.1 Understand and respond appropriately to the terms of over, under, behind, next to, through, right, left, up, down, forward, backward, and in front of, using the body and other objects.

b. 2-P-2.2 Demonstrate the ability to move directionally upon verbal cue (forward, backward, sideways, around).

3. Benchmark 2-P-3

a. 2-P-3.1 Recognize the locomotor skills of walk, run, jump, hop, gallop, levels, and pathways when demonstrated.

b. 2-P-3.2 Identify non-locomotor skills of push, pull, bend, twist, stretch, and turn when demonstrated.

4. Benchmark 2-P-4

a. 2-P-4.1 Demonstrate the ability to follow directions given the following movement vocabulary: slow/fast, forward/backward, sideways, up/down, straight.

5. Benchmark 2-P-5

a. 2-P-5.1 Demonstrate the ability to change movement patterns of walk, run, jump, hop, and gallop on command.

C. Standard 3

1. Benchmark 3-P-1

a. 3-P-1.1 Participate regularly in a variety of non-structured and minimally organized physical activities outside of physical education class (e.g., at home, recess, before school and after school). Record using teacher/parent log.

2. Benchmark 3-P-2

a. 3-P-2.1 Explain how physical activity can improve one's health.

3. Benchmark 3-P-3

a. 3-P-3.1 Willingly participate in and attempt new physical activities during free time.

D. Standard 4

1. Benchmark 4-P-1

a. 4-P-1.1 Participate for short periods of time (10 minutes) in moderate to vigorous physical activities that cause increased heart rate and respiration.

2. Benchmark 4-P-2

a. 4-P-2.1 Observe and describe the relationship and immediate effect of physical activity on the heart, respiration, and perspiration.

3. Benchmark 4-P-3

a. 4-P-3.1 Demonstrate sufficient muscular strength by supporting body weight in various activities (bear walk, crab walk, seal walk).

4. Benchmark 4-P-4

a. 4-P-4.1 Demonstrate the ability to correctly perform a variety of teacher-led flexibility activities regularly during physical education.

D. Standard 5

1. Benchmark 5-P-1

a. 5-P-1.1 Follow rules, directions, and procedures from the instructor with reinforcement.

2. Benchmark 5-P-2

a. 5-P-2.1 Demonstrate self-discipline and responsibility while actively participating in group, individual and partner activities.

3. Benchmark 5-P-3

a. 5-P-3.1 Cooperate with another student or small group in sharing equipment and space to complete a task.

4. Benchmark 5-P-4

a. 5-P-4.1 Demonstrate the characteristics of sharing and positive interaction during physical activity.

b. 5-P-4.2 Resolve conflicts with others in socially acceptable ways.

E. Standard 6

1. Benchmark 6-P-1

a. 6-P-1.1 Choose partners or playmates without regard to physical differences.

2. Benchmark 6-P-2

a. 6-P-2.1 Willingly participate with partners or groups in physical education activities regardless of gender, cultural differences, and/or special needs.

3. Benchmark 6-P-3

a. 6-P-3.1 Demonstrate a willingness to encourage and help others in the physical activity setting through actions and words.

F. Standard 7

1. Benchmark 7-P-1

a. 7-P-1.1 Communicate likes and dislikes of activities when given an opportunity to share (thumbs up, thumbs down, raising of hands, verbal responses).

2. Benchmark 7-P-2

a. 7-P-2.1 Express positive feelings when describing activities.

b. 7-P-2.2 Develop and demonstrate positive attitudes towards physical activity.

3. Benchmark 7-P-3

a. 7-P-3.1 Willingly choose new activities in which to participate when given several options.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.; R.S. 17:17.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1185 (June 2002), amended LR 35:

§1503. Grade 1 Grade-Level Expectations

A. Standard 1

1. Benchmark 1-P-1

a. 1-P-1.1 Demonstrate all locomotor skills (walk, run, leap, jump, hop, slide, gallop, and skip).

b. 1-P-1.2 Demonstrate clear contrasts between slow and fast movements traveling in different directions and in personal and general space without bumping into others or falling.

c. 1-P-1.3 Demonstrate selected non-locomotor skills (push, pull, bend, twist, stretch, turn).

d. 1-P-1.4 Distinguish between straight, curved, and zigzag pathways while traveling in various ways.

e. 1-P-1.5 Roll sideways, right or left, without hesitating (e.g., log roll).

f. 1-P-1.6 Demonstrate the following body shapes: narrow, round, wide, and twisted.

2. Benchmark 1-P-2

a. 1-P-2.1 Jump and land using a combination of one and two-footed takeoffs and landings

b. 1-P-2.2 Demonstrate proper foot patterns in hopping, jumping, skipping, leaping, galloping, and sliding.

c. 1-P-2.3 Demonstrate control in balancing and locomotor movement activities.

3. Benchmark 1-P-3

a. 1-P-3.1 Demonstrate the underhand and overhand throw patterns.

b. 1-P-3.2 Demonstrate the two-handed overhead throw pattern.

c. 1-P-3.3 Catch and gently throw an object from self or another person.

d. 1-P-3.4 Move to approach a stationary ball and kick it.

e. 1-P-3.5 Strike an object upward continuously using a variety of body parts and/or equipment.

f. 1-P-3.6 Dribble a ball continuously using the preferred hand while stationary.

4. Benchmark 1-P-4

a. 1-P-4.1 Create or imitate movement in response to rhythmic patterns and music.

b. 1-P-4.2 Combine locomotor patterns in time to music.

c. 1-P-4.3 Perform rhythmic patterns using body movements and manipulatives (e.g., parachute, balls, sticks, ribbons).

B. Standard 2

1. Benchmark 2-P-1

a. 2-P-1.1 Identify the right and left sides of the body and movement from right to left and left to right (dance).

b. 2-P-1.2 Identify various body parts and levels in performing physical activities.

c. 2-P-1.3 Demonstrate the ability to incorporate language arts, math, social studies, and science concepts through movement activities (alphabetize letters, counting, mass and weight, folk/line dance).

2. Benchmark 2-P-2

a. 2-P-2.1 Identify and demonstrate selected elements of relationship movement concepts of objects, such as over/under, on/off, near/far, in front/behind, along/through, meeting/parting surrounding, around, and alongside in isolated settings.

b. 2-P-2.2 Demonstrate the ability to move directionally upon verbal and rhythmic cues.

3. Benchmark 2-P-3

a. 2-P-3.1 Distinguish between a jog and a run, a hop and a jump, and a gallop and a slide.

b. 2-P-3.2 Recognize levels and pathways when demonstrated.

c. 2-P-3.3 Identify major characteristics of the basic manipulative skills of throw (using underhand, sidearm, or overhand), catch, kick, and strike (using underhand, sidearm, or overhand).

d. 2-P-3.4 Apply movement concepts of walk, jog, and run to a variety of basic skills (e.g., throw, catch, strike).

4. Benchmark 2-P-4

a. 2-P-4.1 Demonstrate the ability to follow directions given the following movement vocabulary: high/low, close/far, alone/partner, curved, zigzag , right/left, clockwise/counter/clockwise.

5. Benchmark 2-P-5

a. 2-P-5.1 Demonstrate the ability to combine any locomotor skills with concepts of space and direction.

C. Standard 3

1. Benchmark 3-P-1

a. 3-P-1.1 Participate regularly in a variety of physical activities outside of physical education class (e.g., playing, bicycling, sport teams, gymnastics, and/or dance). Record using teacher/parent log.

2. Benchmark 3-P-2

a. 3-P-2.1 Identify the location of the heart and lungs and explain what happens during physical exercise.

b. 3-P-2.2 istinguish between active and inactive lifestyles.

3. Benchmark 3-P-3

a. 3-P-3.1 Willingly attempt new physical activities when presented with a variety of options.

b. 3-P-3.2 Exhibit both verbal and non-verbal indicators of enjoyment of, or satisfaction with, physical activity.

D. Standard 4

1. Benchmark 4-P-1

a. 4-P-1.1 Participate in sustained moderate to vigorous physical activities that cause increased heart rate and respiration for a period of 15 minutes.

b. 4-P-1.2 Identify changes in the body that occur during vigorous activity.

2. Benchmark 4-P-2

a. 4-P-2.1 Describe and participate in a variety of physical activities that promote positive gains in health-related fitness.

b. 4-P-2.2 Identify that moderate levels of physical activity increase heart rate, respirations and perspiration, etc. (e.g., running, galloping, and hopping).

3. Benchmark 4-P-3

a. 4-P-3.1 Demonstrate the ability to correctly perform a variety of teacher-led exercises for muscular strength and endurance (crunches, squats, lunges, push-up choices, dyna bands, musical activities).

b. 4-P-3.2 Demonstrate sufficient muscular strength to bear body weight for climbing, hanging, and momentary body support of the hands.

4. Benchmark 4-P-4

a. 4-P-4.1 Demonstrate and identify flexibility activities for shoulders, legs, and trunk.

E. Standard 5

1. Benchmark 5-P-1

a. 5-P-1.1 Follow rules, directions, and procedures from the instructor with little reinforcement.

2. Benchmark 5-P-2

a. 5-P-2.1 Engage in activity in a diverse group setting without interferring with others.

3. Benchmark 5-P-3

a. 5-P-3.1 Demonstrate cooperation and consideration of others in group activities (sharing and taking turns).

4. Benchmark 5-P-4

a. 5-P-4.1 Exhibit behavior which exemplifies responsibility to avoid conflict, best effort, cooperation, and compassion/empathy in a controlled setting.

b. 5-P-4.2 Demonstrate socially acceptable conflict resolution during class activity.

F. Standard 6

1. Benchmark 6-P-1

a. 6-P-1.1 Positively interact with others regardless of physical abilities.

2. Benchmark 6-P-2

a. 6-P-2.1 Show appropriate sportsmanship and sensitivity to diversity and gender issues.

3. Benchmark 6-P-3

a. 6-P-3.1 Encourage fellow students who experience difficulty with a task by giving verbal cues, visual cues, or demonstrations.

G. Standard 7

1. Benchmark 7-P-1

a. 7-P-1.1 Identify and demonstrate acceptable responses to challenges, successes, and failures during physical activity.

2. Benchmark 7-P-2

a. 7-P-2.1 Willingly participate in physical activity.

b. 7-P-2.2 Identify a limited number of emotions related to how the student feels while participating in physical activity.

3. Benchmark 7-P-3

a. 7-P-3.1 Show signs of excitement and willing participation when exposed to new activities, skills, and movements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.; R.S. 17:17.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1185 (June 2002), amended LR 35:

§1505. Grade 2 Grade-Level Expectations

A. Standard 1

1. Benchmark 1-P-1

a. 1-P-1.1 Demonstrate mature form for locomotor skills (walk, run, jog, leap, jump, hop, slide, gallop, and skip).

b. 1-P-1.2 Demonstrate locomotor skills combining two or more while using different levels, tempo, directions, and pathways.

c. 1-P-1.3 Demonstrate skills of chasing, fleeing, and dodging to avoid or catch others, individually and with a partner.

2. Benchmark 1-P-2

a. 1-P-2.1 Balance on one, two, three, and four body parts on the ground and on objects.

b. 1-P-2.2 Demonstrate balance in symmetrical and non-symmetrical shapes from different basis of support.

c. 1-P-2.3 Jump from a variety of elevations and land using mature form (balanced knees and ankles flexed, absorbing force).

d. 1-P-2.4 Demonstrate control in traveling, weight bearing, weight transfer, and balancing activities.

e. 1-P-2.5 Demonstrate simple stunts that exhibit personal agility such as jumping, one and two foot takeoffs, and landing with good control.

3. Benchmark 1-P-3

a. 1-P-3.1 Roll a ball to a target using proper form.

b. 1-P-3.2 Throw a ball overhand for distance using proper form.

c. 1-P-3.3 Catch an object above and below the waist using proper form.

d. 1-P-3.4 Kick a rolling ball using a smooth, continuous running approach.

e. 1-P-3.5 Strike an object upward continuously using a short handed paddle or racket.

f. 1-P-3.6 Strike an object using a long-handled implement (e.g., underhand, sidearm, or overhand).

g. 1-P-3.7 Dribble a ball continuously while moving using dominant and non-dominant hand.

h. 1-P-3.8 Dribble a ball continuously while moving both feet.

4. Benchmark 1-P-4

a. 1-P-4.1 Demonstrate a smooth transition between even-beat and uneven-beat locomotor skills in response to music or an external beat.

b. 1-P-4.2 Combine locomotor patterns in time to music while changing directions.

c. 1-P-4.3 Perform rhythmic sequences related to simple folk dance or ribbon routines.

d. 1-P-4.4 With a partner, demonstrate rhythmic sequences related to simple folk dance or ribbon routines.

B. Standard 2

1. Benchmark 2-P-1

a. 2-P-1.1 Combine movement patterns and body planes (front, back, side).

b. 2-P-1.2 Demonstrate the ability to incorporate language arts, math, social studies, and science concepts

through movement activities (word analysis, math concepts such as addition and subtraction facts, science of spin, and geography).

2. Benchmark 2-P-2

a. 2-P-2.1 Manipulate an object using hands or feet through a series of cones or other objects.

b. 2-P-2.2 Identify and demonstrate selected relationship movement concepts of objects and/or people while maneuvering through a student- or teacher-made obstacle course.

3. Benchmark 2-P-3

a. 2-P-3.1 Distinguish between a leap, gallop, and skip and explain key differences and similarities of movement.

b. 2-P-3.2 Recognize combined locomotor skills, levels, and pathways.

c. 2-P-3.3 Identify major characteristics of the basic manipulative skills of bouncing and dribbling and explain the key difference and similarities of those movements.

4. Benchmark 2-P-4

a. 2-P-4.1 Demonstrate the ability to follow directions given the following movement vocabulary: light/heavy, balance, twist, kick, strike.

5. Benchmark 2-P-5

a. 2-P-5.1 Demonstrate the ability to combine locomotor and non-locomotor skills into complex movement sequence (e.g., dribble while running, rope jumping).

C. Standard 3

1. Benchmark 3-P-1

a. 3-P-1.1 Keep a log of participation in a variety of unstructured or structured and/or organized physical activities outside of physical education class.

2. Benchmark 3-P-2

a. 3-P-2.1 Recognize and identify the health related physical fitness components.

b. 3-P-2.2 Identify at least one activity associated with each component of health-related physical activity.

3. Benchmark 3-P-3

a. 3-P-3.1 Identify positive feelings that result from participation in physical activity.

D. Standard 4

1. Benchmark 4-P-1

a. 4-P-1.1 Identify and participates in sustained moderate to vigorous physical activities that promote cardiovascular, muscular, and flexibility benefits for a minimum of 50% of class time.

b. 4-P-1.2 Identify changes in the body that occur during vigorous activity.

2. Benchmark 4-P-2

a. 4-P-2.1 Compare and contrast changes in heart rate and perspiration before, during, and after physical activity by counting heart rate for six seconds and adding a zero.

3. Benchmark 4-P-3

a. 4-P-3.1 Perform numerous repetitions of activities involving strength and muscular endurance (crunches, push-ups, pull-ups).

b. 4-P-3.2 Lift and support his/her weight in selected activities (e.g., hanging, hopping, and jumping) that develop muscular strength and endurance of the arms, shoulders, abdomen, back, and legs.

4. Benchmark 4-P-4

a. 4-P-4.1 Demonstrate and explain flexibility and its importance for injury prevention during physical activity.

b. 4-P-4.2 Perform appropriate exercises for flexibility in shoulders, legs, and trunk.

E. Standard 5

1. Benchmark 5-P-1

a. 5-P-1.1 Follow rules, directions, and procedures from the instructor while participating in physical education.

2. Benchmark 5-P-2

a. 5-P-2.1 Demonstrate an ability to handle equipment safely and properly.

b. 5-P-2.2 Select and use appropriate protective equipment in preventing injuries such as helmets, elbow/knee pads, wrist guards, proper shoes, and clothing.

3. Benchmark 5-P-3

a. 5-P-3.1 Demonstrate cooperative interaction in small and large group activities without teacher interaction.

4. Benchmark 5-P-4

a. 5-P-4.1 Demonstrate socially acceptable behavior to resolve conflicts through successful communication with peers and teachers.

F. Standard 6

1. Benchmark 6-P-1

a. 6-P-1.1 Willingly participate with students with varying skill and fitness levels in controlled settings.

2. Benchmark 6-P-2

a. 6-P-2.1 Demonstrate respect for all students regardless of individual differences in skill or ability.

3. Benchmark 6-P-3

a. 6-P-3.1 Acknowledge one's opponent or partner before, during, and after an activity and gives positive feedback on their performance.

G. Standard 7

1. Benchmark 7-P-1

a. 7-P-1.1 Accept personal responsibility for one's challenges, successes, and failures during physical activity.

2. Benchmark 7-P-2

a. 7-P-2.1 Demonstrate respect for self, others, and equipment during physical activity.

b. 7-P-2.2 Identify emotions before, during, and after participating in physical activity.

3. Benchmark 7-P-3

a. 7-P-3.1 Identifies a new activity and participates in it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.; R.S. 17:17.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1185 (June 2002), amended LR 35:

§1507. Grade 3 Grade-Level Expectations

A. Standard 1

1. Benchmark 1-E-1

a. 1-E-1.1 Demonstrate and understand the spatial awareness movement concepts (e.g., personal space, general space and boundaries) in individual, partner, and group activities.

b. 1-E-1.2 Demonstrate directional awareness movement concepts and pathways (e.g., up/down, forward/backward, right/left, and clockwise/

counterclockwise, diagonal, zigzag, curved, and straight) in individual/partner, and group settings.

c. 1-E-1.3 Demonstrate the ability to combine directional awareness, movement, and pathways (e.g., up/down, forward/backward, right/left, and clockwise/counterclockwise, diagonal, zigzag, curved, and straight) in individual, partner and group activities.

2. Benchmark 1-E-2

a. 1-E-2.1 Demonstrate a combination of two movement concepts while performing various skills (e.g., sliding while dribbling a ball in a curved pathway in general space; trap and pass; catch, pivot, and dribble a ball; volley ball with racquet/paddle while moving).

b. 1-E-2.2 Demonstrate chasing, dodging, and fleeing skills from an individual during low organizational games.

3. Benchmark 1-E-3

a. 1-E-3.1 Identify and demonstrate the critical elements for manipulative skills (e.g., catch, kick, dribble, strike, volley, and, throw).

b. 1-E-3.2 Manipulate a variety of objects with different sizes, shapes and weights. (e.g., dribbling/throwing a tennis ball or dribbling/throwing a basketball; volleying with a beach ball or a volleyball; catching a football or a yarn ball) with control (correct force, opposition).

c. 1-E-3.3 Individually develop combinations of movements into sequences while manipulating a variety of objects.

d. 1-E-3.4 Balance on a variety of objects (e.g., balance boards, skates, scooters, beams, exercise balls, hoppity-hop).

e. 1-E-3.5 When using catching and throwing skills, demonstrate the ability to change directions and maintain balance, while the body is in motion with an object.

4. Benchmark 1-E-4

a. 1-E-4.1 Demonstrate a simple repeating rhythmic sequence by combining a variety of locomotor skills.

b. 1-E-4.2 Perform simple rhythmic patterns using body movements and manipulative skills (balls, ribbons, Lummi sticks).

B. Standard 2

1. Benchmark 2-E-1

a. 2-E-1.1 Demonstrate fundamental motor skills and movement concepts through grade appropriate language arts (e.g., action stories, movement vocabulary, body spelling).

b. 2-E-1.2 Demonstrate fundamental motor skills movement concepts through grade appropriate math (e.g., skip counting, time, clock skills, addition, subtraction, multiplication, division).

2. Benchmark 2-E-2

a. 2-E-2.1 Identify critical elements/mechanics for manipulative skills of throwing and catching (e.g., step forward opposite foot, arm position, step and follow through).

b. 2-E-2.2 Recognize proper techniques for a variety of fundamental skills while practicing with a partner.

3. Benchmark 2-E-3

a. 2-E-3.1 Assess one's own performance, while throwing and catching, using a checklist/rubric.

b. 2-E-3.2 Assess peer's performance, when performing movement patterns (e.g., throw underhand, throw overhand, chest pass, catching high) using a checklist/rubric.

c. 2-E-3.3 Illustrate correct movement patterns for complex movement activities. (e.g., draw a picture, find pictures in magazines, and use technology to locate diagrams).

4. Benchmark 2-E-4

a. 2-E-4.1 Identify two key components for improving skills.

b. 2-E-4.2 Identify inefficient movement for running, throwing, and catching (e.g., arm/leg movement pattern).

c. 2-E-4.3 Practice skills for which improvement is needed in isolated settings.

C. Standard 3

1. Benchmark 3-E-1

a. 3-E-1.1 Name the components of health-related fitness (cardiorespiratory endurance, muscular strength and endurance, flexibility, and body composition).

b. 3-E-1.2 Identify the impact of short-term physical activity on one's physical health.

2. Benchmark 3-E-2

a. 3-E-2.1 Students will name types of moderate and vigorous activity (e.g., journal, discussion, illustrations of contrasting pictures).

b. 3-E-2.2 Identify opportunities for physical activity within the school and community.

3. Benchmark 3-E-3

a. 3-E-3.1 Participate in physical activities that are moderate in intensity level outside of physical education for 30 minutes per day most days of the week and document (i.e., activity log, journal).

D. Standard 4

1. Benchmark 4-E-1

a. 4-E-1.1 Describe and identify aerobic and anaerobic activities (e.g., 50 yard dash vs. 1 mile race, push-ups vs. swimming laps, bowling vs. bicycling)

b. 4-E-1.2 Describe and identify flexibility activities (e.g., yoga, Dance, gymnastics, martial arts).

c. 4-E-1.3 Describe and identify muscular strength and endurance activities (e.g., push-ups, pull-ups, crunches, changing a tire, walking up a hill, rock climbing).

2. Benchmark 4-E-2

a. 4-E-2.1 Participate in health-related fitness assessments.

3. Benchmark 4-E-3

a. 4-E-3.1 Select, participate in, and log extra-curricular activity that improved health-related fitness either at school or in the community.

b. 4-E-3.2 Identify health-related fitness components to enhance throughout the school year.

c. 4-E-3.3 Perform and log activities or exercises that relate to one or more of the fitness components.

d. 4-E-3.4 Students participate in and log games and activities that work towards improvement of age-appropriate levels of health-related fitness.

E. Standard 5

1. Benchmark 5-E-1

a. 5-E-1.1 Identify and model examples of good sportsmanship and fair play.

b. 5-E-1.2 Demonstrate respect for all students regardless of individual differences in skills and abilities during individual and group activities (e.g., taking turns, sharing equipment, encouraging others, making positive comments).

2. Benchmark 5-E-2

a. 5-E-2.1 State safety rules and practice for participation in selected grade level activities.

b. 5-E-2.2 Comply with rules and procedures during grade appropriate group and individual activities.

c. 5-E-2.3 Remain on assigned task until directed by teacher.

d. 5-E-2.4 Demonstrate understanding and concern for safety of self and others during games/activities.

3. Benchmark 5-E-3

a. 5-E-3.1 Follow directions and rules during school hours (e.g., line behavior, entering and exiting gym and play area).

b. 5-E-3.2 Identify key behaviors which exemplify each of the personal/social character traits of responsibility, best effort, cooperation, and compassion in isolated settings

c. 5-E-3.3 Demonstrate self-control in physical activity settings (e.g., good sportsmanship, teamwork, cooperation, diversity).

4. Benchmark 5-E-4

a. 5-E-4.1 Cooperate with classmates by staying on task, taking turns, and sharing equipment.

b. 5-E-4.2 Demonstrate responsible behavior in game/activity settings.

c. 5-E-4.3 Utilize positive statements to encourage others in games and activities.

5. Benchmark 5-E-5

a. 5-E-5.1 Apply critical elements from feedback to improve motor skills.

b. 5-E-5.2 Provide appropriate feedback from the teacher, partner, or self in a positive manner.

F. Standard 6

1. Benchmark 6-E-1

a. 6-E-1.1 Recognize and understand disabilities that may affect one's participation in physical activity.

b. 6-E-1.2 Demonstrate respect for the ideas of others, attempting to compromise and communicate appropriately through physical activity.

2. Benchmark 6-E-2

a. 6-E-2.1 Cooperate with any child, with or without disabilities, in the class as a partner or in group settings.

b. 6-E-2.2 Demonstrate cooperation by supporting and encouraging others of different abilities/skill levels and ethnicity.

3. Benchmark 6-E-3

a. 6-E-3.1 Participate in age appropriate activities/games and sports played by children in the United States.

b. 6-E-3.2 Participate in popular activities/games and sports played by children in other countries.

G. Standard 7

1. Benchmark 7-E-1

a. 7-E-1.1 Identify activities that are enjoyable and that provide success with students of similar skill levels.

b. 7-E-1.2 Identify positive feelings experienced during physical activity.

2. Benchmark 7-E-2

a. 7-E-2.1 State personally challenging physical activity(ies).

b. 7-E-2.2 Choose and participate in a new or different physical activity.

3. Benchmark 7-E-3

a. 7-E-3.1 During physical education class, willingly participate in games and activities with peers.

4. Benchmark 7-E-4

a. 7-E-4.1 Satisfactorily complete assignments for activities requiring game design, gymnastics and /or dance performance (teacher will provide rubric for assignment).

5. Benchmark 7-E-5

a. 7-E-5.1 Describe how cooperation, understanding strengths and weaknesses in self and others can be used in problem-solving strategies in order to achieve success.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.; R.S. 17:17.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1185 (June 2002), amended LR 35:

§1509. Grade 4 Grade-Level Expectations

A. Standard 1

1. Benchmark 1-E-1

a. 1-E-1.1 Demonstrate spatial awareness movement concepts for location (e.g., personal space, general space and boundaries) individual/partner, and group activities.

b. 1-E-1.2 Apply space awareness movement concepts of direction and pathways (e.g., up/down, forward/backward, right/left, clockwise/counterclockwise, diagonal, zigzag, curved, and straight) in individual/partner and group activities.

c. 1-E-1.3 Apply combinations of directional awareness movement concepts and pathways (e.g., up/down, forward/backward, right/left, clockwise/counterclockwise, diagonal, zigzag, curved, and straight) in individual/partner, and group activities.

d. 1-E-1.4 Apply all spatial awareness movement concepts for levels (e.g., low, medium, and high) with mature forms of selected fundamental motor skills.

e. 1-E-1.5 Apply relationship awareness concepts (e.g., large/small, far/near, over/under, above/below, behind, in front, in/out, between/through, front/back) in individual and small group settings using people and objects.

2. Benchmark 1-E-2

a. 1-E-2.1 Demonstrate a combination of movement concepts while performing various skills (e.g., sliding while dribbling a ball in a curved pathway in general space, trap and pass, catch and pivot, volley ball with racquet/paddle while moving).

b. 1-E-2.2 Demonstrate chasing, dodging and fleeing skills from individuals and objects during games/activities.

3. Benchmark 1-E-3

a. 1-E-3.1 Apply knowledge of selected critical elements while performing movement concepts and selected manipulative skills: catch, kick, foot dribble, strike with a short-handled implement and with the hand, chest pass, bounce pass, hand dribble, throw and volley in individual and group settings.

b. 1-E-3.2 Manipulate a variety of objects with different sizes, shape and weights while in partners or small group settings.

c. 1-E-3.3 Develop combinations of movements into sequences with a partner or small group.

d. 1-E-3.4 Balance with control on a variety of objects (e.g., balance boards, skates, scooters, beams, exercise balls, hoppity-hop).

4. Benchmark 1-E-4

a. 1-E-4.1 Demonstrate simple repeating rhythmic sequence, with a partner or small group, by combining a variety of mature movement skills.

b. 1-E-4.2 Perform simple rhythmic patterns using body movements and manipulative skills with a partner or small group (e.g., balls, ribbons, Lummi sticks, parachute, panel chute).

c. 1-E-4.3 Apply a variety of rhythmic beats while using different body parts (e.g., hand clapping, foot stomping, finger snapping, hands and legs) with a partner or small group.

B. Standard 2

1. Benchmark 2-E-1

a. 2-E-1.1 Participate in low organized games/activities that include movement concepts and integrate with grade-appropriate language arts (e.g., action stories, movement vocabulary, body spelling).

b. 2-E-1.2 Participate in low organized games/activities that include movement and integrate with appropriate math skills (e.g., skip counting, time, clock skills, addition, subtraction, multiplication, division).

c. 2-E-1.3 Participate in low organized games/activities that include movement concepts and integrate with grade appropriate science concepts (e.g., force, friction, heart rate, body parts, body systems, center of gravity, leverage, nutrition).

d. 2-E-1.4 Participate in low organizational games/activities that include movement concepts and integrate with grade-appropriate social studies skills (e.g., states, capitals, landforms, longitude, latitude).

2. Benchmark 2-E-2

a. 2-E-2.1 Understand and demonstrate mature form for manipulative skills: throwing, catching, kicking, and dribbling with hands and feet (e.g., step forward opposite foot, arm position, step and follow through).

b. 2-E-2.2 Understand and demonstrate proper techniques for a variety of fundamental skills while practicing with a partner (e.g., realize there was too much force when a ball was overthrown).

c. 2-E-2.3 Demonstrate transferring weight (e.g., hands to feet, feet to hands, foot to foot, hand to hand) while maintaining balance at fast and slow speeds.

3. Benchmark 2-E-3

a. 2-E-3.1 Critique one's own strengths and weaknesses when performing complex movement patterns (e.g., kicking a stationary ball, kicking a moving ball, dribbling a ball with dominant and non-dominant hand, punting a football, kicking a soccer ball with the inside of the foot), using a checklist/rubric.

b. 2-E-3.2 Critique a peer's strengths and weaknesses when performing movement patterns listed above, using a checklist/rubric.

c. 2-E-3.3 Illustrate correct movement patterns for punting a football, kicking a stationary ball, dribbling a basketball while moving (e.g., draw a picture, find pictures in magazines, and use technology to locate graphics).

d. 2-E-3.4 Record in journal about the student's observation of personal and classmate activity.

4. Benchmark 2-E-4

a. 2-E-4.1 Identify three key components (e.g., self-discipline, determination,) for improving skills

b. 2-E-4.2 Recognize and explain inefficient movement for specific kicking, throwing, catching, and dribbling skills (e.g., arm/leg movement pattern).

c. 2-E-4.3 Identify and practice skills for which improvement is needed in lead-up game settings.

C. Standard 3

1. Benchmark 3-E-1

a. 3-E-1.1 Discuss the components of health-related fitness (cardio respiratory endurance, muscular strength and endurance, flexibility, and body composition).

b. 3-E-1.2 Identify the long-term impact of physical activity to one's physical health.

c. 3-E-1.3 Identify the long-term impact of physical activity to one's emotional and psychological health (e.g., stress and mental health, depression, hurt feelings, anxiety, ability to concentrate).

2. Benchmark 3-E-2

a. 3-E-2.1 Students will participate in moderate and vigorous activity (e.g., journal, discussion, illustrations of contrasting pictures).

b. 3-E-2.2 Document positive and negative feelings that result from different levels of participation in physical activities.

c. 3-E-2.3 Document opportunities for individual and group/team physical activity within the school and community.

3. Benchmark 3-E-3

a. 3-E-3.1 Participate in physical activities that are moderate in intensity level outside of physical education for 30 minutes every day of the week and document (e.g., activity log, journal).

b. 3-E-3.2 Participate in and log games, sports, dance, and outdoor pursuits, both in and outside of school, based on individual interests and capabilities.

D. Standard 4

1. Benchmark 4-E-1

a. 4-E-1.1 Distinguish between aerobic and anaerobic activities when given a list of selected activities (e.g., 50 yard dash vs. 1 mile run, diving in pool vs. swimming laps).

b. 4-E-1.2 Identify flexibility activities when given a list of activities (e.g., yoga, dance, gymnastics, martial arts).

c. 4-E-1.3 Distinguish between muscular strength and endurance activities when given a list of activities (e.g., push-ups, pull-ups, crunches, changing a tire, walking up a hill, rock climbing).

d. 4-E-1.4 Identify factors that affect body composition when given a list (e.g., nutritional choices, physical activity, hereditary traits, culture).

2. Benchmark 4-E-2

a. 4-E-2.1 Participate in health-related fitness assessments and interpret personal results (e.g., Fitness gram/Activitygram or comparable assessment tool).

3. Benchmark 4-E-3

a. 4-E-3.1 Regularly participate in teacher designed physical education program.

b. 4-E-3.2 Participate in and log extra-curricular activity either at school or in the community.

4. Benchmark 4-E-4

a. 4-E-4.1 Identify health-related fitness components to enhance throughout the school year.

b. 4-E-4.2 Perform and log activities or exercises that relate to one or more of the fitness components.

E. Standard 5

1. Benchmark 5-E-1

a. 5-E-1.1 Identify and model examples of good sportsmanship and fair play.

b. 5-E-1.2 Demonstrate respect for all students regardless of individual differences in skills and abilities during individual and group activities. (e.g., taking turns, sharing equipment, encouraging others, making positive comments).

2. Benchmark 5-E-2

a. 5-E-2.1 Remain on task and model responsible behavior in individual and group settings.

b. 5-E-2.2 Use equipment properly and safely.

c. 5-E-2.3 Play within the rules of the game or activity.

d. 5-E-2.4 Model self-control by accepting controversial decisions.

e. 5-E-2.5 Exhibit good sportsmanship and fair play during games/activities.

3. Benchmark 5-E-3

a. 5-E-3.1 Follow directions and rules during school hours (e.g., line behavior, entering and exiting play area).

b. 5-E-3.2 Describe key behaviors which exemplify each of the personal/social character traits of responsibility, best effort, cooperation, and compassion in isolated settings.

c. 5-E-3.3 Demonstrate self-control in physical activity settings (e.g., sportsmanship, cooperation, diversity).

4. Benchmark 5-E-4

a. 5-E-4.1 Demonstrate a willingness to achieve success when participating in physical education class (e.g., gives best effort, displays enjoyment, improves skill development).

b. 5-E-4.2 Demonstrate cooperation with a partner in order to achieve successful participation in a game or activity.

c. 5-E-4.3 Apply problem-solving strategies to work with a group in order to achieve a pre-determined outcome.

5. Benchmark 5-E-5

a. 5-E-5.1 Identify critical elements of a skill.

b. 5-E-5.2 Provide appropriate feedback of skill demonstration (e.g., throwing, catching, kicking dribbling) to teacher or partner in a positive manner.

c. 5-E-5.3 Apply feedback given by teacher or peer to a skill by practicing to improve skill.

F. Standard 6

1. Benchmark 6-E-1

a. 6-E-1.1 Demonstrate respect of classmates, with or without disabilities, that may affect one's participation in physical activity.

b. 6-E-1.2 Demonstrate respect for the ideas of others, attempting to compromise and communicate appropriately.

c. 6-E-1.3 Demonstrate responsibility for practicing fair play by using socially appropriate behavior and accepting decisions of the person in charge.

2. Benchmark 6-E-2

a. 6-E-2.1 Cooperate with any child in the class as a partner or in group settings.

b. 6-E-2.2 Demonstrate cooperation by supporting and encouraging others of different abilities/skill levels and ethnicity.

c. 6-E-2.3 Continue to work willingly with a partner when initially unsuccessful.

3. Benchmark 6-E-3

a. 6-E-3.1 Report on the history and origin of games and activities played by children in the United States and other countries and cooperatively share findings.

b. 6-E-3.2 Research and report the history and origin of popular games played by children in other countries and report findings to a group.

c. 6-E-3.3 Compare/contrast how games and activities are played by children in the United States and other countries (Use graphic organizer or thinking map).

G. Standard 7

1. Benchmark 7-E-1

a. 7-E-1.1 Identify activities that are enjoyable and provide success with students of similar skill levels.

b. 7-E-1.2 Identify two positive feelings experienced during physical activity (e.g., satisfaction, enjoyment, happiness, energetic, etc.).

2. Benchmark 7-E-2

a. 7-E-2.1 Log or journal new and personal challenging physical activity.

3. Benchmark 7-E-3

a. 7-E-3.1 During physical education class, actively participates in individual and group games and activities.

4. Benchmark 7-E-4

a. 7-E-4.1 Satisfactorily complete assignments for activities requiring game design, gymnastics performance (tumbling combination, series of 3 balances, partner balances), and dance (aerobic routine, student selected form of dance, line dance, etc.).

5. Benchmark 7-E-5

a. 7-E-5.1 Identify two things learned about oneself and two things learned about others during participation in games, sports, and dance.

b. 7-E-5.2 Describe how cooperation, understanding strengths and weaknesses in self and others, can be used in problem-solving strategies in order to achieve success.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.; R.S. 17:17.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1185 (June 2002), amended LR 35:

§1511. Grade 5 Grade-Level Expectations

A. Standard 1

1. Benchmark 1-E-1

a. 1-E-1.1 Apply spatial awareness movement concepts for location (e.g., personal space, general space and boundaries) while demonstrating basic game play strategies in individual and group activities.

b. 1-E-1.2 Apply directional awareness movement concepts and pathways using strategies in individual and group activities.

c. 1-E-1.3 Consistently apply mature form and function of all space awareness movement concepts and pathways using strategies in individual and group activities.

d. 1-E-1.4 Apply mature form and function to all space awareness movement concepts for levels, such as low, medium, and high with mature forms of selected fundamental motor skills in controlled settings.

e. 1-E-1.5 Apply relationship awareness concepts using strategies in individual and group settings using people and objects.

d. 1-E-1.6 Exhibit smooth transitions, while combining locomotor sequences and manipulative skills individually or group settings.

e. 1-E-1.7 Exhibit smooth transitions from locomotor to non-locomotor while combining fundamental skills and movement concepts.

2. Benchmark 1-E-2

a. 1-E-2.1 Demonstrate a combination of movement concepts while performing various skills.

b. 1-E-2.2 Demonstrate dodging and fleeing skills from individuals, multiple individuals, using a variety of locomotor and non-locomotor skills and strategies.

3. Benchmark 1-E-3

a. 1-E-3.1 Apply knowledge of selected critical elements of movement concepts while performing selected manipulative skills using strategies.

b. 1-E-3.2 Manipulate a variety of objects using different sizes, shapes and weights using simple strategies while in game situations.

c. 1-E-3.3 Working with a group, demonstrate combinations of movements into sequences while using simple strategies.

d. 1-E-3.4 Demonstrate the ability to change directions while in motion and manipulating an object.

4. Benchmark 1-E-4

a. 1-E-4.1 Create and demonstrate a simple repeating rhythmic sequence by combining a variety of mature movement skills (e.g., marching, dancing).

b. 1-E-4.2 Perform rhythmic patterns using body movements and manipulative skills in a large group setting.

c. 1-E-4.3 Create and demonstrate a variety of rhythmic beats while using different body parts (e.g., hand clapping, foot stomping, finger snapping, hands and legs).

d. 1-E-4.4 Demonstrate complex rhythmic patterns traveling along a specified pathway (e.g., circle, zigzag, straight line) using a variety of movement concepts, locomotor and non-locomotor skills.

B. Standard 2

1. Benchmark 2-E-1

a. 2-E-1.1 Identify with a partner or group through cooperative learning, subjects integrated in a specific activity and explain how it is integrated (e.g., walking using pedometers, calculating steps/mile, time, measuring heart rate with monitor).

b. 2-E-1.2 Create and present to the class or group a game/activity that integrates learning with math, language arts, science, art, and/or social studies.

2. Benchmark 2-E-2

a. 2-E-2.1 Apply mature form for manipulative skills that include striking, volleying, dribbling, kicking, throwing, and catching (use critical elements).

b. 2-E-2.2 Identify proper techniques for a variety of fundamental skills while practicing with a partner.

c. 2-E-2.3 Demonstrate weight transfer (e.g. hands to feet, feet to hands, foot to foot, hand to hand) and follow-through while performing fundamental skills at fast and slow speeds.

3. Benchmark 2-E-3

a. 2-E-3.1 Analyze one's own performance when performing specified striking, volleying, dribbling, kicking, throwing, and catching skills, using a checklist/rubric.

b. 2-E-3.2 Analyze a peer's performance, when demonstrating specified movement skills, using a checklist/rubric.

4. Benchmark 2-E-4

a. 2-E-4.1 Identify four key components (e.g., goal-setting, define objectives of practice) for improving skills.

b. 2-E-4.2 Recognize and record inefficient movement when performing movement skills involving striking, volleying, dribbling, kicking, jumping rope, throwing, and catching (e.g., arm/leg movement pattern). Choose to practice skills for which improvement is needed in controlled game settings.

c. 2-E-4.3 Demonstrate how internal (prior knowledge) and external feedback can be used to improve motor skills and movement patterns, fitness, and physical activities in isolated settings.

C. Standard 3

1. Benchmark 3-E-1

a. 3-E-1.1 Identify and provide examples of the components of health-related fitness (cardio respiratory endurance, muscular strength and endurance, flexibility, and body composition).

b. 3-E-1.2 Identify examples of the impact from daily choices of physical activity on one's physical health.

c. 3-E-1.3 Identify the impact of daily choices of physical activity to one's emotional and psychological health (e.g., stress and mental health, depression, hurt feelings, anxiety, ability to concentrate).

2. Benchmark 3-E-2

a. 3-E-2.1 When given a list of activities, identify moderate and/or vigorous activities that provide pleasure and engage in activities provided in the community.

3. Benchmark 3-E-3

a. 3-E-3.1 Participate in physical activities that are moderate in intensity level outside of physical education

for 30 minutes per day most or every day and document (log, journal).

b. 3-E-3.2 Participate in and log games, sports, dance, and outdoor pursuits, both in and outside of school, based on individual interests and capabilities.

D. Standard 4

1. Benchmark 4-E-1

a. 4-E-1.1 List separately those activities identified as aerobic and anaerobic activities.

b. 4-E-1.2 List flexibility exercises and describe how they are utilized in various types of games and/or activities.

c. 4-E-1.3 Identify muscular strength and endurance activities and their relationship to improved performance in games and activities.

d. 4-E-1.4 Identify factors that affect body composition.

e. 4-E-1.5 Identify and measure the physiological indicators associated with moderate physical activity and adjust participation/effort in isolated settings.

2. Benchmark 4-E-2

a. 4-E-2.1 Participate in health-related fitness assessments and interpret personal results (i.e.; Fitnessgram/Activitygram or comparable assessment tool).

3. Benchmark 4-E-3

a. 4-E-3.1 Regularly participate in physical education program.

b. 4-E-3.2 Participate in and log extra-curricular activity either at school or in the community.

4. Benchmark 4-E-4

a. 4-E-4.1 Identify health-related fitness components to enhance throughout the school year.

b. 4-E-4.2 Perform and log activities or exercises that relate to one or more of the fitness components.

5. Benchmark 4-E-5

a. 4-E-5.1 Participate in and log games and activities that work towards improvement of age-appropriate levels of health-related fitness.

E. Standard 5

1. Benchmark 5-E-1

a. 5-E-1.1 Identify and model examples of good sportsmanship and fair play.

b. 5-E-1.2 Demonstrate respect for all students regardless of individual differences in skills and abilities during individual and group activities.

2. Benchmark 5-E-2

a. 5-E-2.1 State safety rules and practices for participation in selected grade-level activities.

b. 5-E-2.2 Comply with rules and procedures during age-appropriate group and individual activities.

c. 5-E-2.3 Use equipment properly and appropriately.

d. 5-E-2.4 Remind others to play safely.

3. Benchmark 5-E-3

a. 5-E-3.1 Follow directions and rules during school hours (e.g., line behavior, entering and exiting play area).

b. 5-E-3.2 Demonstrate self-control in physical activity settings (e.g., sportsmanship, cooperation, diversity).

c. 5-E-3.3 Distinguish between key behaviors which exemplify each of the personal/social character traits of responsibility, best effort, cooperation, and compassion in isolated settings.

4. Benchmark 5-E-4

a. 5-E-4.1 Identify and list a variety of ways one can achieve success in various games/activities.

b. 5-E-4.2 Demonstrate cooperation with a partner or others in a group in order to achieve successful participation.

c. 5-E-4.3 Apply problem-solving strategies to work with a partner or group in order to achieve successful participation or resolve conflict.

5. Benchmark 5-E-5

a. 5-E-5.1 Self-evaluate performance of critical elements of a skill.

b. 5-E-5.2 Provide appropriate feedback on skill performance to a partner in a positive manner and apply to enhance performance.

c. 5-E-5.3 Apply feedback given by teacher or peer to a improve a skill.

F. Standard 6

1. Benchmark 6-E-1

a. 6-E-1.1 Demonstrate respect for the ideas of others, attempting to compromise and communicate appropriately.

b. 6-E-1.2 Demonstrate responsibility for practicing fair play by using socially appropriate behavior and accepting decisions of the person in charge.

c. 6-E-1.3 Demonstrate the ability to give and receive encouragement.

2. Benchmark 6-E-2

a. 6-E-2.1 Encourage~~s~~ others to participate, despite knowledge of physical disabilities, in the class as a partner or in group settings.

b. 6-E-2.2 Demonstrate cooperation by supporting and encouraging others of different abilities/skill levels and ethnicity in individual or group settings.

c. 6-E-2.3 Display a positive response to a partner or team when initially unsuccessful.

3. Benchmark 6-E-3

a. 6-E-3.1 Participate in games/activities played by children in other countries.

b. 6-E-3.2 Compare differences in how games and activities are played by children in the United States and other countries.

G. Standard 7

1. Benchmark 7-E-1

a. 7-E-1.1 Identify activities that are enjoyable and that provide success with students of similar skill levels.

b. 7-E-1.2 Identify positive feelings experienced during physical activity (e.g., satisfaction, enjoyment, happiness, energetic, etc.).

2. Benchmark 7-E-2

a. 7-E-2.1 Choose and participate in a new or different physical activity.

3. Benchmark 7-E-3

a. 7-E-3.1 During physical education class, willingly participate in games and activities with peers.

4. Benchmark 7-E-4

a. 7-E-4.1 Satisfactorily complete assignments for activities requiring game design, gymnastics performance and dance.

5. Benchmark 7-E-5

a. 7-E-5.1 Identify things learned about oneself and things learned about others during participation in games, sports, and dance.

b. 7-E-5.2 Describe how cooperation, understanding strengths and weaknesses in self and others can be used in problem-solving strategies in order to achieve success.

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§1513. Grade 6 Grade-Level Expectations

A. Standard 1

1. Benchmark 1-M-1

a. 1-M-1.1 Perform locomotor and non-locomotor skills in dynamic fitness (e.g., group exercise, aerobics, and obstacle course).

b. 1-M-1.2 Perform locomotor and non-locomotor skills in sport (e.g., running, faking, and manipulative).

c. 1-M-1.3 Perform locomotor and non-locomotor in rhythmic activities (e.g., moving to the beat).

d. 1-M-1.4 Consistently strike an object using a body part, so that the object travels in the intended direction at the desired height (e.g., soccer, volleyball).

e. 1-M-1.5 Consistently strike an object, using an implement (e.g., racquet, hockey stick, golf club…) so it travels in an intended direction and height.

f. 1-M-1.6 Keep an object continuously in the air while moving (e.g., ball, foot bag).

g. 1-M-1.7 Demonstrate the mature form for the manipulative skills of catching, passing, hand dribbling, shooting, volleying, and punting in isolated settings.

h. 1-M-1.8 Demonstrate a combination of specific sport skills focusing on moving, throwing, and catching.

2. Benchmark 1-M-2

a. 1-M-2.1 Throw and catch a ball consistently while being guarded by an opponent in small-sided games.

b. 1-M-2.2 Maximize involvement for the benefit of a group or team (e.g., everyone touching equipment during possessions/activities, everyone moving during possessions/activities).

c. 1-M-2.3 Identify and use offensive strategies (e.g., evasive maneuvers, game plan, maintaining possession of the ball, advancement to make a play or score) while playing a modified version of a game or sport in small groups activities.

d. 1-M-2.4 Identify and use defensive strategies (e.g., slow the advance of an opponent, regain possession of the ball) while playing a modified version of a game or sport in small group activities.

3. Benchmark 1-M-3

a. 1-M-3.1 Hand and foot dribble while preventing an opponent from stealing the ball.

b. 1-M-3.2 Volley an object in the air, such as a volleyball, without catching it in a small group.

c. 1-M-3.3 Throw and catch a ball consistently while guarded by an opponent.

d. 1-M-3.4 Hit a moving object such as a ball or shuttlecock.

4. Benchmark 1-M-4

a. 1-M-4.1 Perform dance steps and movements of various dance forms (e.g., folk, square, and line).

b. 1-M-4.2 Perform movement sequence with at least four different movements (e.g., simple rhythmic, aerobic, or tumbling activities) in a controlled setting.

c. 1-M-4.3 Design and perform a short dance routine.

5. Benchmark 1-M-5

a. 1-M-5.1 Place or maneuver the ball away from an opponent in net or invasion games.

b. 1-M-5.2 Place or maneuver the ball using offensive strategies in net or invasion games.

B. Standard 2

1. Benchmark 2-M-1

a. 2-M-1.1 Identify body parts and their actions when describing a movement (e.g., forearm lag in the overhand throw).

b. 2-M-1.2 Practice and apply throwing and catching at different levels using a variety of force.

c. 2-M-1.3 Identify the mechanical principles (e.g., equilibrium, force, leverage, motion) of throwing and catching skills.

d. 2-M-1.4 Identify the movement concepts (e.g., spatial awareness, effort qualities and relationships) skills used when striking objects with the body.

e. 2-M-1.5 Identify the movement concepts (e.g., spatial awareness, effort qualities, relationships) and skills used when throwing and catching.

2. Benchmark 2-M-2

a. 2-M-2.1 Describe how appropriate practice in static and dynamic settings, attention, and effort are required when learning movement skills.

b. 2-M-2.2 Participate in and log motor learning practices that are appropriate for and selected for learning skills. (Shorter practice distributed over time is better than one long session, or practicing is best in game-like conditions).

c. 2-M-2.3 Modify performance, based on feedback, to improve skills.

3. Benchmark 2-M-3

a. 2-M-3.1 Demonstrate selected use of tactical problems including scoring, defending object or person, preventing scoring, defending space as a team, and communicating during modified striking, invasion, and fielding games.

b. 2-M-3.2 Observe and analyze the performance of other students to provide feedback (Peer review).

c. 2-M-3.3 Modify performance of movement utilizing feedback to improve execution.

4. Benchmark 2-M-4

a. 2-M-4.1 Identify rules and safe practices for lead up games and activities.

b. 2-M-4.2 Understand and demonstrate guidelines and behaviors for safe participation during physical activity.

c. 2-M-4.3 Distinguish the difference between compliance and noncompliance with game rules.

C. Standard 3

1. Benchmark 3-M-1

a. 3-M-1.1 Identify opportunities to participate in the five components of health-related fitness (cardio-

respiratory endurance, muscular strength and endurance, body composition, and flexibility) during school and in the community.

b. 3-M-1.2 Record in a log weekly participation in physical activities outside school.

2. Benchmark 3-M-2

a. 3-M-2.1 Identify and record forms of new physical activity that provide personal enjoyment and benefit.

b. 3-M-2.2 Participate in and log enjoyable physical activities both during and outside of school.

c. 3-M-2.3 Willingly try new activities.

3. Benchmark 3-M-3

a. 3-M-3.1 Establish short and long-term individual health-related fitness goals.

b. 3-M-3.2 Develop a plan of action for reaching personal fitness goals.

c. 3-M-3.3 Monitor and record progress toward appropriate personal fitness goals in each of the components of health-related fitness.

4. Benchmark 3-M-4

a. 3-M-4.1 Identify the five components of health related fitness (cardiovascular fitness, muscular strength and endurance, flexibility, and body composition).

b. 3-M-4.2 Identify the skill-related components of fitness (agility, speed, power, balance, reaction time, coordination).

c. 3-M-4.3 Describe the difference between the health-related and skill-related components of fitness.

d. 3-M-4.4 Identify and correctly operate technological tools that measure and/or monitor fitness parameters such as computer programs, heart rate monitors, and pedometers.

D. Standard 4

1. Benchmark 4-M-1

a. 4-M-1.1 Demonstrate how to find pulse to determine heart rate.

b. 4-M-1.2 Differentiate between resting heart rate and active heart rate.

c. 4-M-1.3 Participate in and log activities designed to improve or maintain the health-related fitness components.

d. 4-M-1.4 Accumulate a recommended number of minutes of moderate to vigorous physical activity outside of physical education class on three or more days during the week.

2. Benchmark 4-M-2

a. 4-M-2.1 Identify elements of a training program which will improve/maintain health-related fitness levels.

b. 4-M-2.2 Set realistic, measurable, and attainable goals for activities that target all five components of health-related fitness.

3. Benchmark 4-M-3

a. 4-M-3.1 Participate in a health-related fitness assessment such as Fitnessgram or a comparable assessment tool.

b. 4-M-3.2 Interpret individual fitness assessment results.

c. 4-M-3.3 Identify individual level of fitness.

d. 4-M-3.4 Keep a journal or log documenting physical activity both at school and at home.

e. 4-M-3.5 Meet the acceptable, age-appropriate standard for at least three of the five components of health-related fitness.

4. Benchmark 4-M-4

a. 4-M-4.1 Identify ways to achieve activity goals in an individual wellness plan.

b. 4-M-4.2 Recognize and apply the principles of training (frequency, intensity, time, type, overload, specificity).

c. 4-M-4.3 Include warm-up and cool-down procedures regularly during exercise; monitor potentially dangerous environmental conditions such as heat and cold.

E. Standard 5

1. Benchmark 5-M-1

a. 5-M-1.1 Actively cooperate in group activities by sharing and taking turns.

b. 5-M-1.2 Comply with group directions and decisions through democratic processes.

c. 5-M-1.3 Differentiate between effective and ineffective leadership practices.

d. 5-M-1.4 Exhibit behaviors that exemplify each of the personal/social character traits of constructive competition, initiative, and leadership in a controlled setting.

2. Benchmark 5-M-2

a. 5-M-2.1 Stay on task during PE activities.

b. 5-M-2.2 Actively participate and demonstrate mastery of assigned tasks.

c. 5-M-2.3 Make responsible decisions about time management and follow through with the decisions made.

3. Benchmark 5-M-3

a. 5-M-3.1 Follow teacher or leader directions.

b. 5-M-3.2 Follow class rules, even when peers are not.

c. 5-M-3.3 Play within the rules of the game or activity.

d. 5-M-3.4 Model self-control by accepting controversial decisions.

e. 5-M-3.5 Demonstrate concern for safety of self and others during games and activities.

F. Standard 6

1. Benchmark 6-M-1

a. 6-M-1.1 Research and report on popular games and dances for a variety of countries.

b. 6-M-1.2 Identify similarities and differences in the way that games are played in different cultures.

c. 6-M-1.3 Identify similarities and differences in the way that dances are developed and performed in various countries.

d. 6-M-1.4 Research how sports and games have changed over the years.

2. Benchmark 6-M-2

a. 6-M-2.1 Identify and record supportive and inclusive behaviors for dealing with diverse genders, cultures, ethnicities, and ability levels.

b. 6-M-2.2 Participate willingly with others of different genders, cultures, ethnicities, abilities, and skill levels in physical activity settings.

3. Benchmark 6-M-3

a. 6-M-3.1 Complete a project investigating and illustrating the role of events such as the Olympics in bringing diverse countries together in a peaceful manner.

b. 6-M-3.2 Provide and exhibit examples of how sports, games, and dances have brought diverse genders, cultures, and ethnicities together.

G. Standard 7

1. Benchmark 7-M-1

a. 7-M-1.1 Explore, participate in, log, diverse nontraditional physical activities that are current with today's society (e.g., mountain biking, in-line skating, skate boarding, rock climbing, extreme sports).

2. Benchmark 7-M-2

a. 7-M-2.1 Explain the role of games, sports, and dance in getting to know and understand self and others.

b. 7-M-2.2 Explain how physical activity is a positive opportunity for social and group interaction.

3. Benchmark 7-M-3

a. 7-M-3.1 Demonstrate an increased level of competence and satisfaction in a variety of outdoor pursuits and/or recreational activities by engaging in physical activity outside of school hours.

b. 7-M-3.2 Choose to participate in activities that are personally challenging when provided with alternative opportunities.

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HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1185 (June 2002), amended LR 35:

§1515. Grade 7 Grade-Level Expectations

A. Standard 1

1. Benchmark 1-M-1

a. 1-M-1.1 Perform locomotor and non-locomotor skills in dynamic fitness activities (e.g., group exercise with manipulatives, aerobics, circuits).

b. 1-M-1.2 Perform locomotor and non-locomotor skills in sport (e.g., moving and changing directions based on opponents movement).

c. 1-M-1.3 Demonstrate selected elements of the mature form of the manipulative skills of catching, passing, hand dribbling, shooting, volleying, and punting in isolated settings.

d. 1-M-1.4 Demonstrate selected elements of sport specific skills focusing on moving, dribbling, passing, and shooting.

2. Benchmark 1-M-2

a. 1-M-2.1 Demonstrate offensive and defensive strategies used while playing a basic version of a team or individual sport (e.g., creating space, moving an opponent).

3. Benchmark 1-M-3

a. 1-M-3.1 Demonstrate use of strategies/tactics within a variety of physical activities (e.g., changing directions and faking to create space and maintain possession).

b. 1-M-3.2 Combine skills competently to participate in modified versions of team and individual sports.

4. Benchmark 1-M-4

a. 1-M-4.1 Perform selected folk, country, square, line, creative, and/or aerobic dances.

b. 1-M-4.2 Design rhythmic movement patterns or an aerobic routine with a partner/group using appropriate music.

5. Benchmark 1-M-5

a. 1-M-5.1 Demonstrate use of selected tactical problems for both on-the-ball and object (e.g., seeing both the opponent with the object and the opponent you are guarding at the same time).

b. 1-M-5.2 Place or maneuver ball or object to and away from multiple partners in a sport activity.

B. Standard 2

1. Benchmark 2-M-1

a. 2-M-1.1 Demonstrate the ability to maintain static and dynamic balance while performing a task.

b. 2-M-1.2 Analyze and correct movement errors in skills necessary to participate in manipulative activities.

c. 2-M-1.3 Demonstrate competency in the mature form in all locomotor skills.

d. 2-M-1.4 Identify and apply major concepts used in acquiring motor skills (feedback, relevant cues).

2. Benchmark 2-M-2

a. 2-M-2.1 Modify performance, utilizing feedback, to improve execution.

3. Benchmark 2-M-3

a. 2-M-3.1 Identify and explain at least three tactics involved in playing an invasion sport.

b. 2-M-3.2 Demonstrate selected use of tactical problems including scoring, defending object or person, preventing scoring, defending space as a team, and communicating during modified striking, invasion, and fielding games.

4. Benchmark 2-M-4

a. 2-M-4.1 Apply safety rules in all activities.

b. 2-M-4.2 Follow safety procedures related to physical activity, equipment, facilities, environmental factors and takes responsibility for their own safety.

c. 2-M-4.3 Describe and demonstrate proper warm-up and cool-down procedures.

C. Standard 3

1. Benchmark 3-M-1

a. 3-M-1.1 Develop a resource list related to the five components of health-related fitness within the community.

b. 3-M-1.2 Identify opportunities close to home for participation in different kinds of activities using a participation log.

2. Benchmark 3-M-2

a. 3-M-2.1 Identify personal interests, capabilities, and resources in regard to one's exercise behavior and attempt one new activity during the school year.

b. 3-M-2.2 Participate in and log new physical activities both during and outside of school for the purpose of improving skill and health.

3. Benchmark 3-M-3

a. 3-M-3.1 Identify personal factors inhibiting or promoting physical activity.

b. 3-M-3.2 Establish short and long-term individual health-related fitness goals.

c. 3-M-3.3 Participate in an individualized physical activity program designed with the help of the teacher.

d. 3-M-3.4 Establish and monitor progress toward appropriate personal fitness goals in each of the components of health-related fitness.

4. Benchmark 3-M-4

a. 3-M-4.1 Identify and describe the five components of health-related fitness (e.g., cardiovascular fitness, muscular strength and endurance, flexibility, and body composition).

b. 3-M-4.2 Identify and describe the skill-related components of fitness (e.g., agility, speed, power, balance, reaction time, coordination).

c. 3-M-4.3 Identify the relationships among physical activity frequency, intensity and time.

d. 3-M-4.4 Select and use appropriate technology tools to evaluate, monitor, and improve physical development.

D. Standard 4

1. Benchmark 4-M-1

a. 4-M-1.1 Utilize the target heart rate formula to calculate the target heart rate.

b. 4-M-1.2 Participate in physical activity a minimum of 20 minutes, three or more times per week while staying in the target heart rate.

c. 4-M-1.3 Correctly demonstrate activities designed to improve and maintain muscular strength and endurance, flexibility, and cardio respiratory functioning.

2. Benchmark 4-M-2

a. 4-M-2.1 Identify ways to achieve activity goals in an individual wellness plan.

b. 4-M-2.2 Assess physiological indicators of exercise during and after physical activity using appropriate assessment tools.

c. 4-M-2.3 Set realistic, measurable, and attainable goals for activities that will improve health-related fitness components.

3. Benchmark 4-M-3

a. 4-M-3.1 Use a journal to document the benefits of participation in physical activity.

b. 4-M-3.2 Participate in a health-related fitness assessment such as Fitnessgram or comparable assessment.

c. 4-M-3.3 Identify level of health-related components of fitness by using criterion-referenced health and fitness standards.

4. Benchmark 4-M-4

a. 4-M-4.1 Demonstrate understanding of the principles of training (overload, progression, and specificity).

b. 4-M-4.2 Identify ways to achieve activity goals in an individual wellness plan.

c. 4-M-4.3 Include warm-up, cool-down, and training principles regularly during exercise; monitor potentially dangerous environmental conditions such as heat and cold.

E. Standard 5

1. Benchmark 5-M-1

a. 5-M-1.1 Demonstrate the ability to work without supervision

b. 5-M-1.2 Work cohesively in a group by participating in team-building activities.

c. 5-M-1.3 Work cooperatively with peers in group or team activities.

2. Benchmark 5-M-2

a. 5-M-2.1 Use initiative and solve problems in physical activity settings.

b. 5-M-2.2 Remain on task without close teacher monitoring.

3. Benchmark 5-M-3

a. 5-M-3.1 Respect the rights of others in the class.

b. 5-M-3.2 Demonstrate a positive attitude toward the teacher, class, and peers.

c. 5-M-3.3 Distinguish between compliance and non-compliance with rules and regulations.

F. Standard 6

1. Benchmark 6-M-1

a. 6-M-1.1 Develop respect for other cultures by participating in role-playing activities that involve how different cultures view and participate in physical activity.

b. 6-M-1.2 Recognize and describe the role of dance, sports, and physical activities in modern culture.

2. Benchmark 6-M-2

a. 6-M-2.1 Compare and contrast similarities and differences in dance, games, and physical activities across different genders, cultures, ethnicities, abilities, and skill levels.

3. Benchmark 6-M-3

a. 6-M-3.1 Describe how different sports, games, and dances have unique and distinct characteristics relevant to diverse cultures.

b. 6-M-3.2 Participate in a sport, game, and/or dance as a means to interact with individuals of diverse backgrounds.

G. Standard 7

1. Benchmark 7-M-1

a. 7-M-1.1 Seek, participate in, log physical activity in informal settings that utilize skills and knowledge gained in physical education classes.

2. Benchmark 7-M-2

a. 7-M-2.1 Identify ways that regular participation in physical activities contributes to a healthy lifestyle.

b. 7-M-2.2 Analyze selected physical experiences for social, emotional, and health benefits.

3. Benchmark 7-M-3

a. 7-M-3.1 Display satisfaction when engaging in physical activity by participating outside of class time.

b. 7-M-3.2 Record (in journal or log) likes and dislikes when participating in new activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.; R.S. 17:17.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1185 (June 2002), amended LR 35:

§1517. Grade 8 Grade-Level Expectations

A. Standard 1

1. Benchmark 1-M-1

a. 1-M-1.1 Use basic offensive and defensive strategies in a modified version of a team sport and an individual sport.

2. Benchmark 1-M-2

a. 1-M-2.1 Design and teach a dance sequence to music.

b. 1-M-2.2 Demonstrate a basic understanding of square dance steps, positions, and patterns as to create and perform a dance to music.

3. Benchmark 1-M-3

a. 1-M-3.1 Perform hand and foot dribbles while preventing an opponent from stealing the ball.

b. 1-M-3.2 Demonstrate appropriate relationships of the body to an opponent in dynamic game situations such as staying between opponent and goal and moving between opponent and the ball.

B. Standard 2

1. Benchmark 2-M-1

a. 2-M-1.1 Design and perform sequences of dance steps/movements into practiced sequences with intentional changes in speed, direction, and flow.

b. 2-M-1.2 Combine skills competently to participate in modified versions of team and individual sports.

2. Benchmark 2-M-2

a. 2-M-2.1 Exhibit an improved level of manipulative skills while stationary and moving with objects of different shapes, sizes, textures and weights.

b. 2-M-2.2 Demonstrate mastery in striking skills while stationary and moving with objects of different shape, size, texture and weight.

c. 2-M-2.3 Demonstrate mastery in skills to strike both stationary and moving objects with different body parts.

d. 2-M-2.4 Demonstrate mastery in the following patterns of movement related to striking objects with body parts (e.g., kicking, punting, dribbling, volleying, serving).

3. Benchmark 2-M-3

a. 2-M-3.1 Describe and demonstrate the ability to use offensive and defensive strategies in court, goal and field games related to striking with the body.

b. 2-M-3.2 Understand and apply strategies of attacking and defending space in manipulative activities.

4. Benchmark 2-M-4

a. 2-M-4.1 Make activity choices based on safety for self and others.

b. 2-M-4.2 Use equipment safely and properly.

c. 2-M-4.3 Select and use proper attire that promotes participation and prevents injury.

C. Standard 3

1. Benchmark 3-M-1

a. 3-M-1.1 Identify, and log, participation in physical activities both during and outside of school for the purpose of improving skills and health.

2. Benchmark 3-M-2

a. 3-M-2.1 Identify, and log, participation in games, sports, dance, and/or outdoor pursuits, in and outside of school, based on individual interests and/or capabilities.

3. Benchmark 3-M-3

a. 3-M-3.1 Participate in an individualized physical activity program designed with the help of the teacher.

b. 3-M-3.2 Establish and evaluate short and long-term individual health-related fitness goals and make appropriate changes for improvement.

4. Benchmark 3-M-4

a. 3-M-4.1 Identify and describe the five components of health-related fitness (cardiovascular fitness, muscular strength and endurance, flexibility, and body composition).

b. 3-M-4.2 Identify and describe the skill-related components of fitness (agility, speed, power, balance, reaction time, coordination).

c. 3-M-4.3 Identify and describe the relationships among physical activity frequency, intensity and time.

d. 3-M-4.4 Select and use appropriate technology tools to evaluate, monitor, and improve physical development.

D. Standard 4

1. Benchmark 4-M-1

a. 4-M-1.1 Explore and participate in a variety of health-related fitness activities in both school and non-school settings.

b. 4-M-1.2 Demonstrate how to sustain an aerobic activity maintaining target heart rate to achieve cardiovascular benefits.

c. 4-M-1.3 Participate in moderate to vigorous physical activity within target heart range for a sustained period of time (20-30 minutes), three or more days per week. Log participation.

2. Benchmark 4-M-2

a. 4-M-2.1 Use activity log to set realistic goals for lifetime wellness.

b. 4-M-2.2 Set realistic goals for improving his/her health-related fitness.

c. 4-M-2.3 Develop personal fitness goals independently.

d. 4-M-2.4 Achieve and maintain appropriate individual levels of the health-related components of fitness and uses assessment results as a guide to make changes in individual fitness program.

3. Benchmark 4-M-3

a. 4-M-3.1 Meet four of six of the health-related fitness standards as defined by Fitnessgram or an equivalent assessment program.

4. Benchmark 4-M-4

a. 4-M-4.1 Apply the following principles of training: specificity (use of a specific exercise to develop skill in a particular activity; progression (increasing the level of intensity); and overload (increasing the weights used in an exercise in order to build muscle more quickly, rather than increasing the speed of the exercise.

b. 4-M-4.2 Apply basic principles of training to improving physical fitness.

c. 4-M-4.3 Participate in and/or plan an individualized fitness program.

E. Standard 5

1. Benchmark 5-M-1

a. 5-M-1.1 Positively contribute to team building activities.

b. 5-M-1.2 Communicate effectively with group members or teammates.

c. 5-M-1.3 Effectively direct others when appropriate.

2. Benchmark 5-M-2

a. 5-M-2.1 Sustain effort during the entire class period.

b. 5-M-2.2 Manage time and complete tasks asked of her/him.

c. 5-M-2.3 Participate in tasks from initiation to completion.

3. Benchmark 5-M-3

a. 5-M-3.1 Assume responsibility for her/his actions.

b. 5-M-3.2 Let others complete tasks in class without interrupting.

c. 5-M-3.3 Solve problems in physical activities by analyzing causes and providing potential solutions.

F. Standard 6

1. Benchmark 6-M-1

a. 6-M-1.1 Analyze and perform in at least one sport, dance, and physical activity popular in a non-North American country.

2. Benchmark 6-M-2

a. 6-M-2.1 Demonstrate awareness and identify exclusionary practices across different genders, cultures, ethnicities, abilities, and skill levels.

b. 6-M-2.2 Create an informative project that highlights the historical changes of the involvement of diverse genders, cultures, ethnicities, abilities, and skill levels in dance, sport, and/or physical activities.

3. Benchmark 6-M-3

a. 6-M-3.1 Through verbal and nonverbal behavior, demonstrate cooperation with peers of different gender, race, and ability in a physical activity setting.

G. Standard 7

1. Benchmark 7-M-1

a. 7-M-1.1 Participate in and log activities that are personally challenging outside of physical education class.

2. Benchmark 7-M-2

a. 7-M-2.1 Brainstorm and record how physical activity can provide enjoyment, opportunities for self-expression and communication.

b. 7-M-2.2 Use peer interaction to positively enhance personal physical activity and safety such as encouraging friends and joining teams.

3. Benchmark 7-M-3

a. 7-M-3.1 Recognize and describe the affective, aesthetic and creative aspects of performance.

b. 7-M-3.2 Demonstrate enjoyment while participating in a self-selected activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.; R.S. 17:17.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1185 (June 2002), amended LR 35:

§1519. High School Grade-Level Expectations

A. Grades 9-12: I

1. Standard 1: Benchmark 1-H-1

a. 1-H-1.1 Develop skills in an invasion/wall, target, and/or field game.

b. 1-H-1.2 Develop skills in a dance form (e.g., social, square, jazz).

c. 1-H-1.3 Develop skills in a fitness-related activity (e.g., rock climbing, track and field).

2. Standard 1: Benchmark 1-H-2

a. 1-H-2.1 Demonstrate consistency in the execution of the basic skills of outdoor/adventure activities such as archery, canoeing/boating, hiking, camping, orienteering, fishing, tennis, golf, soccer or biking.

b. 1-H-2.2 Demonstrate mastery in the execution of the basic skills of two leisure activities such as bowling, badminton, aerobics, handball, racquetball, Pilates, yoga or martial arts.

3. Standard 2: Benchmark 2-H-1

a. 2-H-1.1 Complete peer review of motor skills used for a specific task for individual/team sports/ activities such as striking, dribbling, catching, kicking and tossing.

b. 2-H-1.2 Describe appropriate practice procedures to improve skill and strategy in a sport.

c. 2-H-1.3 Design and present a new game or activity using previously learned skills (group work).

4. Standard 2: Benchmark 2-H-2

a. 2-H-2.1 Identify the anatomical functions of the body as they relate to physical activity such as muscle strength, joint motion, flexibility and endurance.

b. 2-H-2.2 Identify biomechanical movements as they relate to physical activity and sports.

5. Standard 3: Benchmark 3-H-1

a. 3-H-1.1 Compile a list of available community resources to promote an active lifestyle: bowling, badminton, aerobics, handball, racquetball, Pilates, yoga and martial arts, archery, canoeing/boating, hiking, camping, orienteering, fishing, tennis, golf, soccer and biking.

b. 3-H-1.2 Journal activities related to community participation.

6. Standard 3: Benchmark 3-H-2

a. 3-H-2.1 Identify recreational activities that are enjoyable.

b. 3-H-2.2 Plan and organize an age-appropriate outdoor activity that promotes the maintenance of wellness.

7. Standard 3: Benchmark 3-H-3

a. 3-H-3.1 Participate in a variety of activities, such as aerobic exercise, that develop cardiovascular endurance, flexibility, muscular endurance, and muscular strength.

b. 3-H-3.2 Chart participation in a recreational program in the evening and/or weekends

8. Standard 4: Benchmark 4-H-1

a. 4-H-1.1 Demonstrate high level of participation or engagement in physical education class.

b. 4-H-1.2 Establish and record a daily physical fitness routine.

9. Standard 4: Benchmark 4-H-2

a. 4-H-2.1 Participate in a health-related fitness assessment (e.g., Fitnessgram or comparable assessment tool) and interpret results and develop realistic short-term and long-term personal fitness goals using these results.

b. 4-H-2.2 Monitor body responses before, during, and after exercise by checking pulse rate, recovery rate and target heart rate.

c. 4-H-2.3 Assess and log progress toward fitness goals twice per semester.

d. 4-H-2.4 Adjust and log activity levels to meet personal fitness needs.

10. Standard 4: Benchmark 4-H-3

a. 4-H-3.1 Plan and organize a personal fitness program that will enable one to achieve the specified goals previously set.

b. 4-H-3.2 Maintain evidence of fitness assessment and use the results to guide changes in personal fitness plan.

c. 4-H-3.3 Meet and log progress toward achievement of personal fitness goals after a period of training.

11. Standard 5: Benchmark 5-H-1

a. 5-H-1.1 Identify safety considerations of selected physical activities.

b. 5-H-1.2 Follow safety practices that prevent injuries and/or unsafe conditions when using activity equipment.

c. 5-H-1.3 Adhere to established rules to avoid injury.

12. Standard 5: Benchmark 5-H-2

a. 5-H-2.1 Research and report on safety techniques to use during potentially dangerous weather conditions while physically active.

13. Standard 5: Benchmark 5-H-3

a. 5-H-3.1 Demonstrate conflict resolutions by walking away from verbal confrontation and listening to all sides before taking action in situations.

b. 5-H-3.2 Respond to confrontational situations with mature personal control.

c. 5-H-3.3 Willingly choose activities for enjoyment as opposed to those chosen by peers.

d. 5-H-3.4 Demonstrate good sportsmanship by acknowledging good play from an opponent during competition.

e. 5-H-3.5 Follow safety etiquette in all activities.

f. 5-H-3.6 Avoid causing injury to an opponent in all activities.

14. Standard 6: Benchmark 6-H-1

a. 6-H-1.1 List historical roles of sports and games as they relate to different cultures.

b. 6-H-1.2 Research and compile report of games and sports for different countries.

c. 6-H-1.3 Identify several popular games from various cultures.

d. 6-H-1.4 Participate in games that originated outside the United States.

15. Standard 6: Benchmark 6-H-2

a. 6-H-2.1 Adapt games to the diverse population found in current school setting.

b. 6-H-2.2 Invite less skilled students to participate in physical activity.

16. Standard 7: Benchmark 7-H-1

a. 7-H-1.1 Identify and describe life-time physical activities such as tennis, dancing, golf, yoga, badminton, fitness training, rowing, swimming, walking, soccer, bowling, rock climbing, etc.

b. 7-H-1.2 Participate in various physical activities which include the cooperation of teamwork.

c. 7-H-1.3 Demonstrate a positive and energetic attitude in all activities.

17. Standard 7: Benchmark 7-H-2

a. 7-H-2.1 Describe the physical and social benefits of participating in a variety of physical activities.

b. 7-H-2.2 Log participation in physical activities that encourage social interaction.

c. 7-H-2.3 Provide opportunities (through journaling) for students to express their feelings toward issues such as the importance physical activity, body image, goals, etc. without fear of judgment.

18. Standard 7: Benchmark 7-H-3

a. 7-H-3.1 Identify physical activities that can be used to relieve stress.

b. 7-H-3.2 Describe how physical activity can provide a positive social environment for activities with others.

c. 7-H-3.3 Log participation in physical activities targeted toward relaxation and/or stress relief.

d. 7-H-3.4 Record positive effects experienced during various physical activities in physical education class.

e. 7-H-3.5 Develop a portfolio using artifacts that show student enjoyment of and benefit from participating in physical activity.

B. Grades 9-12: II

1. Standard 1: Benchmark 1-H-1

a. 1-H-1.1 Demonstrate mastery in an invasion/wall, target, and/or field game.

b. 1-H-1.2 Demonstrate mastery in a dance form (e.g., social, square, jazz).

c. 1-H-1.3 Demonstrate mastery in a fitness-related activity (e.g., rock climbing, track and field).

2. Standard 1: Benchmark 1-H-2

a. 1-H-2.1 Maintain a log/journal of outdoor activities describing frequency of physical activity.

b. 1-H-2.2 Maintain a log/journal of leisure activities describing frequency of physical activity.

3. Standard 2: Benchmark 2-H-1

a. 2-H-1.1 Correctly identify the critical elements for successful performance of a sport skill.

b. 2-H-1.2 Record a self-appraisal of motor skills used for a specific task for individual/team sports/ activities such as striking, dribbling, catching, kicking and tossing

c. 2-H-1.3 List safety issues of health and fitness activities.

d. 2-H-1.4 Design and present an obstacle skills course, using skills from various forms of physical activity (group work).

4. Standard 2: Benchmark 2-H-2

a. 2-H-2.1 Apply knowledge of biomechanical movements as they relate to physical activity and sports.

5. Standard 3: Benchmark 3-H-1

a. 3-H-1.1 Participate in a variety of physical activities appropriate for maintaining or enhancing a healthy and active lifestyle.

b. 3-H-1.2 Record physical activity participation in a log or journal.

c. 3-H-1.3 Record inventory of personal behavior that supports a healthy lifestyle.

6. Standard 3: Benchmark 3-H-2

a. 3-H-2.1 Record the benefits of participation in recreational activities.

b. 3-H-2.2 Log/journal of personal lifetime/recreational health activities and include the benefits of participation (e.g., heart health, eating habits, nutrition).

7. Standard 3: Benchmark 3-H-3

a. 3-H-3.1 Teach class members a physical activity that contributes to improved physical fitness.

b. 3-H-3.2 Demonstrate a physical activity skill that contributes to improved physical fitness.

8. Standard 4: Benchmark 4-H-1

a. 4-H-1.1 Plan a personal fitness and conditioning program.

b. 4-H-1.2 Implement and log a personal fitness and conditioning program.

c. 4-H-1.3 Participate in class-selected physical activity designed to improve physical fitness.

9. Standard 4: Benchmark 4-H-2

a. 4-H-2.1 Participate in a health-related fitness assessment (Fitnessgram or comparable assessment tool) and interpret results.

b. 4-H-2.2 Monitor body responses before, during, and after exercise by checking pulse rate, recovery rate and target heart rate.

c. 4-H-2.3 Develop realistic short-term and long-term personal fitness goals.

d. 4-H-2.4 Assess and log progress toward fitness goals twice per semester.

e. 4-H-2.5 Adjust and log activity levels to meet personal fitness needs.

10. Standard 4: Benchmark 4-H-3

a. 4-H-3.1 Implement a personal fitness program that will enable one to achieve the specified goals previously set.

b. 4-H-3.2 Demonstrate evidence of fitness assessment and use the results to guide changes in personal fitness plan.

c. 4-H-3.3 Interpret progress toward achievement of personal fitness goals after a period of training.

11. Standard 5: Benchmark 5-H-1

a. 5-H-1.1 Follow safe practices that prevent injuries and/or unsafe conditions when using activity equipment.

b. 5-H-1.2 Adhere to established rules to avoid neglect and/or liabilities.

c. 5-H-1.3 Provide a class demonstration of a selected safety practice.

12. Standard 5: Benchmark 5-H-2

a. 5-H-2.1 Recognize and describe how environmental changes may affect physical performance (e.g., weather conditions, locations and facilities).

b. 5-H-2.2 Identify and record potentially dangerous repercussions from physical activities concerning hydration, apparel, ventilation and appropriate prevention strategies.

13. Standard 5: Benchmark 5-H-3

a. 5-H-3.1 Identify and apply rules and procedures that are designed for safe participation.

b. 5-H-3.2 Explain how and why rules provide for safe practices in physical activity participation.

c. 5-H-3.3 Respond to challenges, successes, and failures in physical activities in socially appropriate ways.

d. 5-H-3.4 Accept successes and performance limitations of self and others, exhibit appropriate behavior/responses, and recognize that improvement is possible with appropriate practice.

e. 5-H-3.5 Anticipate and identify potentially dangerous consequences of participating in selected activities.

14. Standard 6: Benchmark 6-H-1

a. 6-H-1.1 Identify and record activities which target current student population (demographics).

b. 6-H-1.2 Select and demonstrate a physical activity which encourages participation (group work).

15. Standard 6: Benchmark 6-H-2

a. 6-H-2.1 Develop a game to include all students, including persons of diverse backgrounds and abilities in physical activity.

b. 6-H-2.2 Participate successfully in a cooperative learning group in a variety of physical activity settings.

16. Standard 7: Benchmark 7-H-1

a. 7-H-1.1 Identify, participate in, log physical activities that are personally enjoyable.

b. 7-H-1.2 Log participation in a variety of physical activities which include the cooperation of teamwork.

c. 7-H-1.3 Pursue new activities that provide opportunities for individual activities and group activities.

d. 7-H-1.4 Demonstrate a positive and energetic attitude in all activities.

17. Standard 7: Benchmark 7-H-2

a. 7-H-2.1 Identify and log recreational and physical activities that provide personal feelings of success.

b. 7-H-2.2 Participate in and log physical activities that encourage social interaction.

c. 7-H-2.3 Express feelings toward issues such as the importance of physical activity, body image, goals, etc. through journaling.

d. 7-H-2.4 Describe self-satisfaction of participating in a game, sport, or physical activity.

18. Standard 7: Benchmark 7-H-3

a. 7-H-3.1 Keep a log of participation in physical activities that are enjoyable and relaxing.

b. 7-H-3.2 Identify and record negative feelings that accompany physical activities.

c. 7-H-3.3 Participate in and log physical activities targeted toward relaxation and/or stress relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4, et seq.; R.S. 17:17.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1185 (June 2002), amended LR 35:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? Yes.

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 via U.S. Mail until 4:30 p.m., October 9, 2009, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Acting Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 102—Louisiana Physical Education Content Standards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no estimated savings to the state or local governmental units as a result of this policy change.

The proposed policy change will result in a total estimated cost of $15,664 to the state.

- It is estimated that $15,500 will be expended by the Department of Education for the statewide implementation of the Physical Education Grade-Level Expectations.
- An additional $164.00 will be expended by the state due to expense associated with publication of the proposed policy change in the *Louisiana Register*.

The economic impact to local governmental units or local education agencies (LEAs) as a result of the proposed policy change cannot be measured. The impact is estimated to be minimal and is associated with travel to regional professional development meetings by LEA and/or school-level personnel.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed policy change will have no effect on revenue collections at the state or local governmental level.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed policy change will result in no cost or economic benefit to persons directly affected or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy change will have no effect on competition or employment.

Beth Scioneaux	H. Gordon Monk
Deputy Superintendent	Legislative Fiscal Officer
0908#065	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System—Differentiated Accountability Pilot (LAC 28:LXXXIII.Chapter 20)

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 111—The Louisiana School, District, and State Accountability System*: Chapter 20, Differentiated Accountability Pilot. Proposed changes in Bulletin 111, Chapter 20, provide detail of the No Child Left Behind Differentiated Accountability Plan Pilot that proposes different, more targeted/effective interventions for schools and school districts in need of improvement so that students can reach proficiency in Reading/Language Arts and Math by 2014. Act 478 of the 1997 Regular Legislative Session called for the development of an Accountability System for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components that are required to change in response to state and federal laws and regulations.

Title 28
EDUCATION
Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System
Chapter 20. Differentiated Accountability Pilot
§2001. Pilot Program, Timeframe, and Transition

A. In January 2009, the United States Department of Education approved Louisiana's proposal to participate in its Differentiated Accountability Pilot Program.

1. The flexibility applies to all schools required to implement interventions in academic year 2009-10 as a result of the 2008/09 accountability release (preliminary and/or full).

2. The pilot program is scheduled to end with academic year 2012-13.

3. Districts with schools that entered SI 1 and began implementing interventions in academic year 2008-09 shall not enter the pilot program but shall follow existing policy for an additional year if the school does not move to SI 2 as a result of the 2009 summer preliminary release.

4. Districts with schools entering SI 1 or AUS 1 in fall 2009 shall have the option of participating in the pilot program immediately or following existing policy for an additional year. A written justification must be submitted to the LDE and receive LDE approval for schools that follow existing policy.

5. All schools shall participate in the pilot in years 2010-11 to 2012-13.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§2003. Academically Unacceptable Schools

A. Existing policy related to the remedies required of a school with an SPS below 60.0 are generally in alignment with the flexibility offered by the differentiated accountability pilot except that during the pilot:

1. Title 1 schools must offer supplemental educational services when entering AUS 1;

2. non-Title 1 schools must select and implement 1 intervention from the corrective action list when entering AUS 1;

3. all schools entering AUS 2 shall offer school choice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§2005. Subgroup Component Failure Category Determinations

A. Schools that enter SI 1 and are required to implement the associated interventions shall be categorized into one of three groups.

1. If the subgroup/subgroups that caused the schools to enter SI 1 comprise a total of 15 percent or less of the schools' total enrollments, the schools shall be labeled "symptomatic."

2. If the subgroup/subgroups that caused the schools to enter SI 1 comprise a total of 15.1 percent to 30.0 percent of the schools' total enrollments, the schools shall be labeled "acute."

3. If the subgroup/subgroups that caused the schools to enter SI 1 comprise a total of 30.1 percent or greater of the schools' total enrollments, the schools shall be labeled "chronic."

4. Each time a school moves to an additional level of subgroup component failure (SI 2, CA 1, etc.) and an additional subgroup contributes to the label, the school shall be reassessed on the percentage of students in the failing subgroup/subgroups and if the results so indicate, receive a different label and the associated requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§2007. Requirements for Schools in Subgroup Component Failure

A. Districts with a school failing the subgroup component but that does not enter SI 1 must assign a district assistance team to work with the school to provide training and assistance with diagnostic/data analysis tools included in the school improvement planning process.

B. The LDE shall maintain an extensive list of effective school improvement strategies and distribute the interventions list to districts following their identification.

C. All interventions are additive in nature: schools continue interventions from prior years and add those required by continued subgroup component failure.

D. Districts with schools entering SI 1 shall:

1. offer supplemental educational services to students in Title 1 schools;

2. select and implement an intervention from the interventions list for non-Title 1 schools;

3. include at least one additional strategy from the interventions list in the SIPs for schools labeled "chronic;"

4. assign district assistance teams to assist, oversee, and monitor implementation of school improvement plans in SI 1 schools;

5. submit quarterly implementation reports to the LDE;

6. submit the SI 1 revised school improvement plans (SIPs) to the LDE for approval.

B. Districts with schools entering SI 2 shall:

1. offer school choice for students in Title 1 schools;

2. select and implement an intervention from the Interventions List for non-Title 1 schools;

3. include at least one additional strategy from the interventions list in the SIPs for schools labeled "acute" or "chronic."

C. Districts with schools entering CA 1 shall include at least one additional strategy from the interventions list in the SIPs for all schools.

D. Districts with schools entering CA 2 shall:

1. submit to the LDE a corrective action plan to address any failure to successfully implement the SIPs;

2. include at least one additional strategy from the interventions list in the SIPs for schools labeled "acute" or "chronic."

E. Districts with schools entering Restructuring Level 1 shall:

1. write and submit for approval to the LDE:

a. a focusea." Focused plans are based on each identified subgroup;

b. a comprehensive restructuring plan for schools labeled "chronic." Comprehensive plans are based on the entire school.

F. Districts with schools entering Restructuring Level 2 shall:

1. implement the restructuring plans.

G. Schools that fail to receive approval of their restructuring plans or that fail to implement restructuring plans are eligible for state takeover.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

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? No.

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., October 9, 2009, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Acting Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 111—The Louisiana School, District, and State Accountability System Differentiated Accountability Pilot

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Proposed changes in Bulletin 111, Chapter 20 provide detail of the No Child Left Behind Differentiated Accountability Plan Pilot that proposes different, more targeted/effective interventions for schools and school districts in need of improvement so that students can reach proficiency in Reading/Language Arts and Math by 2014.

There are no estimated implementation costs (savings) to state or local governmental units as a result of these changes.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
Management and Finance
0907#064

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Agricultural Education, Technology Education, Trade and Industrial Education
(LAC 28:CXV. 2373, 2385, and 2387)

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 741—Louisiana Handbook for School Administrators*: §2373.Agricultural Education, §2385.Technology Education, and §2387.Trade and Industrial Education. The proposed changes will update course titles to reflect utilization of industry-based certification curriculum and training in NCCER Carpentry I and II, Electrical I and II, Instrumentation Control Mechanic I and II, Pipe Fitter I and II, and Welding Technology I and II. The action is being proposed to update Career and Technical course offerings. In updating these course offerings our Career and Technical program of studies will provide students with the opportunity to participate in industry-based certification training in multiple building trade areas.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 23. Curriculum and Instruction
§2373. Agricultural Education

A. The agricultural education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Exploratory Agriscience	7-8	-
Agribusiness	10-12	1/2-1
Agricultural Education Elective I, II	9-12	1/2-3
Agriscience I	9-12	1
Agriscience II	10-12	1
Agriscience III	11-12	1
Agriscience Elective I, II	9-12	1/2-3
Agriscience-Construction Technology	11-12	1/2-1
Agriscience-Leadership	9-12	1/2-1
Agriscience Power Equipment	11-12	1/2-1
Animal Science	11-12	1/2
Biotechnology in Agriscience	11-12	1
Canine Care and Training	9-12	1/2
Cooperative Agriscience Education I	11-12	3
Cooperative Agriscience Education II	12	3
Environmental Studies in Agriscience	11-12	1
Equine Science	11-12	1/2-1
Floristry	11-12	1
Forestry	11-12	1/2-1
Horticulture	11-12	1/2-1
Landscape Design, Construction and Maintenance	10-12	1
Precision Instrumentation in Agriscience	10 12	1/2
Small Animal Care and Management	10-12	1/2-1
Veterinary Assistant	10-12	1
Industry-Based Certifications		
NCCER Welding Technology I Agriscience	11-12	1-3
NCCER Carpentry in Agriscience	11-12	1-3
NCCER Electrical I Agriscience	11-12	1-3
NCCER Pipefitting in Agriscience	11-12	1-3

B. - C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1298 (June 2005), amended LR 33:277 (February 2007), LR 33:2050 (October 2007), LR 34:2386 (November 2008), LR 35:

§2385. Technology Education

A. Technology education (formerly industrial arts) course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Communication/Middle School	6-8	-
Construction/Middle School	6-8	-

Course Title(s)	Recommended Grade Level	Units
Manufacturing Technology/Middle School	6-8	-
Modular Technology/Middle School	6-8	-
Transportation Technology/Middle School	6-8	-
Advanced Electricity/Electronics	10-12	1
Advanced Metal Technology	10-12	1
Advanced Technical Drafting	10-12	1
Advanced Wood Technology	10-12	1
Architectural Drafting	10-12	1
Basic Electricity/Electronics	9-12	1
Basic Metal Technology	9-12	1
Basic Technical Drafting	9-12	1
Basic Wood Technology	9-12	1
Communication Technology	9-12	1
Construction Technology	10-12	1
Cooperative Technology Education	10-12	3
Energy, Power, and Transportation Technology	9-12	1
General Technology Education	9-12	1
Manufacturing Technology	9-12	1
Materials and Processes	10-12	1
Physics of Technology I	10-12	1
Physics of Technology II	11-12	1
Power Mechanics	9-12	1
Technology Education Computer Applications	9-12	1
Technology Education Elective I, II	9-12	1/2-3
Welding Technology	10-12	1
Industry-Based Certifications		
Process Technician I, II	11-12	1
NCCER Carpentry I, II TE	11-12	1-3
NCCER Electrical I, II TE	11-12	1-3
NCCER Instrumentation Control Mechanic I, II	11-12	1-3
NCCER Pipe Fitter I, II TE	11-12	1-3
NCCER Welding Technology I, II TE	11-12	1-3
Introduction to Engineering Design	8-12	1
Principles of Engineering	9-10	1
Digital Electronics	9-10	1
Aerospace Engineering	11-12	1
Civil Engineering and Architecture	11-12	1
Computer Integrated Manufacturing	11-12	1
Engineering Design and Development	11-12	1
Engineering Design I, II	11-12	1
Marine Engineering	11-12	0.5

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 33:279 (February 2007), LR 35:

§2387. Trade and Industrial Education

A. Trade and industrial education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Air Conditioning/ Refrigeration I, II	11-12	1-3
Air Conditioning/ Refrigeration III, IV	11-12	2-3
Auto Body Repair I, II	11-12	1-3
Auto Body Repair III, IV	11-12	2-3
Automotive Technician I, II	11-12	1-3
Automotive Technician III, IV, V, VI	11-12	1-3
General Automotive Maintenance	11-12	1-3
G.M. Technician I, II	11-12	1-3
NCCER Carpentry I, II	11-12	1-3
NCCER Electrical I, II	11-12	1-3
NCCER Instrumentation Control Mechanic I, II	11-12	1-3
NCCER Pipe Fitter I, II	11-12	1-3
NCCER Welding Technology I, II	11-12	1-3
Masonry I, II	11-12	1-3
Cabinetmaking I, II	11-12	1-3
Carpentry I, II	11-12	1-3
Carpentry III, IV	11-12	2-3
Culinary Occupations I, II	11-12	1-3
Culinary Occupations III, IV	11-12	2-3
Custom Sewing I, II	11-12	1-3
Computer Electronics I, II	11-12	1-3
Computer Service Technology I, II	11-12	2-3
Commercial Art I, II	11-12	1-3
T & I Cooperative Education (TICE) I	11-12	1-3
T & I Cooperative Education (TICE) II	12	1-3
T & I Elective I	11-12	1-3
T & I Elective II	11-12	1-3
Cosmetology I, II	11-12	1-3
Cosmetology III, IV	11-12	2-3
Diesel Mechanics I, II	11-12	1-3
Diesel Mechanics III, IV	11-12	2-3
Drafting and Design Technology I, II	11-12	1-3
Drafting and Design Technology III, IV	11-12	2-3
Basic Electricity I, II	11-12	1-3
Electronics I, II	11-12	1-3
Industrial Electronics I, II	11-12	1-3
Electrician I, II	11-12	1-3
Electrician III, IV	11-12	2-3
Graphic Arts I, II	11-12	1-3
Graphic Arts III, IV	11-12	2-3
Horticulture I, II	11-12	1-3
Industrial Engines I, II	11-12	1-3
Laboratory Technology I, II	11-12	1-3
Industrial Machine Shop I, II	11-12	1-3
Industrial Machine Shop III, IV	11-12	2-3
Marine Operations I, II	11-12	1-3
Photography I, II	11-12	1-3
Networking Basics	10-12	2-3
Routers and Routing Basics	10-12	2-3
Switching Basics and Intermediate Routing	11-12	2-3
WAN Technologies	11-12	2-3
Plumbing I, II	11-12	1-3
Printing I, II	11-12	1-3
Sheet Metal I, II	11-12	1-3
Outdoor Power Equipment Technician I, II	11-12	1-3
Outdoor Power Equipment Technician III, IV	11-12	2-3
Television Production I, II	11-12	1-3
Upholstery I , II	11-12	1-3
Welding I, II	11-12	1-3
Welding III, IV	11-12	2-3
Hull Shipbuilding	11-12	0.5
Barber I-IV	9-12	2

B. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 32:1415 (August 2006), LR 33:1615 (August 2007), LR 34:2558 (December 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 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 via the U.S. Mail until 4:30 p.m., October 9, 2009, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Acting Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Agricultural Education, Technology Education, Trade and Industrial Education

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed revision will change Career and Technical Education course offerings. It is estimated that there will be no additional implementation costs to state governmental units except for an estimated $168 for printing the Bulletin 741 amendment in the *Louisiana Register*. The LEA may choose to offer new courses to students that may require updating course offerings or other counseling brochures. LEAs choosing to offer the new courses may need to purchase items such as new textbooks, instructional materials or equipment. Each LEA will make its determination.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by state/local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Secondary Career and Technical students will be the population affected by the changes. Students will be able to participate in courses that will prepare them for the workplace, meeting industry employee requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Employers could have a larger, trained and qualified pool from which to select employees.

Elizabeth Scioneaux
Deputy Superintendent
0908#059

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—General Career and Technical Education (LAC 28:CXV.2377)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2377. General Career and Technical Education. The proposed changes will add a new course offering, Journey to Careers, as a 1/2 or 1 credit course. The action is being proposed to update Career and Technical course offerings. In updating these course offerings our Career and Technical program of studies will provide students with the opportunity to participate in a comprehensive career exploration course.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 23. Curriculum and Instruction
§2377. General Career and Technical Education

A. General Career and Technical Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
CTE Internship I	11-12	1
CTE Internship II	12	1
CTE Internship I	11-12	2
CTE Internship II	12	2
General Cooperative Education I	11-12	3
General Cooperative Education II	12	3
Education for Careers	9-12	1/2 -1
Advanced Television Broadcasting I	10-12	1-3
Advanced Television Broadcasting II	11-12	1-3
Digital Media I	10-12	1-3
Digital Media II	11-12	1-3
Oracle Internet Academy		
Database Design and Programming	11-12	1
Java Programming	11-12	1
Database Programming with PL/SQL	11-12	1
Finance Academy		
Business Economics	11-12	1/2
Financial Services	11-12	1/2
Financial Planning	11-12	1/2
Ethics in Business	11-12	1/2
Insurance	11-12	1/2

Course Title(s)	Recommended Grade Level	Units
Business in a Global Economy	11-12	1/2
Principles of Finance	11-12	1/2 – 1
Principles of Accounting	11-12	1/2
Managerial Accounting	11-12	1/2
Advanced Finance	11-12	1/2
Hospitality and Tourism Academy		
Principles of Hospitality and Tourism	11-12	1/2
Customer Service	11-12	1/2
Sports Entertainment and Event Management	11-12	1/2
Geography and World Cultures	11-12	1/2
Sustainable Tourism	11-12	1/2
Hospitality Marketing	11-12	1/2
Information Technology Academy		
Principles of Information Technology	11-12	1/2
Computer Networking	11-12	1/2
Web Design	11-12	1/2
Databases Design	11-12	1/2
Computer Systems	11-12	1/2
Introduction to Programming	11-12	1/2
Digital Video	11-12	1/2
STAR I	11-12	1
STAR II	12	1
Entrepreneurship	11-12	1
Journey to Careers	9	1/2-1

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1299 (June 2005), amended LR 32:546 (April 2006), LR 32:1415 (August 2006) LR 33:278 (February 2007), LR 33:2050 (October 2007), LR 34:1386 (July 2008), LR 34:2558 (December 2008), LR 35:

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 via the U.S. Mail until 4:30 p.m., October 9, 2009, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Acting Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—General Career and Technical Education

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed revision will change Career and Technical Education course offerings. It is estimated that there will be no additional implementation costs to state governmental units except for an estimated $168 for printing the Bulletin 741 amendment in the Louisiana Register. The LEA may choose to offer new courses to students that may require updating course offerings or other counseling brochures. LEAs choosing to offer the new courses may need to purchase items such as new textbooks, instructional materials or equipment. Each LEA will make its determination.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by state/local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Secondary Career and Technical students will be the population affected by the changes. Students will be able to participate in courses that will prepare them for the workplace, meeting industry employee requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Employers could have a larger, trained and qualified pool from which to select employees.

Elizabeth Scioneaux
Deputy Superintendent
0907#062

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Health Occupations (LAC 28:CXV.2381)

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 741—Louisiana Handbook for School Administrators*: §2381.Health Occupations. The proposed changes will increase the course credit for Emergency Medical Technician (EMT) course. The action is being proposed to update Career and Technical course offerings. The EMT-B course content and training requirements have increased over time, and districts need the

option to offer EMT-B for an additional credit hour. Students will benefit from the additional class time to cover the material mandated by the Bureau of Emergency Medical Services (BEMS).

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 23. Curriculum and Instruction
§2381. Health Occupations

A. Health Occupations course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
AHEC of a Summer Career Exploration	9-12	1/2
Allied Health Services I	10-12	1-2
Allied Health Services II	10-12	1-2
Cooperative Health Occupations	11-12	3
Dental Assistant I	10-12	1-2
Dental Assistant II	11-12	2-3
Emergency Medical Technician—Basic	12	2-3
First Responder	10 -12	1/2-2
Health Occupations Elective I, II	9-12	1/2-3
Health Science I	11-12	1-2
Health Science II	12	1-2
Introduction to Emergency Medical Technology	10-12	2
Introduction to Health Occupations	9-12	1
Introduction to Pharmacy Assistant	10-12	1
Medical Assistant I	10-12	1-2
Medical Assistant II	11-12	1-2
Medical Assistant III	12	1-2
Medical Terminology	9-12	1
Nurse Assistant	10-12	2-3
Patient Care Technician	12	3
Pharmacy Technician	12	1-2
Sports Medicine I	10-12	1/2
Sports Medicine II	11-12	1/2
Sports Medicine III	11-12	1

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 33:279 (February 2007), LR 33:1615 (August 2007), LR 33:2051 (October 2007), 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 via the U.S. Mail until 4:30 p.m., October 9, 2009, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Acting Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Health Occupations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed revision will change Career and Technical Education course offerings. It is estimated that there will be no additional implementation costs to state governmental units except for an estimated $168 for printing the Bulletin 741 amendment in the *Louisiana Register*. The LEA may choose to offer new courses to students that may require updating course offerings or other counseling brochures. LEAs choosing to offer the new courses may need to purchase items such as new textbooks, instructional materials or equipment. Each LEA will make its determination.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by state/local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Secondary Career and Technical students will be the population affected by the changes. Students will be able to participate in courses that will prepare them for the workplace, meeting industry employee requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Employers could have a larger, trained and qualified pool from which to select employees.

Elizabeth Scioneaux
Deputy Superintendent
0907#061

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—High School Graduation Requirements (LAC 28:CXV.2319)

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 741—Louisiana Handbook for School Administrators*: §2319. High School Graduation Requirements. This policy revision replaces the Graduation Exit Examination (GEE) with the End-of-Course tests as a graduation requirement for incoming freshmen in

2010-2011. This policy revision is intended to help prevent dropouts and assist in helping students graduate on time.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 23. Curriculum and Requirements
§2319. High School Graduation Requirements

A. - A.3.d. …

B. In addition to completing the required Carnegie units, students must pass the required assessments to earn a standard high school diploma.

1. For incoming freshmen prior to 2010-2011, students must pass the English language arts and mathematics components of the GEE or LEAP Alternate Assessment, Level 2 (LAA 2) and either the science or social studies portions of GEE or LAA 2. For students with disabilities who have passed two of the three required components of the GEE or LAA 2 and have exhausted all opportunities available through the end of the 12th grade to pass the remaining required GEE or LAA 2 component, that GEE or LAA 2 component may be waived by the State Superintendent of Education if the Department of Education determines the student's disability significantly impacts his/her ability to pass the GEE or LAA 2 component.

a. Only students with disabilities eligible under IDEA who meet the LAA 2 participation criteria may take the LAA 2.

b. The English language arts and mathematics components of GEE or LAA 2 shall first be administered to students in the 10th grade.

c. The science and social studies components of the GEE or LAA 2 shall first be administered to students in the 11th grade.

2. For incoming freshmen in 2010-2011 and beyond, students must meet the assessment requirements below to earn a standard diploma.

a. Students must pass three End-of-Course Tests in the following categories:

i. English II or English III;

ii. algebra I or geometry;

iii. biology or American history.

b. For students with disabilities who have passed two of the three required End-of-Course Tests and have exhausted all opportunities available through the end of the 12th grade to pass the remaining required End-of-Course Test, that End-of-Course Test may be waived by the State Superintendent of Education if the Department of Education determines the student's disability significantly impacts his/her ability to pass the End-of-Course Test.

3. Remediation and retake opportunities will be provided for students that do not pass the GEE, LAA 2, or the End-of-Course Tests. Students shall be offered 50 hours of remediation each year in each content area they do not pass. Refer to *Bulletin 1566—Guidelines for Pupil Progression,* and the addendum to *Bulletin 1566—Regulations for the Implementation of Remedial Education Programs Related to the LEAP/CRT Program, Regular School Year.*

4. Students may apply a maximum of two Carnegie units of elective credit toward high school graduation by successfully completing specially designed courses for remediation.

a. A maximum of one Carnegie unit of elective credit may be applied toward meeting high school graduation requirements by an eighth grade student who has scored at the *Unsatisfactory* achievement level on either the English language arts and/or the mathematics component(s) of the eighth grade LEAP provided the student:

i. successfully completed specially designed elective(s) for LEAP remediation;

ii. Scored at or above the *Basic* achievement level on those component(s) of the eighth grade LEAP for which the student previously scored at the *Unsatisfactory* achievement level.

C. Prior to or upon the student's entering the tenth grade, all LEAs shall notify each student and his/her parents or guardians of the requirement of passing GEE, LAA 2, or the End-of-Course Tests.

1. Upon their entering a school system, students transferring to any high school of an LEA shall be notified by that system of the requirement of passing GEE, LAA 2, or the End-of-Course Tests.

D. The Certificate of Achievement is an exit document issued to a student with a disability after he or she has achieved certain competencies and has met certain conditions. Refer to *Bulletin 1706—Regulations for the Implementation of the Children with Exceptionalities Act.*

E. - J. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R. S. 17:183.2; R.S. 17: 395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 35:1230 (July 2009), 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 via the U.S. Mail until 4:30 p.m., October 9, 2009, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Acting Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—High School Graduation Requirements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This policy revision replaces the Graduation Exit Examination (GEE) with the End-of-Course Tests as a graduation requirement for incoming freshmen in 2010-2011. There will be no additional cost or savings to governmental units. The cost of the End-of-Course Tests will replace the cost of the GEE.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to schools or school districts.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0907#063

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Trade and Industrial Education
(LAC 28:CXV.2387)

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 741—Louisiana Handbook for School Administrators*: §2387.Trade and Industrial Education. The proposed amendment will:

a. add four new 2 credit courses to the Trade and Industrial program area: Barber I, II, III, and IV; and

b. change the number of credit hours for Automotive Technician III, IV, V, and VI.

The action is being proposed to update Trade and Industrial Career and Technical course offerings. In updating these courses new offerings will be available in Barber I, II, III, and IV.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 23. Curriculum and Instruction
§2387. Trade and Industrial Education

A. Trade and Industrial Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Air Conditioning/Refrigeration I, II	11-12	1-3
Air Conditioning/Refrigeration III, IV	11-12	2-3
Auto Body Repair I, II	11-12	1-3
Auto Body Repair III, IV	11-12	2-3
Automotive Technician I, II	11-12	1-3
Automotive Technician III, IV, V, VI	11-12	1-3
General Automotive Maintenance	11-12	1-3
G.M. Technician I, II	11-12	1-3
NCCER Carpentry I, II	11-12	1-3
NCCER Electrical I, II	11-12	1-3
NCCER Instrumentation Control Mechanic I, II	11-12	1-3
NCCER Pipe Fitter I, II	11-12	1-3
NCCER Welding Technology I, II	11-12	1-3
Masonry I, II	11-12	1-3
Cabinetmaking I, II	11-12	1-3
Carpentry I, II	11-12	1-3
Carpentry III, IV	11-12	2-3
Culinary Occupations I, II	11-12	1-3
Culinary Occupations III, IV	11-12	2-3
Custom Sewing I, II	11-12	1-3
Computer Electronics I, II	11-12	1-3
Computer Service Technology I, II	11-12	2-3
Commercial Art I, II	11-12	1-3
T & I Cooperative Education (TICE) I	11-12	1-3
T & I Cooperative Education (TICE) II	12	1-3
T & I Elective I	11-12	1-3
T & I Elective II	11-12	1-3
Cosmetology I, II	11-12	1-3
Cosmetology III, IV	11-12	2-3
Diesel Mechanics I, II	11-12	1-3
Diesel Mechanics III, IV	11-12	2-3
Drafting and Design Technology I, II	11-12	1-3
Drafting and Design Technology III, IV	11-12	2-3
Basic Electricity I, II	11-12	1-3
Electronics I, II	11-12	1-3
Industrial Electronics I, II	11-12	1-3
Electrician I, II	11-12	1-3
Electrician III, IV	11-12	2-3
Graphic Arts I, II	11-12	1-3
Graphic Arts III, IV	11-12	2-3
Horticulture I, II	11-12	1-3
Industrial Engines I, II	11-12	1-3
Laboratory Technology I, II	11-12	1-3
Industrial Machine Shop I, II	11-12	1-3
Industrial Machine Shop III, IV	11-12	2-3
Marine Operations I, II	11-12	1-3
Photography I, II	11-12	1-3
Networking Basics	10-12	2-3
Routers and Routing Basics	10-12	2-3
Switching Basics and Intermediate Routing	11-12	2-3
WAN Technologies	11-12	2-3
Plumbing I, II	11-12	1-3

Course Title(s)	Recommended Grade Level	Units
Printing I, II	11-12	1-3
Sheet Metal I, II	11-12	1-3
Outdoor Power Equipment Technician I, II	11-12	1-3
Outdoor Power Equipment Technician III, IV	11-12	2-3
Television Production I, II	11-12	1-3
Upholstery I , II	11-12	1-3
Welding I, II	11-12	1-3
Welding III, IV	11-12	2-3
Hull Shipbuilding	11-12	0.5
Barber I-IV	9-12	2

B. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 32:1415 (August 2006), LR 33:1615 (August 2007), LR 34:2558 (December 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 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 via the U.S. Mail until 4:30 p.m., October 9, 2009, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Acting Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Trade and Industrial Education

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed revision will:

a. add four new 2 credit courses to the Trade & Industrial program area: Barber I, II, III, & IV

b. change the number of credit hours for Automotive Technician III, IV, V, & VI.

It is estimated that there will be no additional implementation costs (savings) to state governmental units except for an estimated $168 for printing the amendment of Bulletin 741 in the *Louisiana Register*. The LEA may choose to offer new courses to students that may require updating course offerings or other counseling brochures. LEAs choosing to offer the new courses may need to purchase items such as new textbooks, instructional materials or equipment. Each LEA will make its determination.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections by state/local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Secondary Career and Technical students will be the population affected by the changes. Students will be able to participate in courses that will prepare them for the workplace, meeting industry employee requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Employers could have a larger, trained and qualified pool from which to select employees.

Elizabeth Scioneaux
Deputy Superintendent
0908#060

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—Career and Technical Education
(LAC 28:CXXXI.Chapter 5)

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:* §501.Introduction, §503.Career and Technical Certificate Types Issued Prior to July 1, 2006, §504.Career and Technical Certificate Types Issued after July 1, 2006, §505.CTTIE-1 and CTTIE-2 Certificates, §507.VTIE, CTTIE, and CTTIE-1 Certificates Renewal Guidelines, §509.CTTIE-2 Certificates Renewal Guidelines, and §511.Process for Reinstating Lapsed CTTIE or VTIE Certificates. This policy revision will clarify Career and Technical Trade and Industrial Education (CTTIE) licensure requirements and expand career and technical certification areas to ensure alignment with high demand occupations as identified by the Louisiana Workforce Investment Council. The revisions are the result of collaborative efforts between the Divisions of Certification and Preparation and Career and Technical Education to ensure alignment with high demand occupations.

Title 28
EDUCATION
Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel
Chapter 5. Standards for Secondary Career and Technical Trade and Industrial Education Personnel

§501. Introduction

A. Career and Technical Trade and Industrial Education (CTTIE) certificates authorize full time or part time employment for instructors of CTTIE classes. The applicant being certified under requirements found in this bulletin may teach CTTIE courses as listed on the Teacher Louisiana website (http://www.teachlouisiana.net).

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 32:1812 (October 2006), amended LR 35:

§503. Career and Technical Certificate Types Issued Prior to July 1, 2006

A. Vocational Technical Industrial Education (VTIE) Certificates—Issued prior to July 1, 2004.

1. Vocational Temporary (VT)—Valid for one year; renewable annually while holder completes required coursework.

2. Vocational Permanent (VP)—Lifetime certificate for continuous service.

B. Career and Technical Trade and Industrial Education (CTTIE) Certificates—Issued between July 1, 2004, and June 30, 2006.

1. CTTIE Temporary Certificate (CT)—Valid for one year; renewable annually while holder completes required coursework.

2. CTTIE Permanent Certificate (CP)—Lifetime certificate for continuous-service.

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 32:1812 (October 2006), amended LR 35:

§504. Career and Technical Certificate Types Issued after July 1, 2006

1. CTTIE-1 Certificate—Valid for one year; renewable for a maximum of five years while holder completes required coursework.

2. CTTIE-2 Certificate—Valid for five years and renewable. To qualify for this certificate, an individual must meet requirements for a CTTIE-1 certificate and have earned the appropriate CTTIE coursework.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:

§505. CTTIE-1 and CTTIE-2 Certificates

A. CTTIE-1 and CTTIE-2 certificates are issued to instructors who teach CTTIE courses listed on the "Teach Louisiana" website. CTTIE certification classes (listed in §507.B) are not required prior to issuance of an initial CTTIE-1 certificate.

B. Eligibility Requirements

1. Applicant must hold a high school diploma, or have passed an equivalency test approved by the State Department of Education.

2. Applicant must have a minimum of four years of full time work experience or 7,680 hours of experience in the selected career and technical field:

a. at least one year of full time work experience or 1,920 hours of the required work experience must have been acquired within the five calendar years immediately prior to certification;

b. graduates of community and technical colleges will be given credit for two years or 3,840 hours of occupational experience if the training is in the field for which the applicant is applying; and

c. graduates with a bachelor's degree from a regionally accredited college or university will be given credit for two years or 3,840 hours of experience;

d. graduates with an advanced degree from a regionally accredited college or university will be given credit for three years or 5,760 hours of occupational experience;

e. graduates with a technical degree in the selected field and a bachelor's degree from a regionally accredited college or university will be given credit for three years or 5,760 hours of occupational experience;

f. graduates with a bachelor's degree from a regionally accredited college or university and an Industry Based Certification (IBC) in the selected field, or who pass the appropriate NOCTI exam if industry-based certification is not available, will be given credit for three years or 5,760 hours of occupational experience;

g. applicants holding current approved industry-based certification, or who pass the approved NOCTI exam if industry-based certification is not available, will be given credit for two years or 3,840 hours of work experience. An industry-based certification may not be combined with educational attainment to qualify for a waiver from all required work experience.

3. Applicants with an earned baccalaureate degree and who hold an industry-based certification (IBC) in the selected field may also apply years of teaching experience in that field toward the required work experience.

4. Applicants with prior teaching experience at a postsecondary institution in the selected field may apply those years of teaching at a postsecondary institution toward the required work experience.

5. In addition to CTTIE certification, a current license must be held when a state or national license is required in the workplace. A state or national license will be recognized as an industry–based certification.

C. Certified Nursing Assistant (CNA) Eligibility Requirements

1. Applicant must be a professional nursing program graduate with current Louisiana licensure as a registered nurse (RN) or practical nurse (PN).

2. Applicant must have a minimum of two of the past four years of experience in staff nursing or PN or RN nursing education. One year of this experience must be in caring for the elderly or chronically ill. Applicant must submit letter from employer for verification of work duty.

3. Licensed practical nurses (LPN) may serve as a certified nursing assistant instructor under the direct supervision of a registered nurse. LPNs, under the general supervision of the primary instructor, may provide classroom and skills training instruction and supervision if they have two years of experience in caring for the elderly and/or chronically ill. Applicant must submit a letter from the district CTE supervisor with the name of the RN supervisor.

4. All instructors must have a "Train the Trainer Certificate" and meet Certified Nursing Assistant Regulations, as mandated by the Louisiana Department of Health and Hospitals (DHH).

5. Applicant with the approval letter from DHH will not have to send the above verifications. Approval letter must be dated within the last year of CTTIE application.

D. Certified Nursing Assistant, Program Coordinator—Eligibility Requirements. The program coordinator must be a registered nurse (RN) and must have the following experience and qualifications:

1. current Louisiana licensure as a registered nurse (RN);

2. a minimum of two years of nursing experience, of which at least one year must be in caring for the elderly or chronically ill;

3. completion of VTIE, CTTIE, "train-the-trainer" type program or a master's degree or higher;

4. all instructors must meet requirements mandated by the Louisiana Department of Health and Hospitals (DHH).

E. Emergency Medical Technician

1. An Emergency Medical Technician (EMT) instructor must be approved by the Louisiana Department of Career and Technical Education (CTE) office and the Bureau of EMS.

F. Other Health Professions/Related Fields Instructor (e.g., Dental Assistant, Sports Medicine)—Eligibility Requirements

1. Applicant must be a graduate of an approved program in the area to be taught, with current state license or national certification where required. Nutrition instructors in nursing programs may meet certification requirements with a degree in Family and Consumer Sciences and a minimum of 12 semester hours in Foods and Nutrition.

2. Applicant must have a minimum of two years of occupational experience in the area in which he/she is to teach. One year of this experience must have been served within the last five years.

3. Sports medicine instructors shall have at least a Bachelor of Science degree and have received and maintained a current state and/or national certification as an athletic trainer and meet all CTTIE requirements.

G. Jobs for America's Graduates (JAG) Louisiana Job Specialist eligibility requirements (one of the following):

1. a bachelor's degree from a state-approved and regionally accredited college or university, plus two years of full-time work experience, or 3,840 hours of work experience within four years of date of application; or

2. a high school diploma or general equivalency diploma (GED) plus five years of full-time work experience or 9,600 hours of work experience with seven years of date of application (Exceptions to the number of required years/hours of experience may be approved by the Board of Elementary and Secondary Education.); or

3. a valid standard Louisiana teaching or school counselor certification for which the professional coursework identified in §507 shall not be required.

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 32:1813 (October 2006), amended LR 35:

§507. VTIE, CTTIE, and CTTIE-1 Certificates Renewal Guidelines

A. Holder must earn at least three semester hours in professional coursework each year until a minimum number of required semester hours have been completed, as follows:

1. with no degree—fifteen semester hours;

2. with an associate degree—twelve semester hours;

3. with a baccalaureate degree—nine semester hours;

4. with a graduate degree—six semester hours;

5. with a valid Louisiana teaching certificate (Type A, B, C, Level 1, 2, 3 or OS)—three semester hours; (New Instructor Workshop is not required);

6. with three years of post-secondary teaching experience—three semester hours (must include the New Instructor Workshop);

7. with a valid Louisiana teaching certificate (Type A, B, C, Level 1, 2, 3 or OS) and three years of teaching experience—immediate CTTIE 2 certification.

B. The coursework must be completed from the following approved list:

1. New Instructor Workshop (mandatory for all instructors who do not hold a valid Louisiana teaching certificate and do not have three years of successful teaching experience);

2. Foundations of Vocational Technical Education;

3. Preparation of Vocational Technical Education Instructional Materials;

4. Management of the Vocational Technical Education Classroom(s)/Laboratory(ies);

5. Occupational Safety and Health;

6. Testing and Evaluation in Vocational Technical Education;

7. Teaching Special Needs Students in Vocational Technical Education;

8. Methods of Teaching Vocational Technical Education;

9. Occupational Analysis and Course Development;

10. Ethics and Diversity in the Workplace/Classroom;

11. Computer Technology in the Classroom;

12. Curriculum Planning;

13. Vocational Guidance;

14. Management of Change;

15. Basic Theory in Vocational Education;

16. Advanced Theory in Vocational Education;

17. Development of Vocational Teacher Competency;

18. Adolescent Psychology;

19 Other education pedagogy courses, including online courses, from accredited institutions. Must have prior approval from the Office of Career and Technical Education.

C. If a state or national license is required in the workplace, a current license must be held. A state or national license will be recognized as an industry-based certification.

D. Upon successful completion of the required hours, and upon written request, a VTIE or a CTTIE temporary certificate was converted to a permanent CTTIE certificate until June 30, 2006. After June 30, 2006, certificates for all holders of VTIE, CTTIE, and CTTIE-1 certificates who are completing the required hours will be converted to five year CTTIE-2 certificates upon written request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1814 (October 2006), amended LR 33:2356 (November 2007), LR 35:

§509. CTTIE-2 Certificates Renewal Guidelines

A. Certificate holder must complete 150 continuing learning units (CLUs) of district-approved and district-verified professional development over the five year time period during which the certificate is held.

B. The Louisiana employing authority must request renewal of the certificate directly from the State Department of Education.

C. If holder of an expired certificate has not earned the required 150 CLUs of professional development, the expired certificate may be reactivated upon request of the Louisiana employing authority (at the level that was attained prior to expiration) for a period of one year, during which time holder must complete the required 150 CLUs and present evidence of successful completion to the Division of Certification and Preparation. Failure to complete necessary CLUs during the one year reactivation period will result in an expired certificate that cannot be reinstated until evidence is provided of completed professional development requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1814 (October 2006), amended LR 35:

§511. Process for Reinstating Lapsed CTTIE or VTIE Certificates

A. If holder allows a period of five consecutive calendar years to pass in which he/she is not a regularly employed teacher for at least one semester, or 90 consecutive days, the certificate will lapse for disuse.

B. To reinstate a CTTIE or VTIE certificate if a license is required in the workplace, holder must present evidence that he/she has a current state or national license. Holder must also present evidence that he/she earned six semester hours of credit in state-approved courses (see §507.B) during the five year period immediately preceding request for reinstatement.

C. If a license is not required in the workplace, to reinstate a CTTIE or VTIE certificate the holder must present evidence that he/she earned six semester hours of credit in state-approved courses (see §507.B) during the five year period immediately preceding request for reinstatement.

D. If holder did not earn the required six semester hours, the lapsed certificate may be reactivated upon request (at the level that was attained prior to disuse) for a period of one year, during which time the holder must complete reinstatement requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1814 (October 2006), amended LR 35:

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 via the U.S. Mail until 4:30 p.m., October 9, 2009, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Acting Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel
Career and Technical Education

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This policy revision will clarify Career and Technical Trade and Industrial Education (CTTIE) licensure requirements and expand career and technical certification areas to ensure alignment with high demand occupations as identified by the Louisiana Workforce Investment Council. 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
0908#058

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Division of Administration
Board of Regents

Registration, Licensure, and Consumer Protection
(LAC 28:XI.Chapters 1-5)

Editor's Note: This Proposed Rule is being repromulgated to correct errors. The original Notice of Intent may be viewed on pages 1335-1340 of the July 20, 2009 *Louisiana Register.*

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and R.S. 17:1808, notice is hereby given that the State Board of Regents proposes to amend the rules and regulations to LAC Part Number IX, Regents, Chapters 1-5.

Title 28
EDUCATION
Part IX. Regents

Chapter 1. Rules for Registration and Licensure

§101. Definition of Terms

A. Terms used in these regulations such as *Board of Regents, Postsecondary, Academic Degree-Granting Institution*, *Registration*, *Licensure*, and *Fees* shall be interpreted in accordance with R.S. 17:1808.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1551 (December 1993), amended LR 35:

§103. Registration and License Applications

A. All public and private postsecondary, academic degree-granting institutions offering instruction in the state of Louisiana must register annually with the Board of Regents. Regular licenses are reviewed every two years. Requests for registration forms and license applications should be made in writing and addressed to:

Commissioner of Higher Education
Louisiana Board of Regents
150 Third Street, Suite 129
Baton Rouge, LA 70801-1389

B. Completed registration forms and license applications should be returned to the address shown above.

C. License applications must be accompanied by a nonrefundable license application fee of $750. The license application fee must be paid by company or institutional check or by money order, and should be made payable to the Louisiana Board of Regents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1551 (December 1993), amended LR 21:168 (February 1995), amended LR 35:

§105. License Fees

A. The license application fee shall be $750. Those institutions granted a license to operate will be required to pay an additional $750 at the start of the second year of the two-year licensing period. License renewal fees are required during each subsequent two-year licensing period and are nonrefundable.

B. If a request for license renewal is not received at the Board of Regents' offices at least 30 days prior to its expiration date, the institution can be subject to a delinquent fee of $500 in addition to the renewal fee.

C. The Board of Regents may authorize assessment of special or supplemental fees to be paid by registered institutions pursuant to special actions or requests.

D. Institutions seeking licensure shall submit all required materials and the nonrefundable license fee to the Board of Regents. If a final determination concerning the institution's qualifications for licensure is not reached within 180 days of receipt of the license application, a provisional license will be issued to the institution. The provisional license will remain in effect pending a final licensing decision by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1551 (December 1993), amended LR 21:168 (February 1995), LR 35:

§107. Information Requirements for Registration[1]

A. All postsecondary, academic degree-granting institutions are required to provide the following information on an annual basis:

1 name and in-state address of the institution;
2. location of its main campus or office;
3. a role, scope, and mission statement;
4. degrees offered in Louisiana;
5. courses offered in Louisiana;
6. the name of the institution's chief executive officer and chief financial officer;
7. names and addresses of the institution's governing board members, if applicable;
8. description of its physical facilities in Louisiana;
9. information relative to the institution's accreditation or official candidacy status from a regional or professional accrediting agency recognized by the United States Department of Education;
10. information relative to programmatic accreditation of official candidacy status from a professional program accrediting agency mandated by Board of Regents' Academic Affairs Policy and Procedures 2.13—Program Accreditation and recognized by the United States Department of Education.
11. other information as specified by the Board of Regents.

[1]Registration with the Board of Regents shall in no way constitute state approval or accreditation of any institution and shall not be used in any form of advertisement by any institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1551 (December 1993), amended LR 35:

Chapter 3. Criteria and Requirements for Licensure

§301. General Standards

A. General standards for public and private academic degree-granting institutions offering similar degrees and titles must be as close as possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1552 (December 1993), amended LR 21:168 (February 1995), LR 35:

§302. Institutional Accreditation

A. Institutions must hold accreditation through an association recognized by the U.S. Department of Education.

Institutions domiciled outside the state of Louisiana must be fully accredited by an accrediting body recognized by the U.S. Department of Education prior to making an application for licensure with the Board of Regents. Institutions domiciled in the state of Louisiana must either hold recognized accreditation or must make formal application and obtain accreditation from a U.S. Department of Education recognized accrediting association by date certain as a requirement for licensure.

B. Institutions seeking accreditation that have been found to meet other requirements set forth by the Board of Regents will be granted a conditional license until such time that they are accredited, or at a minimum, receive candidacy status from a recognized accrediting association. An institution that does not receive accreditation within a specified time frame will have its conditional license revoked.

C. The Board of Regents will consider a possible waiver of the accreditation requirement in the case of single purpose institutions. This consideration will be given in circumstances where the board determines that it would be educationally impractical for an institution to reorganize its programs and operations in order to become eligible for consideration by a U.S. Department of Education recognized accrediting association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 21:168 (February 1995), amended LR 35:

§303. Program Accreditation

A. Academic programs offered and/or proposed by applicant institutions must meet program accreditation mandates as defined by Board of Regents' Academic Affairs Policy and Procedures 2.13 - Program Accreditation prior to making an application for licensure with the Board of Regents. Licensed Institutions domiciled outside of Louisiana which offer programs mandated to be accredited by the aforementioned Regents' policy, may, at the discretion of the Board of Regents, be required to meet additional conditions that demonstrate a high probability of being granted mandated program accreditation. Institutions domiciled in the state of Louisiana offering programs which are mandated to be accredited by Regents' policy must either hold recognized program accreditation or must make formal application and obtain such accreditation from a Board of Regents mandated and U.S. Department of Education recognized program accrediting association by a date determined by the Board of Regents as a requirement for licensure.

B. Institutions seeking mandated program accreditation as required by the aforementioned Regents' policy that have been found to meet other requirements set forth by the Board of Regents will be granted a conditional license until such time that they are accredited, or at a minimum, receive candidacy status from a recognized program accrediting association. An institution that does not receive program accreditation within the specified time frame may have its conditional license revoked by the Board of Regents.

C. The Board of Regents will consider a possible waiver of mandated program accreditation requirements in the exceptional cases. This consideration will be given in circumstances where the board determines that it would be educationally impractical for an institution to reorganize its programs and operations in order to become eligible for program accreditation consideration by a Board of Regents mandated and U.S. Department of Education recognized program accrediting association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 35:

§304. Faculty, etc.

A. Qualifications of Faculty

1. Faculty shall be qualified by education and experience in the fields in which they teach. Faculty must meet the following minimum requirements.

a. Faculty shall possess no less than the degree awarded to a graduate of the program in which they are teaching.

b. The faculty shall be sufficient in number to establish and maintain the effectiveness of the educational program.

B. Institutions offering advanced degrees must employ faculty who hold advanced degrees in appropriate fields from institutions accredited by recognized agencies.[1] It is required that faculty credentials be verifiable.

1. If any institution employs a faculty member whose highest earned degree is from a non-regionally-accredited institution within the United States or an institution outside the United States, the institution must show evidence that the faculty member has appropriate academic preparation.

2. It is the responsibility of the institution to keep on file for all full-time and part-time faculty members documentation of academic preparation, such as official transcripts, and if appropriate for demonstrating competency, official documentation of professional and work experience, technical and performance competency, records of publications, and certifications and other qualifications.[2]

[1] Recognized accrediting agencies are those approved by the United States Department of Education.

[2] Source: Southern Association of Colleges and Schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1552 (December 1993), amended LR 21:169 (February 1995), amended LR 35:

§305. Academic Program Standards

A. All curricula leading to academic credits, certification, and degrees shall be formulated and evaluated by qualified faculty with appropriate education and experience acceptable to public postsecondary, academic degree-granting institutions in Louisiana and elsewhere in the nation.

B. Institutions shall provide prospective students and other interested persons with the following information:

1. admissions policies;
2. program descriptions and objectives;
3. schedule of tuition, fees, and other charges;
4. cancellation and refund policies;
5. other material information about the institution and its programs which may impact a student's enrollment decision.

C. Institutions must provide programs of sufficient quality and content to achieve stated learning objectives. Curricula offered by the institutions must be formulated and evaluated by faculty with appropriate earned degrees from

institutions with U.S. Department of Education recognized accreditation. Institutions are also required to establish procedures for evaluating program effectiveness.

D. Institutions must indicate the means for determining satisfactory academic progress and provide data on student retention, graduation rates, job placement, and passing rates on licensure or certification exams, where appropriate.

E. Currently licensed institutions seeking to implement new academic degree programs must first advise the Board of Regents of the proposed change. New programs will be reviewed as part of the regular license renewal process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1552 (December 1993), amended LR 21:169 (February 1995), LR 35:

§307. Physical Plant Standards

A. Library

1. The institution shall maintain and/or provide student access to an appropriate library collection with adequate support staff, services, and equipment. Any contractual agreements with libraries not directly affiliated with the institution shall be available in writing to the Board of Regents.

B. Facilities and Equipment

1. The institution shall maintain or provide access to appropriate administrative, classroom, and laboratory space, and appropriate equipment and instructional materials to support quality education based on the type and level of program being offered. Facilities must comply with all health and safety laws and ordinances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1552 (December 1993), amended LR 21:169 (February 1995), LR 35:

§309. Financial Operations

A. The business and financial management of the institution shall be directed by a qualified and bonded business officer responsible to the institution's chief executive officer.

B. Institutions are required to maintain adequate insurance to protect the operation of the institution and to guard against any personal or public liability.

C. All institutions shall provide the Board of Regents with a financial review prepared in accordance with standards established by the American Institute of Certified Public Accountants. However, any institution accredited by an agency recognized by the United States Department of Education may, at its discretion, submit financial statements prepared in accordance with rules and guidelines established by the accrediting agency.

D. Institutions shall maintain and update a long-range financial development plan for the institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1553 (December 1993), amended LR 35:

§311. Maintenance of Records

A. Institutions are required to keep records for a minimum of three years which detail:

1 the composition and background of students, faculty, and administrative staff;

2. the institution's physical plant including land, buildings, library, and research facilities;

3. copies of brochures, catalogs, and advertising which describe student admissions, programs, and scholarships.

B. A student's records must be available for review by that student at the institution's central office.

C. Individual student records must include an enrollment agreement which at a minimum contain:

1. the name and address of the student;

2. commencement date of the program;

3. titles of courses within the student's chosen curriculum;

4 total hours (quarter, trimester, semester);

5. a payment schedule which includes the total cost to the student;

6. the refund policy of the institution;

7. a statement indicating that the individual signing the agreement has read and understands all aspects of the agreement;

8. student grievance procedures.

D. Student records must also include:

1. grades received;

2. all obligations incurred and all funds paid by the student to the institution;

3. student attendance information;

4. counseling records;

5. a transcript;

6. financial aid records.

E. Student records shall be available and readily accessible for use and review by authorized officials of the institution and authorized representatives of the Board of Regents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1553 (December 1993), amended LR 21:169 (February 1995), LR 35:

§313. Student Services[1]

A. Institutions shall provide orientation and counseling services throughout enrollment. Special services including financial aid, employment placement for graduates, and student housing, if appropriate, must be evaluated periodically by the institution to determine effectiveness in meeting student needs and contribution to the educational purpose of the institution.

[1]The Board of Regents recommends that prospective students seek independent job/career counseling prior to enrollment in an academic degree-granting postsecondary institution and encourages such institutions to promote this recommendation.

AUTHORITY NOTE: Promulgated in accordance with 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1553 (December 1993), amended LR 35:

§315. Organization and Administration

A. An institution shall establish a governing structure which delineates responsibility for institutional operations, policy formation, and the selection of the institution's chief executive officer. If the institution is governed by a board or group of officers, the role and responsibilities of that body must be clearly defined.

B. Administrative personnel must possess qualifications which support the institution's stated purpose and effective operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1553 (December 1993), amended LR 21:169 (February 1995), LR 35:

§317. Procedures for Tuition and Fee Refunds

A. Pricing and Refund Policy

1. The institution must fully disclose all charges and fees in writing to prospective students. The parent or guardian of prospective students under legal adult age must be notified in writing of all charges and fees prior to enrollment.

2. Prospective students shall not be required to make a nonrefundable tuition payment until it has been determined that the prospective student has been accepted for enrollment.

3. The institution's refund policy must be disclosed in any contract to be signed by the prospective student or the student's legal adult guardian.

4. Institutions are required to follow the minimum standards for tuition refunds as set forth herein. These guidelines are:

a. students who withdraw prior to the first day of classes are entitled to a full refund of tuition and fees. Institutions may, however, require a nonrefundable application fee;

b. any administrative fees retained by the institution upon the early withdrawal of a student shall not exceed 15 percent of the total cost of tuition and fees paid by the student;

c. institutions which financially obligate students on a quarter, semester, or similar basis will be subject to the following tuition and fee refund policy:

i. students withdrawing during the first 10 days of classes shall receive a minimum refund of 75 percent of total tuition and fees paid, excluding any nonrefundable application fees, less the maximally-allowable administrative fees retained by the institution;

ii. students withdrawing from day 11 through day 24 of classes shall receive a minimum refund of 50 percent of total tuition and fees paid, excluding any nonrefundable application fees, less the maximally-allowable administrative fees retained by the institution;

iii. students withdrawing from day 25 through the end of the quarter, semester, or similar time period are ineligible to receive a refund;

d. institutions which financially obligate students for longer periods of time, i.e., periods exceeding six months, shall be subject to the following tuition and fee refund policy:

i. students completing up to 25 percent of the course of study shall receive a minimum refund of 50 percent of total tuition and fees paid, excluding any nonrefundable application fees, less the maximally allowable administrative fees retained by the institution;

ii. students completing more than 25 percent but less than 50 percent of the course of study shall receive a minimum refund of 25 percent of total tuition and fees paid, excluding any nonrefundable application fees, less the maximally-allowable administrative fees retained by the institution;

iii. institutions are not allowed to keep the full amount of tuition and fee charges until at least half the program of study has been completed;

iv. refund policies for programs offering tuition/fee payments on an installment plan will be examined by the Board of Regents on an individual basis. Refund policies for installment programs are expected to conform generally to refund policies which appear in Subsection A.4.c.i through iii and d.i through iv of this Section;

e. refunds must be paid within 45 days of the date of withdrawal of the student from the institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1553 (December 1993), amended LR 21:169 (February 1995), LR 35:

§319. Surety Bonding

A. Institutions are required to post a surety bond issued by a surety authorized to do business in the state of Louisiana in the amount of $10,000 to cover the period of the license. These bonds are intended to protect students in the event of a sudden closure of the institution. Institutions that are also licensed and bonded under provisions set forth by the Louisiana Board of Elementary and Secondary Education (BESE) need not seek additional bonding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1554 (December 1993), amended LR 35:

§321. Rules and Guidelines on Advertising[1]

A. Registration with the Board of Regents shall in no way constitute state approval or accreditation of any institution and shall not be used in any form of advertising by any institution.

B. Licensed institutions may use the state name and licensing agency as follows:

1. *(Name of Institution)* is currently licensed by the Board of Regents of the State of Louisiana. Licenses are renewed by the State Board of Regents every two years. Licensed institutions have met minimal operational standards set forth by the state, but licensure does not constitute accreditation, guarantee the transferability of credit, nor signify that programs are certifiable by any professional agency or organization.

2. Any licensed institution wishing to use the state name and licensing agency in any promotion or advertising is restricted to the language which appears above. The statement must appear in its entirety and any modifications are not permissible under these rules or the law.

3. Advertising shall not include false or misleading statements with respect to the institution, its personnel, courses, or services, or the occupational opportunities of its graduates.

4. Institutions claiming accreditation by agencies not recognized by the United States Department of Education must clearly state in all advertising and promotional literature that the institutions' accreditation is not recognized by either the United States Department of Education or the State of Louisiana.

[1]Neither the institution nor its agents shall engage in false advertising or other misleading practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1554 (December 1993), amended LR 35:

§323. Hearings and Appeals

A. Institutional hearings and appeals are handled in accordance with guidelines set forth in R.S. 17:1808.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1554 (December 1993), amended LR 35:

§325. Sale of Ownership and Transfer of License

A. In the event that an institution sells all or a majority interest in its ownership, it is required to notify the Board of Regents of both expected and final sale. A review of the institution's operations and objectives will be required upon final sale to determine if the institution's operating license should be transferred to the new ownership. Any and all costs associated with the Board of Regents' review will be borne by the new ownership of the institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 21:170 (February 1995), amended LR 35:

§327. Licensure Denial

A. Any institution denied licensure by the Board of Regents that wishes to seek reconsideration by the board is required to wait a minimum of 24 months before resubmitting its license application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 21:170 (February 1995), amended LR 35:

Chapter 5. Consumer Protection

§501. General Provisions

A. Individuals must make reasonable effort to solve disputes directly with the institution. If a solution cannot be reached, an individual may file a written complaint with the Board of Regents. Board of Regents' staff will review the facts and intervene where appropriate. Such intervention shall not include legal action on behalf of the party, but may include additional investigation of the institution including a site visit to determine if the institution's license should be revoked.

B. Disciplinary Provisions and Administrative Penalties

1. The Board of Regents may institute disciplinary proceedings against a licensed agent who engages in false or misleading advertising. The Board of Regents may also require an institution to submit all advertising for approval prior to use.

2. It is illegal for institutions which come under the jurisdiction of the Board of Regents to advertise, recruit students for, and/or operate educational programs in the state of Louisiana unless properly registered and licensed.

3. Penalties may be assessed for the following violations:

a. operating an institution without a license;

b. deceptive or fraudulent advertising;

c. offering an unapproved program;

d. other violations as determined by the Board of Regents.

4. Violations may result in suspension of student enrollments where patterns of abuse and willful misconduct have been established.

C. Meetings, Site Visits, and Reports

1. The Board of Regents, at its discretion, may conduct preliminary conferences with institutional officers and board members to discuss standards and procedures for implementing licensure.

2. The Board of Regents may require a site visit and examiner's report at the cost of the institution. The cost shall not exceed the actual dollar amount incurred by the Board of Regents.

3. Site visits could include an inspection of facilities, books, school files and records, as well as interviews with administrators, faculty, and students.

4. Examiners would submit a report following the site visit with recommendations pertaining to the licensure of the institution.

D. Enforcement

1. The attorney general is authorized to seek injunctive relief against an institution operating in noncompliance with the law. All costs incurred by the state of Louisiana in connection with such action shall be borne by the institution if it is found to be operating illegally.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1808.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 19:1554 (December 1993), amended LR 35:

Family Impact Statement

In accordance with R.S. 17:3141, Title 28 of the Louisiana Revised Statues, 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.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting

should reference this proposed regulation by ACT 129. Such comments must be received no later than August 24, 2009, at 4:30 p.m., and should be sent to Dr. Larry Tremblay, Louisiana State Board of Regents, P.O. Box 3677, Baton Rouge, LA 70821-3677 or to fax (225) 342-6926.

Dr. Larry Tremblay
Acting Deputy Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Registration, Licensure, and Consumer Protection

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change should have little or no impact (costs/savings) to state governmental units. The Regents' staff will add one additional step in its review process of licensed institutions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of state or local governmental units. The only impact would be if an institution determined not to seek licensure due to the additional criteria.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules will require post-secondary educational programs provided by licensed educational institutions to meet program accreditation requirements to continue operating in Louisiana. Affected institutions may incur additional requirements and costs to obtain the program accreditation required by the proposed rules if they want to continue offering the academic program in Louisiana. Affected institutions may pass on additional program accreditation costs to affected students or may choose to cease offering the particular program to students in Louisiana rather than seek program accreditations required by the proposed rules.

There are three in-state and approximately 25 post-secondary educational institutions domiciled outside of Louisiana licensed to operate in Louisiana that could be affected by the proposed program accreditation requirements according to information provided by the Louisiana Board of Regents. According to Regents, 20 of these out-of-state institutions currently enroll approximately 2,100 Louisiana residents. Another five out-of-state institutions operating in Louisiana currently enroll approximately 7,460 students nationwide, but Regents is unable to identify how many such students receive educational services in Louisiana and might be affected by the proposed rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Institutions may choose to discontinue a particular program or to cease operations altogether in Louisiana rather than seek the program accreditation required by the proposed rules, potentially decreasing supply and competition among post-secondary educational programs in Louisiana. However, individuals obtaining a degree from an accredited program from affected institutions as required by the proposed rules may have more employment offers at higher compensation amounts.

Dr. Larry Tremblay
Acting Deputy Commissioner
0908#033

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
State Military Department

Military Forces of the State (LAC 41:I.Chapters 1-9)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and Louisiana Revised Statutes 29:11, The State Military Department hereby gives notice of its intent to promulgate the Louisiana National Guard Regulation 27-10, Military Justice. This regulation was developed in accordance with Louisiana Revised Statutes Title 29:101, et seq. in order to provide the Military Forces of the State of Louisiana the proper procedures to implement Military Justice. This regulation is applicable to the servicemembers of the Louisiana National Guard, the Louisiana State Guard and any and all other state military forces. This is the first time these rules will be published and implements changes to the Louisiana Code of Military Justice, Act No. 309 of the 2007 Regular Session of the Legislature and revisions to Army Regulation 27-10, effective 16 December 2005. The Rules in this Part of the Louisiana Administrative Code will be contained in nine Chapters and seven Appendixes: Chapter 1 General, Chapter 2 Basics Of Military Justice, Chapter 3 Investigating And Obtaining Evidence, Chapter 4 Non-Judicial Punishment, Chapter 5 Pretrial Procedures, Chapter 6 Trial Procedures, Chapter 7 Post-Trial Procedures, Chapter 8 Reserved For Future Publication, Chapter 9 Complaints Under Article 138, LCMJ, Appendixes: A - Military Justice Abbreviations, B - Military Justice Definitions, C - Nonjudicial Punishment Guide, D - Summary Courts-Martial Guide, E - Jurisdictional Alignment For Louisiana Army National Guard, F - Punitive Articles Of The Louisiana Code Of Military Justice, G - Request For Arrest Warrant Packet.

Title 41
MILITARY FORCES OF THE STATE
Part I. Military Justice

Chapter 1. General

§101. Authority

A. U.S. Constitution, Article I, Section 8, clauses 15 and 16; Article II, Section 2, clause 1; Article VI; Amendment X.

B. Title 10, Chapter 47, U.S. Code (UCMJ); Title 32 U.S. Code, Sections 326-333

C. Manual for Courts-Martial, United States, 2008 (MCM).

D. Army Regulation 27-10, Military Justice.

E. Air Force Manual 111-6, Military Justice.

F. Louisiana Constitution, 1974, Article IV, Section 5(J).

G. Louisiana Revised Statutes 29:2, 39, 136, 242.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§102. Purpose

A. This Regulation prescribes policies and procedures pertaining to the administration of military justice within the Louisiana National Guard and implements the Louisiana Code of Military Justice (LCMJ). Its format is designed to be of practical assistance to the commander in his effort to be effective and fair in matters relating to military law.

Although even the most routine legal situation may seem confusing initially, the solution will generally prove to be relatively simple. This Regulation presents practical advice about many aspects of military justice and is designed to equip all concerned with the resources necessary to make swift, fair, and effective decisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§103. Applicability

A. General. This Regulation applies to all persons in the military forces and applies at all places. [LCMJ Article 5.]

B. Extraterritorial Application. Courts Martial and Courts of Inquiry may be convened and held in units of the Louisiana National Guard while those units are serving outside the State, with the same jurisdiction and power as to persons subject to the LCMJ as if the proceedings were held inside the State, and offenses committed outside the State may be tried and punished either inside or outside the State. However, there is no extraterritorial application of the LCMJ to a Louisiana National Guard unit serving overseas in a Title 10, U.S. Code status. Soldiers committing offenses in a Title 10 status must be adjudicated by active duty units through the application of the Uniform Code of Military Justice (UCMJ).

C. Duty Status Limitation. No person may be tried or punished for any offense under LCMJ Articles 77-134 unless the act(s) or omission(s) constituting the offense was committed while he was in a duty status or during a period of time in which he was under lawful order to be in a duty status. (For purposes of Article 112a only, membership is equated with duty status.) Nevertheless, the processing of charges and all proceedings, including trial, may be conducted without regard to duty status of the accused, and is not affected by the place where the military justice action takes place. [LCMJ Article 2.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§104. Suggested Improvements

A. The proponent agency of this Regulation is the Office of the State Judge Advocate. Any questions and/or recommendations for improvements concerning these materials should be directed to Joint Forces Headquarters Louisiana, Consolidated Law Center, 5445 Point Clair Road, Box 28, Carville, LA 70721.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§105. Explanation of Abbreviations and Terms

A. General. Abbreviations and special terms used in this Regulation are explained in the Glossary. [See also, LCMJ Article 1, 10 U.S. Code Section 101, 32 U.S. Code Section 101, and Rules for Courts-Martial (R.C.M.) 103 for definitions of terms used therein.] If a term is not adequately explained in this Regulation, it should receive the construction and usage customarily accorded by reference to dictionaries of the English language.

B. Special Rules. Unless otherwise specifically so stated, use of the male pronoun shall be construed to include the female, and use of the term "Servicemember" includes Soldiers and Airmen of the Louisiana National Guard. References to terms peculiar to one branch of military service shall, unless the context specifically indicates a contrary intent, be construed to include the corresponding term(s) for other branch(es) of the military service. Words used in the singular number apply also to the plural; words used in the plural number include the singular. The word "shall" is mandatory, and the word "may" is permissive. The term "Louisiana National Guard" shall include the terms Louisiana Army National Guard, Louisiana Air National Guard Military Department, State Militia, State Military Forces, State Guard, and State Defense Force unless context clearly indicates otherwise. The term "Parish" shall, where applicable, be construed to include the term, "County."

C. Cross-references. References to source materials located elsewhere are designated in [brackets.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§106. Responsibilities

A. State Judge Advocate. The State Judge Advocate (SJA) is responsible for the overall supervision and administration of military justice within the Louisiana National Guard. The State Judge Advocate is also the legal advisor to The Adjutant General (TAG) and the Governor in their capacities as General Courts Martial convening authorities. The SJA supervises all Judge Advocate Legal Services (JALS) in the National Guard. [LCMJ Article 6, 34, 60; R.C.M. 406, 1106.] The SJA or his assistants shall make frequent inspections in the field in supervision of the administration of military justice. [LCMJ Article 6C.] The SJA may publish directives or rules not inconsistent herewith for the conduct of military justice operations.

B. Staff Judge Advocates. Brigade and/or Direct Reporting Unit Staff Judge Advocates are responsible for providing legal advice and services to their respective commands. The Staff Judge Advocate has responsibilities generally corresponding to those discharged by the State Judge Advocate with relation to TAG. Staff Judge Advocates assist the commander by identifying legal problems and participating in making legally acceptable decisions. Staff Judge Advocates supervise Trial Counsel and other Judge Advocates assigned to the DRU and control the duties and responsibilities assigned to the Trial Counsel and other Judge Advocates assigned to the DRU. Additionally, the Staff Judge Advocates supervise all paralegals assigned to the DRU and to Summary Court Martial Convening Authorities (i.e. Battalions) which are attached to the DRU. As such the Staff Judge Advocate is authorized by this regulation to consolidate all paralegals at a DRU law center in order to better provide efficient and timely legal services to the command.

C. Chief of Military Justice. The Chief of Military Justice is responsible for assisting in the professional development and guidance for all LANG Trial Counsel in all facets of military justice actions. The chief will supervise and is responsible for all post-trial matters for Special and General Courts-Martial. He will also provide guidance and assistance on pre-trial matters, especially preparation of convening orders and the selection of panel members.

D. Chief, Trial Defense Service. In order to provide independent trial defense counsel services to the Soldiers and Airmen of the Louisiana National Guard, TAG established Louisiana National Guard Trial Defense Service. (LANG TDS). Chief, LANG TDS shall operate independently from the State Judge Advocate and shall provided separate offices, automation, and support. Chief, LANG TDS shall provide defense counsel services for LANG personnel, whenever required by law or regulation and authorized by the State Judge Advocate. Chief, LANG TDS shall also develop programs and policies to promote the effective and efficient use of defense counsel resources and enhance the professional qualifications of all personnel providing defense services. Chief, LANG TDS is appointed by the State Judge Advocate and certified under LCMJ Article 27b(2) and is the Supervisor of all defense counsel assigned to LANG TDS. Chief, LANG TDS details defense counsel to courts martial and recommends personnel for service in LANG TDS. Chief, LANG TDS may represent soldiers and airmen in courts martial, administrative boards, and other proceedings and act as consulting counsel as required by law and regulations. Chief, LANG TDS may assist the State Judge Advocate and DRU SJA's with mobilization issues that do not relate to criminal law (ie Wills, Powers of Attorney).

E. Other Assigned Judge Advocate Legal Service (JALS) Personnel. Other assigned personnel of a JALS perform those duties prescribed by their superiors and/or outlined in applicable regulations as supplemented by superior competent authority.

F. Commanders. Commanders at each level are responsible for carrying out the military justice responsibilities outlined in this Regulation and other references. A copy of this Regulation is issued to each unit down to the company/squadron level to be maintained in the units' publications library, and is subject to inspection. It is imperative that commanders familiarize themselves with the contents of these materials. [See also, paragraph 2-3.]

G. Convening Authorities. Convening Authorities are responsible for carrying out those duties outlined in this Regulation and other references. Careful attention will be given to the area of Unlawful Command Influence discussed in Chapter 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§107. Availability of Military Justice Publications

A. The complete text of the current Manual for Courts-Martial, United States, the Louisiana Code of Military Justice (R.S. 29:101, et seq.), and this Regulation, shall be available electronically to any member of the Louisiana National Guard by accessing the State Judge Advocate's site Louisiana Knowledge Online (LKO) at http://nglashcbsvitsp1/SiteDirectory/sja/default.aspx printed copies are available upon request through Judge Advocates and the Trial Defense Service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§108. Prospective Application of Amendments

A. All references made to any provisions of the LCMJ, MCM, federal or state statutes, rules, or regulations shall automatically include amendments and additions thereto now or hereafter made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§109. Construction and Precedence

A. Principles of Construction. This Regulation and other military justice source materials shall be construed to secure simplicity in procedure, elimination of unjustifiable expense and delay, and fairness and efficiency in administration to the end that truth may be ascertained and proceedings justly determined.

B. Order of Precedence. Unless express authority or the context clearly indicate otherwise, the following authorities are applicable to the administration of military justice under the LCMJ in the following order of precedence:

1. the LCMJ and other provisions contained in La. Revised Statutes Title 29 [See, e.g. La. R.S. 29:11(F).];
2. the Military Rules of Evidence (M.R.E.) and Rules for Courts-Martial (R.C.M.);
3. Louisiana laws concerning criminal trials and procedures (e.g. La. C.Cr.P., La. C.E., etc);
4. the UCMJ.

C. Special Rules/Secondary Authorities.

1. Louisiana court decisions may be used in interpreting or construing Louisiana authorities (the LCMJ, La. R.S., this Regulation, and other Louisiana laws and rules concerning criminal trials and procedures). Decisions of the U.S. Supreme Court, other federal courts, and the U.S. Court of Military Appeals (U.S.C.M.A.) may be cited in interpreting or construing federal authorities (e.g. M.R.E.., R.C.M., UCMJ, and MCM). Decisions of the Courts of Military Review do not constitute precedent authority, but they may be cited as guidance or persuasive authority.

2. Other active component publications (regulations, pamphlets, etc.) not applicable to the National Guard when not in federal service may be used for guidance in administering military justice, but shall not be regarded as directive, particularly if they are incompatible with the general nature and organization of, or special procedures established or authorized by law for Louisiana National Guard military justice activities.

D. Matters Not Covered. All matters relating to the administration of military justice in the organized militia not otherwise provided for herein shall be decided by the customs and usage of the appropriate force or of the Armed Forces of the United States.

E. Consensual Departure Authorized. Nothing contained in this Regulation or other military justice authority shall prevent departure from any of the procedural requirements prescribed for military justice actions provided that the defendant makes a voluntary, knowledgeable, and intentional declaration on the record of his intention and desire to so depart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§110. Forms

A. Prescribed Forms. Certain forms in use by Louisiana and/or United States military forces are referred to herein. The use of any particular form described in connection with military justice actions is preferred but not mandatory. Variance from the specified forms does not constitute a jurisdictional defect or invalidate any proceeding.

B. Non-prescribed Forms. If a Department of Defense, Army, or Air Force form is available for certain purposes, it may be modified to comply with this Regulation and/or the LCMJ, and may be used for state purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§111. Jurisdictional Alignment of Louisiana Guard Units

A. The Adjutant General and Governor are the General Court-martial convening authorities. As such TAG or the Governor may publish a Jurisdictional alignment of units designating the Special Court Martial Convening Authorities and Summary Court-Martial Convening Authorities and the units under the jurisdiction of such authorities. TAG or the Governor may delegate to SPCMCA's the authority to jurisdictionally align their own subordinate units. This delegation must be in writing. All jurisdictional alignment memoranda will be appended to this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

Chapter 2. Basics of Military Justice

§201. The Commander's Role

A. The commander has the primary role in the administration of military justice. He is responsible for both enforcing the law and protecting the rights of the individual servicemember. Generally, the commander is one of the first to learn of conduct of one under his command that might require non-punitive disciplinary measures, non-judicial punishment or court-martial action. The commander's duties are two-fold. First, he has a duty to investigate the circumstances of a possible infraction and secondly, to determine the appropriate action. Factors such as the seriousness of the offense, the intent or lack thereof, the age, experience and any special qualifications of the offender, the past performance and record of the servicemember, and the state of morale and discipline in his unit will influence whether the commander prefers charges by a court-martial or disposes of the matter with non-punitive disciplinary action or non-judicial punishment. The commander has strong powers to exact obedience. But military justice should be restrained and graduated to "fit the crime." The commander should act objectively and calmly, and should never resort to scorn or ridicule. All facts should be collected and carefully considered before acting. The commander's choice of action will depend in part on the nature of the misconduct; it will also depend upon the goal sought. The commander shall consult with his servicing judge advocate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§202. Professional Standards of Conduct

A. The Louisiana Code of Judicial Conduct and Louisiana Rules of Professional Responsibility are applicable to judges and lawyers involved in Louisiana National Guard courts-martial. The Army Rules of Professional Conduct, Army Regulation 27-26 applies to all Army judge advocates and paralegals in the Louisiana National Guard. The Air Force Rules of Professional Conduct, TJS-2 applies to all Air Force judge advocates and paralegals in the Louisiana National Guard. Any allegation of a violation of such rules will be processed in accordance with Army Regulation 27-1 or TJS-2, as applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§203. Unlawful Command Influence

A. Convening Authority's Proper Role. The LCMJ permits the convening authority to play a dominant role in the court-martial process before and after trial. Before trial, the convening authority decides whether to convene a court-martial and refers the case to trial. After the trial, the convening authority has broad powers of clemency. But while the convening authority plays a dominant role before and after trial, the LCMJ has provisions to assure the independence of the court-martial during trial.

B. Specific Prohibitions. Superiors may not direct how subordinate commanders' act on cases over which authority to act has not been withheld or restricted. A superior who believes a specific action (such as imposing non-judicial punishment, referring a case to trial, or ordering pretrial confinement) should be taken may not order the subordinate to take the desired action. Rather, until the accused has been arraigned on a charge, the superior retains authority to order that charge referred to him for disposition; after arraignment, the superior has no authority to take action on the charge. [See LCMJ Article 37, R.C.M. 104]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

Chapter 3. Investigating and Obtaining Evidence

§301. Sources of Information

A. A commander may receive information from many sources that an offense may have been committed by one of his Servicemembers. For example, the unit commander himself may witness an offense, someone within the unit may report the offense, or a higher headquarters may forward a report for action. When a superior commander asks that a report be investigated and the disposition reported, the request should not be construed or interpreted as a directive to take disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§302. Command Responsibilities

A. General. Regardless of how the commander learns of an alleged offense, he must insure that the matter is promptly and adequately investigated.

B. Reporting. Any incident which may generate widespread adverse publicity or which may damage public confidence in the organized militia shall be reported to the Adjutant General through channels.

C. Investigation. The investigation should provide the unit commander with sufficient information to make an intelligent and appropriate disposition of the incident report. The commander may conduct the inquiry himself or he may direct some other competent individual to do it. In serious cases, consideration should be given to use of law enforcement professionals, such as the Military Police or Criminal Investigation Division. The investigator should collect and present all information which may prove or disprove the allegation of misconduct. The investigation should address itself to three primary questions.

1. Was an offense committed?
2. Was a servicemember involved in the offense?
3. What is the character and military record of the suspected servicemember?

D. Impartiality. The investigator must at all times remain impartial. A one-sided investigation may lead to an injustice to the accused and an embarrassment to the command. Usually, the preliminary investigation is informal and consists of interviews with witnesses and review of police reports. The investigation must be thorough enough to provide a firm factual foundation for a determination of what happened and what should be done. This investigation is preliminary in nature and should not be confused with the formal LCMJ Article 32 investigation, which requires sworn charges, nor the procedures for an administrative investigation under AR 15-6.

E. Disposition. Once the preliminary investigation is completed, the unit commander must make his decision. He may:

1. decide to take no action;
2. decide to take non-punitive disciplinary action;
3. decide to impose non-judicial punishment under LCMJ Article 15 (Chapter 4);
4. decide to prefer court-martial charges against the accused (Chapter 5); or
5. refer the case to appropriate civilian authorities (Chapter 5, paragraph 5-3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§303. Questioning Suspects and Witnesses, Generally

A. It is the duty of the unit commander to insure prompt investigation of the circumstances of an alleged crime and to examine the facts relevant to the guilt or innocence of the accused. All necessary witnesses as well as the suspects, should be interviewed. Interviews should be conducted fairly and, because memories fade, as soon as possible. The questioning of any suspect must begin with a warning of his rights under LCMJ Article 31 and his right to counsel. An investigation may be complicated or simple. In either case, the investigator will want to question both the suspect and the witnesses. Not all cases will require formal statements. In the simple case, sufficient facts may be obtained without written statements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§304. LCMJ Article 31 Warning/Right to a Lawyer

NOTE: (DA Form 3881 Rights Warning Procedures/Waiver Certificate, See Figure 5.7).

A. General. Servicemembers suspected of a violation of the LCMJ shall be advised of their Article 31 rights. A confession or admission made by such a suspect who has not been advised of his rights may result in the confession or admission being inadmissible against him court-martial. It is possible that an accused may still be convicted because of other evidence of guilt which is admissible.

1. Procedure. The following procedure must be carefully followed in questioning a suspect to insure that his statements are admissible in court proceedings (DA Form 3881 Rights Warning Procedures/Waiver Certificate, See Figure 5.7):

a. Before asking any questions pertaining to the case, first inform the individual: "You are suspected of committing the following offense(s) which is (are) violation(s) of the Louisiana Code of Military Justice. Before I ask you any questions, you must understand your rights. You have the right to remain silent. Any statement you make may be used as evidence against you in criminal or administrative proceedings. You have the right to consult with a lawyer before being asked any questions and to have the lawyer present with you during questioning. You may hire a civilian lawyer at no cost to the government or a military lawyer will be detailed for you at no cost to you. Even if you decide to answer questions now without having a lawyer present, you may stop answering questions until you consult with a lawyer."

b. After this statement is made, the suspect should be asked if he understands his rights. When the investigator is satisfied that the suspect understands these rights, then the following two questions should be asked:

(a). "Do you want a lawyer?" and

(b). "Do you want to answer any questions or make a statement?"

2. The suspect may indicate that he wishes to waive his rights to remain silent and to consult with a lawyer. He must waive these rights freely, knowingly and intelligently. If he does so, he may then be questioned concerning the offense. If the suspect indicates that he wants to consult with a lawyer, he should not be questioned until a lawyer is present. If the suspect indicates that he does not wish to answer questions, he should not be questioned. In any case, it is essential that the investigator not use a tone of voice or manner which could lead the suspect to believe that he is being threatened or which plays down the importance of the warning. If this is done it may later be held that the suspect's agreement to answer questions was gained by coercion or improper inducement and his statement would be inadmissible in a trial by court-martial. It is advisable to have a disinterested witness present for such advice of rights and suspect statements. The investigator may decide not to question a suspect if other evidence is available (DA Form 3881 Rights Warning Procedures/Waiver Certificate, See Figure 5.7).

B. If the person being interviewed is not suspected of having committed an offense, but is merely a witness to the

offense or has knowledge of it, there is no legal requirement to warn him of his rights. In the questioning, the investigator may begin to suspect that the witness was involved in the offense. This may happen when it appears that the witness was actually an accomplice or an accessory to the crime. The investigator should immediately then stop the questioning, inform the witness of the offense of which he is now suspected, and advise him of his rights as indicated above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§305. Written Statements

A. Procedure. The best means for making an accurate and complete record of the information obtained in the investigation is the sworn statement. A sworn statement (affidavit) is a written statement of facts given by a witness or suspect who states under oath or affirmation that the contents of his statement are true. All persons who are detailed to conduct the investigation are authorized by LCMJ Article 136 to administer oaths in conjunction with sworn statements taken in the course of a preliminary investigation. No special form is required to make this sworn statement. If the statement is to be taken from a suspect, DA Form 3881 (Rights Warning Procedures/Waiver Certificate) should be completed and signed by the suspect before taking his statement. A copy of DA Form 3881 is Figure 5-7, which may be used with appropriate changes in the body from "UCMJ" to "LCMJ". [See paragraph 1-10.] After a suspect has signed the DA Form 3881 and waived his rights to remain silent, his statement may be taken on DA Form 2823 (Sworn Statement). DA Form 2823 (Sworn Statement) may also be used for the sworn statement of a witness. Since the witness is not a suspect, this latter form has no provision for a warning of his rights. The language of the witness or suspect should be used throughout the statement even though it may be vulgar, grammatically incorrect, or illogical. This insures that the writing is the witness's statement and not the composition of the investigating officer. The statement may be written in narrative form or story form, in question and answer form, or both. An appropriate oath for completing the sworn statement may be administered as follows:

1. "Do you swear (or affirm) that the statements you have made are the truth, the whole truth and nothing but the truth (so help you God)?"

2. The person administering the oath must sign his own name.

B. Guidelines for Written Statements. Sworn statements should be requested primarily from witnesses who have direct, personal knowledge of the facts. If the information offered was told to a witness by Sergeant A, the investigator should obtain a sworn statement from Sergeant A. Opinions and conclusions, without offering supporting facts, reduce the reliability of a sworn statement. The investigator should attempt to obtain the facts upon which the opinions are based, and encourage the witness to substitute facts for his opinions. The witness should initial the written statement at the beginning and the end of each page, at each erasure and correction, and where otherwise indicated on DA Form 2823. The purpose of initials is to avoid any questions of tampering after the statement has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§306. Oral Statements

A. When a suspect waives his rights under LCMJ Article 31 and his right to counsel, but refuses to sign a statement, the investigator may make a summary of his remarks. This summary or oral statement may be admissible in a trial by courts-martial. The oral statement of a suspect concerning his part in an offense made to a person who is not investigating the case or which was blurted out spontaneously to the investigator before the rights warning was administered may also be admissible in a trial by court-martial. If possible, have critical oral statements witnessed by at least one disinterested individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§307. Search and Seizure

A. General. A unit commander may lawfully seize the property of a person in his unit; however, that an unlawful search which violates a Servicemember's rights will likely result in seized items being excluded from evidence and therefore inadmissible during a court-martial. Because the law of probable cause is often difficult to apply, Commanders shall consult with a Judge Advocate prior to taking action. This not only avoids unlawful searches and protects the Servicemember's rights, but it also insures that physical evidence will be admissible in a trial by court-martial.

B. Lawful Searches and Seizures. A commander may authorize a search if he is reasonably certain that an offense has been committed and that items connected with the offense will be found in the location he intends to search.

C. Search of Persons, Vehicles, or Residences not located on Military Property. Searches shall not be conducted of Persons, Vehicles, or Residences not located on Military Property. If a commander has a reasonable basis to search a servicemember’s person, vehicle, or residence not located on Military Property, he shall immediately contact his servicing Judge Advocate in order to obtain a civilian search warrant and the assistance of local law enforcement.

D. Search of Government Quarters or Residences located on Military Property. Prior to undertaking a search of Government Quarters or Residences located on Military Property, commanders and investigators shall immediately contact his servicing Judge Advocate in order to obtain a search warrant from a Military Judge.

E. Inspections. Search and seizure requirements do not limit the commander's authority to conduct legitimate inspections including unannounced shakedown inspections. The purpose of an inspection is to promote the health, welfare, preparedness, and safety of the personnel in the unit. For example, the commander may want to insure that his servicemembers have their equipment cleaned, maintained, and properly stored and that they have no dangerous articles such as ammunition carried from the range. The inspection must apply uniformly to all Servicemembers in the area and may extend to an examination of all their belongings kept within their

government living area. Although an inspection need not be previously announced, it must have a legitimate purpose and may not be a mere subterfuge or excuse for what is really an unlawful search. The commander who decides to conduct his "inspection" upon hearing of a barracks larceny, and then starts his inspection near the living area of his prime suspect probably will not later convince the military judge that he was "inspecting" rather than "searching." Since an inspection is not based on the commander's belief a crime has been committed, it is not a search. Evidence of criminal conduct discovered during the course of a legitimate inspection may be admitted at a trial by court-martial.

F. Inventories. When a servicemember is AWOL, about to be confined, or detained by civilian authorities, an inventory of the member's personal belongings is required. Evidence obtained as a result of this inventory is admissible in a court-martial. Having a disinterested witness participate in this inventory is advisable.

G. Consent Searches. A person may consent to a search of his person or property, or both, unless control over such property has been given to another. A person may grant consent to search property when the person exercises control over that property. Consent may be limited in any way by the person granting consent, including limitations in terms of time, place, or property, and may be withdrawn at any time [See also para 3-8(C).] The issue of whether or not consent has been granted is a question of fact to be determined after a thorough examination of the circumstances relative to the alleged consent.

H. Searches of Government Property. Government property may be searched unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein at the time of the search. Under normal circumstances, a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. Wall or floor lockers in living quarters issued for the purpose of storing personal possessions normally are issued for personal use; however, the determination as to whether a person has a reasonable expectation of privacy in government property issued for personal use depends on the facts and circumstances at the time of the search. [See also para 3-8(c).]

I. Searches of Open Fields or Woodlands. A search of open fields or woodlands does not require the issuance of a search warrant or search authorization.

J. Search of Person or Vehicle Located on Military Post, Reservation or Installation. When properly notified, usually by a warning sign posted conspicuously at the post, reservation or installation gate, individuals entering or leaving such post, reservation or installation give implied consent to the search of their persons, possessions, and vehicles and may be so searched. This authority includes Louisiana National Guard armories and facilities, under the provisions of La. R.S. 29:28.1.

K. Canine Searches. If a commander has a reasonable belief that illegal drugs are present in the area under his command, that commander may authorize a canine search of either the barracks or POV's located in that area and any contraband found upon alert of the canine is legal and admissible evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§308. Authority to Search

A. A search and seizure is lawful in the following situations:

1. Apprehension. A Servicemember may be searched at the time and place of a lawful apprehension. The purpose of the search is to discover weapons and to prevent the destruction of evidence. The search is limited to the person of the Servicemember and the area within his immediate control. For example, the area within his immediate control may include a nearby open locker within his reach, but not the entire room.

2. Searches Authorized by the Commander

a. Areas subject to search. A commander has authority to conduct or direct a search of any person or property located in a place under his control if there is probable cause to justify the search. Searches of areas outside the commander’s immediate control should be undertaken only after coordination with the proper command authority.

b. Requirement of Probable Cause. Before a commander may authorize a search of a person or area in a place under his control, he must at least have probable cause to believe:

i. a crime is being committed or has been committed;

ii. the person to be searched committed or is involved in the crimes;

iii. the evidence of the crime is now where the commander plans to search; and

iv. the information is credible and the source of the information is reliable.

c. Probable cause to search exists when there is a reasonable belief that a person, property, or evidence sought is located in the place or on the person to be searched. A search authorization may be based upon "hearsay" evidence in whole or in part. There must be more than mere suspicion in the mind of the commander, but absolute proof beyond a shadow of a doubt is not required. In other words, probable cause lies somewhere between suspicion and actual knowledge. The commander must personally conclude, on the basis of information presented to him, that the contraband or evidence of a crime is at that time likely to be in the possession of the individual or on the premises to be searched. The commander's determination that probable cause exists must be reasonable and must be based on facts. It may not be based only on the conclusions of others. It is of no importance that a CID agent, a first sergeant, or an informant is aware of sufficient facts to provide probable cause, unless those facts are given to the only individual who orders or authorizes the search - the commander. The commander must believe that the person furnishing the information is reliable and that he had a sound basis for his information. In case of doubt, the commander should consult a Judge Advocate. DA Form 3745 should be used by the commander when authorizing a search.

d. Delegation of Authority. A unit commander may delegate his authority to search. The delegation of this authority should be limited to those persons whose experience, responsibilities, and temperament will insure a

fair and impartial determination of probable cause. Commanders should consult the DRU SJA in order to delegate his authority to search.

3. Consent Searches

a. Probable cause is not required when a person with possession or control of property freely gives his consent to the search of his property. Because consent to the search is a waiver of the constitutional right to be free from unreasonable searches, the government must be able to produce clear and convincing evidence that the consent was voluntary and not a mere submission to authority. In order to establish voluntary consent, it is recommended that the suspect be told:

i. the specific items the search is expected to uncover;

ii. the specific area the search will cover;

iii. that he has a legal right to withhold his consent;

iv. that he cannot be forced to submit to a search unless it is properly authorized; and

v. that any evidence found in the search can be used against him.

b. It is advisable for a commander to have an unbiased and trustworthy witness present when a servicemember consents to a search. Should consent become an issue at the trial, the witness can verify the nature of the consent. If a consent search uncovers evidence of criminal conduct, the evidence will be admissible at trial. It does not matter that the consent was obtained without probable cause.

4. Open View. Evidence of criminal conduct which is in open view or located in a public area, such as a day room, may be seized without consideration of the requirements of consent or probable cause.

5. Search Warrant. Evidence may be seized pursuant to a search warrant issued by a proper magistrate. In the event that a search warrant is deemed necessary, the commander should consult a Judge Advocate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§309. Safeguarding Evidence, Generally

A. Drugs, weapons, clothing, and other items related to an alleged offense are physical evidence of crimes. The unit commander must preserve and safeguard any physical evidence in his custody. Physical evidence should be handled by as few persons as possible since anyone who touches it may be required to appear at the trial. In order to properly safeguard physical evidence, it must be carefully marked to insure the later identification. A chain of custody document must be initiated, such as DA Form 4137, Physical evidence should be turned over to investigating officer as soon as possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§310. Chain of Custody

A. When an item of physical evidence is introduced at trial, counsel must show that it is the same item that was found at the scene of a crime or otherwise connected with the offense and that the item has not been materially altered. The chain of custody document is a written record listing all persons who have handled an item from the time it was originally identified as evidence until the time of trial. Therefore, secure storage for such evidentiary items is crucial. Coordination with the servicing staff Judge Advocates and, if available, active component CID personnel and/or local law enforcement authorities should prove useful in this regard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§311. Marking Evidence

A. Physical evidence must be marked immediately by the first person who assumes custody to insure that he will be able to identify it at trial. This mark may be placed on the item itself and is usually the person's initials, the date, and time. The chain of custody record should briefly describe the item and the date and place of its discovery. One acceptable method of marking difficult items is with typewriter correction fluid, which will accept pen or pencil markings once dry. If the evidence simply cannot be marked, it should be placed in a sealed container and the container suitably marked and dated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§312. Perishable and Unstable Items

A. Perishable and unstable items of evidence require special attention. They must be photographed or otherwise preserved. Professional assistance is necessary, for example, to preserve a fingerprint or a tire track in the dirt. Military police, CID, and/or local law enforcement officials may be of assistance in this regard. Contact your Judge Advocate if in doubt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§313. Flagging Action, Generally

A. When it appears that action may be initiated which could result in a court-martial, disciplinary action, or elimination proceedings, the commander must initiate flagging action against the servicemember pursuant to AR 600-8-2, (DA Form 286, Suspension of Favorable Actions). This suspends all favorable personnel action. In no case will flagging action be used as a punitive or disciplinary measure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§314. Courts of Inquiry

A. General. A court of inquiry is a formal, fact-finding tribunal authorized by LCMJ Article 135. It may be convened by the Governor to investigate any matter of concern to the Louisiana National Guard whether or not the persons involved have requested such an inquiry.

B. Policy. LANG policy is that a court of inquiry will not be convened to investigate a particular matter to ascertain the facts if there are other satisfactory means available (prescribed by law or regulation or authorized by the customs of the service). Under this policy, it is proper to convene a court of inquiry only when-

1. The matter to be investigated is one of grave importance to the Louisiana National Guard or an individual.

2. The testimony is expected to be so diverse, complicated, conflicting, or difficult to obtain that a court of inquiry can best:

a. procure the pertinent evidence;

b. ascertain the true facts; and/or

c. assist the convening or superior authority in determining what action should be taken.

3. Procedures. The procedures applicable to courts of inquiry shall parallel those prescribed in active component regulations, except as otherwise specifically set forth in LCMJ 135 or necessitated by the peculiar nature of the Louisiana National Guard. [See AR 27-10, Chapter 10.] Counsel appointed to advise a court of inquiry shall advise the president on issues of procedural and substantive law, and the president's ruling on such issues shall be binding on the court and all participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

Chapter 4. Non-Judicial Punishment

§401. Applicability, Generally

A. A commanding officer of the organized militia may impose non-judicial punishment for minor offenses upon military personnel of his command under the provisions of LCMJ Article 15. He should distinguish non-judicial punishment from non-punitive disciplinary measures, such as reprimands, administrative reductions, and corrective training. Non-judicial punishment is a disciplinary measure more serious than the administrative corrective measures, but less serious than trial by court-martial. Non-judicial punishment provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in servicemembers without the stigma of a court-martial conviction. It is important to note that non-judicial punishment is imposed to correct misconduct which violates the LCMJ.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§402. Prerequisites

A. General. Before taking action under LCMJ Article 15, the commanding officer must satisfy himself that:

1. based on a swiftly conducted, fair, and impartial preliminary factual investigation, the alleged misconduct actually was committed by the accused Servicemember (see Chapter 3);

2. the misconduct was an offense under the Louisiana Code of Military Justice. This can be verified by consulting the "elements of the offense" analysis found under the analogous UCMJ punitive article in Part IV of the most current Manual for Courts Martial;

3. non-judicial punishment is appropriate to the offense in view of the nature and circumstances of the alleged misconduct and the Servicemember's past record. Stated another way, non-punitive measures are simply inadequate or inappropriate, and the violation is of a "minor" nature not warranting court-martial.

B. Minor Offenses. Whether an offense is "minor" depends on several factors: the nature of the offense and the circumstances surrounding its commission, the offender's age, rank, duty assignment, record, and experience. Ordinarily, a "minor offense" would exclude conduct that would warrant a dismissal, bad conduct, or dishonorable discharge or constitute a "felony" under civilian law (i.e. punishable by imprisonment at hard labor if convicted). Generally speaking, the term "minor" does not include offenses involving any greater degree of criminality than is involved in the average offense tried by summary court-martial. However, this rule is flexible, and rests with the commander's discretion. The decision whether an offense is "minor" is a matter of discretion for the commander imposing non-judicial punishment, but non-judicial punishment for an offense other than a minor offense (even though thought by the commander to be "minor") is not a bar to trial by court-martial for the same offense. [See R.C.M.. 907(b)(C)(iv).] However, the accused may show at trial that non-judicial punishment was imposed, and if the accused does so, this fact must be considered in determining an appropriate sentence. [See Article 15(f); R.C.M. 1001(c)(B).]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§403. Persons Who May Be Punished

A. The Adjutant General reserves disposition authority over all officer and senior noncommissioned officer in the grade of E7 and above offenses. Unit commanders will forward all offenses of officer and senior noncommissioned officer offenses through the DRU commanders to The Adjutant General.

B. Except as provided by subparagraph (a) of this Paragraph, unit commanders may impose non-judicial punishment upon enlisted members of their command. For purposes of Article 15, military personnel are considered to be "of the command" of a commander if they are:

1. assigned to an organization commanded by that commander.

2. affiliated with the command (by attachment, detail, or otherwise) under conditions, either expressed or implied, which indicate that the commander and the commander of the unit to which they are assigned are to exercise administrative or disciplinary authority over them.

3. unit commanders may impose non-judicial punishment upon enlisted members of their command.

C. Of the Command. To determine if an individual is "of the command" of a particular commanding officer, refer first to those written or oral orders or directives that affect the status of the individual. If orders or directives do not expressly confer authority to administer non-judicial punishment to the commander of the unit with which the servicemember is affiliated or present (as when, for example, they contain no provision attaching the servicemember "for disciplinary purposes"), consider all attendant circumstances, such as:

1. the phraseology used in the orders.

2. where the servicemember slept, ate, was paid, performed duty, the duration of the status, and other similar factors.

D. If orders or directives include such terms as "attached for administration of military justice," or simply "attached for administration," the individual so attached will be

considered to be of the command of the commander of the unit of attachment for the purpose of Article 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§404. Persons Who May Impose Non-judicial Punishment

A. General. Non-judicial punishment may be imposed by any commanding officer, provided that a superior commander has not restricted or withheld his authority to impose punishment on certain categories of military personnel or offenses (e.g. officers, senior NCO's, drug offenses, etc.) For special rules, see paragraph 4-7 and Figure 4-1.

B. Delegation. The authority given to a commander under Article 15 is an attribute of command and cannot be delegated except as follows:

1. The Adjutant General may delegate his authority under Article 15 to an Assistant Adjutant General.

2. The authority delegated may only be exercised when the delegate is senior in rank to the person punished. A delegate need not, when acting as a superior authority on an appeal, be senior in rank to the imposing commander.

3. A delegation of authority shall be in writing, and unless limited by its terms, the officer to whom this authority is granted may exercise any power that is possessed by the officer who delegated the authority.

4. Notification that the delegation has been terminated should be made in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§405. Policies

A. General. Commanders are responsible for good order and discipline in their commands. Generally, discipline can be maintained through effective leadership including, when necessary, administrative corrective measures. Non-judicial punishment is ordinarily appropriate when administrative corrective measures are inadequate due to the nature of the minor offense or the record of the Servicemember, unless it is clear that only trial by court-martial will meet the needs of justice and discipline. Non-judicial punishment shall be considered on an individual basis.

B. Proportionality. Commanders considering non-judicial punishment should consider the nature of the offense, the record of the Servicemember, the needs for good order and discipline, and the effect of non-judicial punishment on the Servicemember and the Servicemember's record. A commander should employ his power under LCMJ Article 15 in every case in which punishment is deemed necessary and that section applies, unless it is clear that punishment under that section would not meet the ends of justice and discipline. Superior commanders should restrain any tendency of subordinate commanders to resort prematurely or unnecessarily to court-martial jurisdiction for the punishment of offenders. The punitive power under Article 15 must be used judiciously and with restraint. Punishment that is too severe creates resentment and bitterness and frustrates corrective efforts. Conversely, to be effective, the punishment must be adequate and proportional to deter the offender and others from committing the same offenses.

C. Suspension of Article 15. Commanders should consider suspending all or part of any punishment selected under Article 15, particularly in the case of first offenders or when significant extenuating or mitigating matters are present. Suspension provides an incentive to the offender and gives an opportunity to the commander to evaluate the offender during the period of suspension. [See paragraph 4-23 and Figure 4-4.] Additionally, commanders must seriously consider the collateral effects of a reduction in pay grade on the accused before imposing such a penalty.

D. Referral within Chain of Command. Although a superior commander has authority to impose disciplinary punishment upon military subordinates of his command, it is customary for such superior commander to refer any breach of discipline on the part of an enlisted person in grade E-6 or below who is a member of a subordinate unit to the attention of the immediate commander of the offender. If the officer, to whom information concerning a breach of discipline is forwarded, as contemplated in this paragraph, lacks jurisdiction to impose the most appropriate punishment, he should forward the matter to a superior authority. DA Form 5109-R, Request to Superior to Exercise Article 15 Jurisdiction, may be modified and used for these purposes, or the request can be made in memorandum format. [See Figure 4-7.]

E. Personal Consideration Required. A commander who is considering a case for disposition under Article 15 will exercise personal discretion in evaluating each case, both as to whether non-judicial punishment is appropriate, and, if so, as to the nature and amount of punishment appropriate. No superior may direct that a subordinate authority impose non-judicial punishment in a particular case. No superior may issue regulations, orders, or "guides" which suggest to subordinate authorities that certain categories of minor offenses be disposed of by non-judicial punishment instead of by court-martial or administrative corrective measures, or that predetermined kinds or amounts of punishments be imposed for certain classifications of offenses that the subordinate considers appropriate for disposition by non-judicial punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§406. Authorized Punishments

A. LCMJ Article 15(B) proscribes the maximum authorized punishments a commander may impose under his non-judicial punishment authority. Figure 4-1 contains a chart outlining permissible Article 15 maximum punishments and the commanders authorized to impose such within the LANG. No additional punishments may be imposed under Article 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§407. Special Rules and Limitations

A. Combinations of Punishments. With the following exception, punishment authorized under Article 15 may be combined. No two or more of the punishments of arrest in

quarters, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment.

B. Duration of Punishments. A withholding of privileges, a restriction to certain specified limits or the imposition of extra duties, when imposed as non-judicial punishment, may not extend beyond the last day of the training period (MUTA or AT) during which such punishment was imposed. No such limitation applies to fines or forfeitures.

C. Extra Duties Considerations. No extra duties imposed as non-judicial punishment which tend to degrade the grade of the person upon whom they are imposed may be imposed upon non-commissioned officers.

D. Forfeiture of Pay Considerations. Whenever a punishment of forfeiture of pay is imposed under LCMJ Article 15, the forfeiture may apply to pay accruing on or after the date that punishment is imposed and to any pay accrued after that date.

E. Double Punishment Prohibited. When non-judicial punishment has been imposed for an offense, punishment may not again be imposed for the same offense under Article 15.

F. Increase in Punishment Prohibited. Once non-judicial punishment has been imposed, it may not be increased, upon appeal or otherwise.

G. Multiple Punishments Prohibited. When a commander determines that non-judicial punishment is appropriate for a particular servicemember, all known offenses determined to be appropriate for disposition by non-judicial punishment and ready to be considered at that time, including all such offenses arising from a single incident or course of conduct, shall ordinarily be considered together, and not made the basis for multiple punishments.

H. Statute of Limitations. Except as provided in LCMJ Article 43(d), non-judicial punishment may not be imposed for offenses which were committed more than 2 years before the date of imposition. [See LCMJ Article 43(c).]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§408. Initial Notification

A. The first steps in an Article 15 proceeding are the commander's oral and written notification to the servicemember. The elements of this step are stated on the DA Form 2627, Record of Proceedings under Article 15, UCMJ. Located at Appendix C is a "Suggested Guide for Conduct of Non-judicial Punishment Proceedings." The initial notification contains the following elements:

1. Statement of Offense. The commander who intends to impose the punishment must inform the member of that intent. The initial notification must include a brief statement of the offense that the commander believes the member has committed, including the specific Article(s) of the LCMJ. The commander shall prepare the charge sheet only with the advice and assistance of a Judge Advocate or a Paralegal. In drafting Item 1 of the DA Form 2627, the paralegal should use the model sample specification forms in Part IV, Punitive Articles, of the Manual for Courts-Martial by selecting the UCMJ Punitive Article which corresponds to the LCMJ Punitive Article under which the accused is being punished. The notice should include a brief summary of the information upon which the allegations are based or a statement that the member may, upon request, examine available statements and evidence.

2. Right to Demand Trial by Court-Martial. Unless the member is attached to or embarked in a vessel, the member has a right to demand court-martial in lieu of the Article 15. If the member has this right, the commander must so advise the individual, covering the following specific facts:

a. the member may demand trial by court-martial in lieu of non-judicial punishment;

b. the maximum punishment which the non-judicial punishment authority may impose by non-judicial punishment;

c. if trial by court-martial is demanded, charges could be referred for trial by summary, special, or general court-martial along with an explanation of the maximum possible punishments those courts-martial may adjudge; that the member may not be tried by summary court-martial over the member's objection; and that at a special or general court-martial the member has the right to be represented by military counsel at no personal expense.

3. Rights under Article 31(b), LCMJ. The commander must inform the member that under Article 31(b), the member has a right to remain silent and that anything said by the individual can be used against him.

4. Right to Consult Counsel or Representative. The commander shall inform the individual of the right to consult counsel or his personal representative concerning the proposed disciplinary action. At the time of the initial notification, the commander shall inform the servicemember of the period of time which the servicemember has to consult with counsel or personal representative and make the necessary decisions on such matters as the right to demand court-martial. The servicemember shall be afforded the opportunity to view the video and complete the survey provided by LANG TDS on State Judge Advocate's site Louisiana Knowledge Online (LKO) at http://nglashcbsvitsp1/SiteDirectory/sja/default. Unit personnel shall provide a method for the servicemember to view such video if the servicemember does not have the ability to do so. If the servicemember wishes to consult counsel after viewing the video, then unit personnel shall provided him with the contact information for LANG TDS. In no event shall a servicemember be given less that 48 hours, to consult with counsel, if he chooses to do so. The commander must afford the servicemember a reasonable amount of time to consult with counsel. In determining the amount of time afforded to servicemember to consult with counsel, the commander should consider such factors as the gravity of the offense and the availability of counsel. If, after viewing the LANG TDS video, the servicemember chooses not to avail himself to the right to counsel, then the commander may precede with the remainder of the article 15 preceding and does not have to wait a full 48 hours.

5. Right to Informal Public Hearing. The commander must inform the servicemember of the right to fully present evidence, and to be accompanied by a person to speak on his behalf. The commander must also inform the servicemember that, upon request, the hearing will be open to the public unless military exigencies or security interests preclude public disclosure.

6. Maximum Possible Punishments. While the servicemember is not entitled to be informed as to the type or amount of punishment actually contemplated by the commander if he does not demand trial by court-martial, he will in each case be informed of the maximum punishment which may be imposed under Article 15 by the officer who is to impose the punishment, and, if he specifically requests such, he shall be advised of the maximum punishment that could be adjudged by court-martial upon conviction for the offense involved. Figure 4-1 contains a chart outlining permissible Article 15 maximum punishments and the commanders authorized to impose such within the LANG. Figure 6-2 contains a table outlining permissible maximum punishments under courts-martial.

7. Possibility of Counsel. The servicemember will also be told that, if he demands trial, trial could be by SCM, SPCM, or GCM. The servicemember will also be told that he may object to trial by SCM and that at SPCM or GCM he would be entitled to representation by qualified LANG TDS, or by civilian counsel obtained at no government expense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§409. Demand for Trial by Court-Martial

A. Except in the case of a member attached to or embarked in a vessel, no non-judicial punishment under the provisions of LCMJ Article 15 may be imposed upon any member of the Louisiana National Guard if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. In such a case, the Article 15 must terminate, and the commander must then decide whether to prefer court-martial charges and the level of court. The commander need not prefer the charges, but will ordinarily do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§410. Waiver of Court-Martial and Failure to Either Submit Matters or Demand Hearing

A. If the member waives court-martial and neither submits matters in his own behalf nor demands a hearing, the commander may immediately impose punishment if convinced that a violation has been committed by the member.

§411. Waiver of Court-Martial and Hearing and Submission of Matters

A. If the servicemember waives both court-martial and an Article 15 hearing but submits matters orally or in writing in defense, extenuation, or mitigation, the commander must consider these matters before deciding whether to impose non-judicial punishment. If the matters persuade the commander that the servicemember is not guilty or that there is some other valid reason for not punishing the servicemember, the commander simply terminates the Article 15 proceeding. If, after considering the matters, the commander is still convinced that the servicemember is guilty and that non-judicial punishment is appropriate, the commander proceeds to impose punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§412. Waiver of Court-Martial and Demand for Hearing

A. General. If the servicemember waives court-martial but demands an Article 15 hearing, the commander must arrange for and conduct the hearing before deciding whether to impose non-judicial punishment. The commander himself must conduct the hearing except in rare circumstances where it is not feasible for him to do so. In those circumstances, the commander must appoint another officer to conduct the hearing. After conducting the hearing, the appointed officer should submit written recommendations to the commander.

B. Spokesman. During the hearing the servicemember may be represented by a spokesman. The individual need not be an attorney, and the spokesman's participation in the case must be completely voluntary. In addition, no travel fees or other unusual costs will be incurred at government expense to insure the spokesman's presence at the hearing. Neither shall the servicemember's desire to be represented by a spokesman be permitted to cause unreasonable delay in the disposition of his case.

C. Accused Witnesses. The servicemember may indicate the witnesses he desires produced at the hearing. If the witnesses are reasonably available, the commander must arrange for their presence. No witness or transportation fees will be incurred at government expense to insure the witnesses' presence. Reasonably available witnesses include those present for duty at the installation concerned and those whose presence can be arranged without the expenditure of government travel funds and whose attendance at the hearing will not materially delay the proceedings.

D. Evidentiary Considerations. During the hearing, neither the member nor the spokesman may examine or cross-examine witnesses unless the commander allows them to do so. However, the Servicemember or the spokesman may brief the commander on the relevant issues and areas. The commander should explore those issues and areas in questioning the witnesses. The imposing commander is not bound by the formal rules of evidence before courts-martial (except privileges), and may consider any matter, including unsworn statements, that the commander reasonably believes to be relevant to the offense.

E. Punishment Warranted. If the imposing commander decides to impose punishment, ordinarily the commander will announce the punishment to the servicemember. The commander may, if he desires to do so, explain to the servicemember why a particular punishment was imposed.

F. Punishment Not Warranted. If, after evaluation of all pertinent matters, the imposing commander determines that non-judicial punishment is not warranted, the servicemember is notified that the proceedings have been terminated and all copies of DA Form 2627 are destroyed.

G. Appellate Rights. After punishment is imposed the appellate rights and procedures which are available to the servicemember are explained to the servicemember. (Refer to Paragraph 4-16)

H. Subsequent Court-Martial. The imposition and enforcement of disciplinary punishment under LCMJ Article 15 for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the

same act or omission, and not properly punishable under LCMJ Article 15. However, the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty by court-martial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§413. Hearing Procedures

A. General. Unless the servicemember demands trial by court-martial within the decision period, the imposing commander may proceed with the hearing. Located at Appendix A of this Regulation is a "Suggested Guide for Conduct of Non-judicial Punishment Proceedings." The major functional subdivisions of the hearing consist of the following:

1. consideration of evidence, written or oral, against the servicemember.
2. examination of available evidence by the servicemember.
3. presentation by servicemember of testimony of available witnesses or other matters, in defense, extenuation, and/or mitigation.
4. determination of guilt or innocence by the imposing commander.
5. imposition of punishment or termination of the proceedings;
6. explanation of right to appeal.

B. Not Adversarial Proceedings. Article 15 proceedings, unlike courts-martial, are not adversarial in nature. Thus, no "examination" or "cross-examination" of witnesses is permitted by the servicemember or his spokesperson unless authorized by the imposing commander. The Military Rules of Evidence, other than with respect to privileges, do not apply at non-judicial punishment proceedings. Any relevant matter may be considered, after proper notification to the servicemember of the information against him and relating to the offense(s) alleged and allowing the servicemember opportunity to examine documents or physical objects against him that are being considered by the non-judicial punishment authority.

C. Open/Closed Hearings. Ordinarily, hearings are open. Though the servicemember may request that his hearing be open or closed, that decision rests solely within the discretion of the imposing commander. An "open hearing" is a hearing open to the public, but does not require the commander to hold the proceeding in a location different from that in which he conducts normal business, i.e., the commander's office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§414. Non-Judicial Punishment Based on Record of Court of Inquiry or Other Investigative Body

A. General. Non-judicial punishment may be based on the record of a court of inquiry or other investigative body, in which proceeding the member was accorded the rights of a party. No additional proceeding in the nature of a hearing is required.

B. Procedure. The servicemember shall be informed in writing that non-judicial punishment is being considered based on the record of the proceedings in question, and given the opportunity, if applicable, to refuse non-judicial punishment. If the servicemember does not demand trial by court-martial, the servicemember may submit, in writing, any matter in defense, extenuation, or mitigation, to the officer considering imposing non-judicial punishment, for consideration by that officer to determine whether the member committed the offenses in question, and, if so, to determine an appropriate punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§415. Specific Punishments

A. General. Whether to impose punishment and the nature of the punishment are the sole decisions of the imposing commander. However, commanders are encouraged to consult with their NCO's on the appropriate type, duration, and limits of punishment to be imposed. Additionally, as NCO's are often in the best position to observe a servicemember undergoing punishment and evaluate daily performance and attitude, their views on clemency should be given careful consideration.

B. Restriction. Restriction may be imposed with or without suspension from duties. Normally, the limits of the restriction should be announced at the time punishment is imposed. However, the imposing commander, a successor-in-command, and any superior authority may change the specified limits of restriction; e.g., if a servicemember is transferred or assigned duties at another location after imposition and before the term or restriction is completed. The limits of restriction, as changed, will be generally no more restrictive (unless required by military exigencies) than the limits originally imposed. Restrictions during periods other than IDT or AT require that the accused be placed on duty orders.

C. Extra Duties. Extra duties may be required to be performed at anytime and, within the duration of the punishment, for any length of time. Extra duties during periods other than IDT or AT require that the accused be placed on duty orders. Extra duties may include the performance of fatigue duty or of any other military duty. No extra duty may be imposed that:

1. constitutes cruel or unusual punishment or a punishment not sanctioned by the customs of the service (e.g., using the offender as a personal servant);
2. is a duty normally intended as an honor, such as assignment to a guard of honor;
3. is required to be performed in a ridiculous or unnecessarily degrading manner (e.g., an order to clean a barracks floor with a toothbrush);
4. constitutes a safety or health hazard to the offender; or
5. would demean the servicemember's position as a NCO or specialist.

D. Reduction in Grade. The grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this Regulation, the

imposing commander or any subordinate commander has "promotion authority" within the meaning of Article 15 if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade. When a person is reduced in grade as a result of an unsuspended reduction, the date of rank in the grade to which reduced is the date the punishment of reduction was suspended. If the reduction is suspended either on or after the time the punishment was imposed, or is set aside or mitigated to forfeiture, the date of rank in the grade held before the punishment was imposed remains unchanged. If a suspension of the reduction is vacated, the date of rank in the grade to which reduced as a result of the action is the date the punishment was originally imposed, regardless of the date the punishment was suspended or vacated.

E. Effective Date and Execution of Punishments. Reduction and forfeiture of pay, if unsuspended, take effect on the date the commander imposes the punishments. Other punishments, if unsuspended, will take effect and be carried into execution on the date they are imposed, unless the imposing commander prescribes otherwise. In those cases where the execution of the punishment legitimately must be delayed (e.g., the servicemember is hospitalized, placed on quarters, authorized emergency leave or on brief period of TDY or a brief field problem) the execution of the punishment should normally begin immediately thereafter A sentence to forfeiture of pay may be collected from active duty and inactive-duty training pay during subsequent periods of duty. If the servicemember timely files an appeal and specifically requests interruption of the performance of the punishment pending action on his appeal, the request should be granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§416. Appeals, Generally

A. Timeliness. Only one appeal is permissible under Article 15 proceedings. An appeal not made within a reasonable time may be rejected as untimely by the superior authority. A reasonable time will vary according to the situation; however, an appeal (including all documentary matters) submitted more than five days after the punishment is imposed will be presumed to be untimely unless the superior commander, in his sound discretion for good cause shown, determines it to be timely.

B. Change of Intention. If, at the time of imposition of punishment, the servicemember indicates a desire not to appeal, the superior authority may reject a subsequent election to appeal, even though it is made within the 5 day period.

C. Vacation of Suspended Punishment. Although a suspended punishment may be appealed, no appeal is authorized from the vacation of a suspended punishment. Vacation of a suspended non-judicial punishment is not itself non-judicial punishment and additional action to impose non-judicial punishment for a violation of a punitive article of the code upon which the vacation action is based is not precluded thereby. The accused is entitled to be confronted with the allegations that give rise to the vacation of a suspended punishment. Though no right exists to a full hearing, the accused should, in the absence of extraordinary circumstances, be given the opportunity to consult with a Judge Advocate and to present a written response to the allegations raised by the convening authority. [See Para 4-24 and Figure 4-.8]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§417. Who May Act on Appeal

A. General. The authority next superior to the commander will act on an appeal if the servicemember punished is still of the command of that officer at the time of appeal.

B. Next Superior Rule. If the commander has acted under a delegation of authority, the appeal will be acted on by the authority next superior to the delegating officer. If, at the time of appeal, the servicemember is no longer of the imposing commander's command, the authority next superior to the servicemember's present commander (who can impose the same kind and amount of punishment as than imposed or resulting from subsequent modifications) will act on the appeal. The authority "next superior" to an imposing commander is normally the next superior in the chain of command or such other authority as may be designated by competent authority as being next superior for the purposes of Article 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§418. Procedure for Submitting Appeal

A. All appeals will be made on DA Form 2627 or DA Form 2627-1 and forwarded through the imposing commander (or successor in command, when applicable) to the superior authority. The superior authority will act on the appeal unless otherwise so directed by competent authority. The servicemember may state reasons or attach documents to the appeal for consideration, but is not required to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§419. Action by the Imposing Commander on Appeal

A. General. The imposing commander or successor-in-command may take any action on the appeal with respect to the punishment that the superior authority could take (see paragraph 4-20). If the imposing commander or successor-in-command suspends, mitigates, remits, or sets aside any part of the punishment, this action will be so recorded according to instructions on the DA Form 2627 or 2627-1.

B. Inquiry. If such action (suspension, mitigation, remission or set aside) is taken by the imposing commander, the appealing member (the "appellant") will be so advised and asked to state whether, in view of this action, the appellant wishes to withdraw the appeal. Unless the appeal is voluntarily withdrawn, the appeal will be forwarded to the appropriate superior authority. An officer forwarding the appeal shall attach a detailed report of the incident, any comments he deems appropriate, and the appellant's permanent record.

C. Presumption. Any allegations by the appellant, if unrebutted by the forwarding commander, may be accepted as valid and considered by the reviewing officer.

D. Consulting Legal Counsel Availability. The imposing commander (or successor-in-command) will make available to the servicemember reasonable assistance (legal and otherwise) in preparing the appeal, and will promptly forward the appeal to the appropriate superior authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§419. Action by the Superior Authority on Appeal

A. General. The superior authority to which the appeal is made shall refer every such appeal to the Judge Advocate Office of his assigned or detailed Special Courts-Martial Convening Authority for review and comment as to legal sufficiency prior to action. He may conduct an independent inquiry into the case if necessary or desirable. In acting on an appeal, the superior authority may exercise the same powers with respect to the punishment imposed as may be exercised by the imposing commander or the imposing commander's successor-in-command. However, the superior authority cannot change a filing determination. A timely appeal does not terminate merely because a servicemember is discharged from the service. It will be processed expeditiously to completion by the superior authority.

B. Delay. Action by the superior authority on appeal should ordinarily be accomplished within 30 days after imposition of non-judicial punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§420. Action by a Judge Advocate on Appeal

A. General. The Judge Advocate review on Article 15 appeals may be either oral or written. If given orally, that fact and the name of the Judge Advocate who rendered the advice will be recorded on the DA Form 2627, item 8. The Judge Advocate is not limited to an examination of written matters of the record of proceedings, and may make any inquiries that are necessary. An example of the Judge Advocate Review on Appeal is located at Figure 4-6.

B. Inquiry. The Judge Advocate Review shall address the following issues:

i. the appropriateness of the punishment.

ii. whether the proceedings were conducted under law and regulations.

C. Review Standard. Only deviations that substantially affect the proceedings shall give cause for relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§422. Clemency, Generally

A. Usefulness. The full effectiveness of non-judicial punishment cannot be realized unless the commander is aware of his powers of "clemency," including the authority to suspend, remit, or set aside punishment if warranted by the circumstances of the case. These powers give the commander an effective means of rehabilitating the offender which are often more valuable than his mere power to punish.

B. Recording Requirement. Any action of suspension, mitigation, remission, or setting aside taken by an authority will be recorded according to published guidance on DA Form 2627-2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§423. Suspension

A. General. Ordinarily, punishment is suspended to grant a probational period during which a servicemember may show that he deserves a remission of the remaining suspended punishment. An executed punishment of reduction or forfeiture may be suspended only within a period of six months after the date imposed. Suspension of non-judicial punishment may not be for a period longer than six months from the suspension date, and the expiration of the current enlistment or term of service of the servicemember involved automatically terminates the period of suspension. [See Figure 4-8.]

B. Remission. Unless the suspension is sooner vacated, suspended portions of the punishment are remitted, without further action, upon the termination of the period of suspension.

C. Conditions of Probation. Unless otherwise stated, an action suspending a punishment includes a condition that the servicemember not violates any punitive article of the code. The non-judicial punishment authority may specify in writing additional conditions of the suspension. Further misconduct by the servicemember, within the period of the suspension, may be grounds for vacation of the suspended portion of the punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§424. Vacation

A. General. A commander may vacate any suspended punishment provided the punishment is of the type and amount the commander could impose and where the commander has determined that the servicemember has committed misconduct (amounting to an offense under the LCMJ) during the suspension period. A suspension may be vacated by any non-judicial punishment authority or commander competent to impose upon the servicemember concerned punishment of the kind and amount involved in the vacation of suspension. [See Para 4-16(c) and Figure 4-9.]

B. Procedure. The commander is not bound by the formal rules of evidence before courts-martial, and may consider any matter, including unsworn statements; the commander reasonably believes to be relevant to the misconduct. There is no appeal from a decision to vacate a suspension. Unless the vacation is undertaken prior to the expiration of the stated period of suspension, the suspended punishment is automatically remitted without further action. Misconduct resulting in vacation of a suspended punishment may also be the basis for the imposition of another Article 15.

C. Servicemember's Right to Rebut. The commander should, unless impracticable, give the servicemember an opportunity to rebut the information on which the proposed vacation is based. This may be by personal appearance or in

writing, at the discretion of the commander. Failure to provide prior notification and/or an opportunity to appear or otherwise respond to the basis of a proposed vacation will not, by itself, render a vacation action void, though it may render the record of non-judicial punishment inadmissible in any subsequent court-martial.

D. Vacation Not Considered NJP. Vacation of a suspended non-judicial punishment is not itself non-judicial punishment and additional action to impose non-judicial punishment for a violation of a punitive article of the code upon which the vacation action is based is not precluded thereby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§425. Mitigation

A. General. Mitigation is a reduction in either the quantity or quality of a punishment. For example, a punishment of $50.00 forfeiture may be reduced to $25.00. The general nature of the punishment remains the same. Mitigation is appropriate when:

1. the recipient has, by the recipient's subsequent good conduct, merited a reduction in the severity of punishment.

2. the punishment imposed was disproportionate to the offense or the offender.

B. Judge Advocate Advice. As the rules for mitigation are somewhat complex, Judge Advocate advice is warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§426. Remission

A. This is an action whereby any portion of the unexecuted punishment is canceled. Remission is appropriate under the same circumstances as mitigation. An unsuspended reduction is executed on imposition and thus cannot be remitted, but may be mitigated or set aside. The death, discharge, or separation from the service of the servicemember punished automatically remits any unexecuted punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§427. Setting Aside and Restoration

A. Generally. This is an action whereby the punishment or any part or amount, whether executed or unexecuted, is set aside and any rights, privileges, or property affected by the portion of the punishment set aside are restored. Non-judicial punishment is "wholly set aside" when the commander who imposed the punishment, a successor-in-command, or a superior authority sets aside all punishment imposed upon an individual under Article 15. The basis for any set aside action is a determination that, under all the circumstances of the case, the punishment has resulted in a clear injustice. "Clear injustice" means that there exists an unwaived legal or factual error which clearly and affirmatively injured the substantial rights of the servicemember. An example of "clear injustice" would be the discovery of new evidence unquestionably exculpating the servicemember. "Clear injustice" does not include the fact that the servicemember's performance of service has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on the retention or promotion potential of the servicemember.

B. Proof Required. Normally, the servicemember's uncorroborated sworn statement will not constitute a basis to support the setting aside of punishment.

C. Administrative Errors. In cases where administrative error results in incorrect entries on the Article 15 documents, the appropriate remedy generally is an administrative correction of the form and not a setting aside of the punishment.

D. Timeliness. The power to set aside an executed punishment and to mitigate a reduction in grade to a forfeiture of pay, absent unusual circumstances, will be exercised only within four months after the punishment has been executed. When a commander sets aside any portion of the punishment, he will record the basis for this action upon the form. Any punishment set aside after four months from the date punishment has been executed will be accompanied with a detailed addendum of the unusual circumstances warranting such action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§428. Summarized Article 15

A. General. A summarized Article 15 may be imposed by any commander who may impose a formal Article 15. It should be used for only very minor offenses, and where the preliminary inquiry convinces the commander that any punishment that might be imposed should not exceed the following:

1. 14 days extra duty;
2. 14 days restriction;
3. an oral admonition or reprimand;
4. any combination of these punishments.

B. Procedures. A servicemember offered a summarized Article 15 may request, but does not have a right, to consult with legal counsel provided by the Government before deciding whether to accept the Article 15, he does not have the right to be accompanied by a spokesperson at the hearing, and he normally must decide whether to accept the Article 15 or demand trial by court-martial within 24 hours. Otherwise, he has the same rights under the summarized procedure that he does under the formal procedure.

C. Notification and Explanation of Proceedings. If an imposing commander determines that summarized proceedings are appropriate, the designated subordinate officer or NCO or the commander personally will notify the servicemember of the following:

1. the imposing commander's intent to initiate proceedings under Article 15, LCMJ;

2. the fact that the imposing commander intends to use summarized proceedings and the maximum punishments impossible under these proceedings;

3. the right to remain silent;

4. offense(s) the servicemember has allegedly committed and the Article(s) of the LCMJ violated;

5. the right to demand trial;

6. the right to confront witnesses, examine the evidence, and submit matters in defense, extenuation, and/or mitigation; and

7. the right to appeal.

D. Hearing. Unless the servicemember demands trial by court-martial within the decision period, the imposing commander may proceed with the hearing, which should consist of the following:

1. consideration of evidence, written or oral, against the servicemember;

2. examination of available evidence by the servicemember;

3. presentation by the servicemember of testimony of available witnesses or other matters, in defense, extenuation, and/or mitigation;

4. determination of guilt or innocence by the imposing commander;

5. imposition of punishment or termination of the proceedings; and

6. explanation of right to appeal.

E. Record of Proceedings. DA Form 2627-1 (Summarized Record of Proceedings under Article 15, UCMJ) will be used to record the proceedings, which may be handwritten. An illustrated example of a completed DA Form 2627-1 is shown at Figure 4-5. Except as provided above, the same rules and limitations concerning punishments, appeal, and clemency are applicable to summarized proceedings as in the case of formal proceedings.

F. Filing/Destruction of DA Form 2627-1 The Summarized Article 15 form will be maintained locally in the unit's non-judicial punishment files, and shall be destroyed at the end of two years from the date of imposition of punishment or on the servicemember's transfer from the unit, whichever occurs first. A copy will be provided to the servicemember on a request submitted during the filing period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§429. Distribution and Filing of Article 15 and Allied Documents

A. General. DA Form 2627 will be prepared in an original and five copies. All written statements and other documentary evidence considered by the imposing commander or the next superior authority acting on an appeal will be transmitted with the original. Copies of DA Form 2627 will be transmitted through the SIDPERS (J1) to the Military Personnel Records Jacket (MPRJ) to the MilPay maintaining the servicemember's pay account according to DA Pam 600-8, chapter 8. DA Form 268, Report of Suspension of Favorable Personnel Actions, will be submitted per AR 600-8-2 Standard instructions for distribution and filing of forms for commissioned officers, warrant officers, and enlisted servicemembers are set out below.

B. Original of DA Form 2627

1. Place of filing, E-4 and below. For servicemembers E-4 and below (prior to punishment), the original will be filed locally in unit non-judicial punishment files. Such locally filed originals will be destroyed at the end of 2 years from the date of imposition of punishment or on the servicemember's transfer to another special courts-martial convening authority, whichever occurs first. For these servicemembers, the imposing commander should annotate item 5 of DA Form 2627 as "Not Applicable (N/A)."

2. Place of filing, E-5 and above. For all other servicemembers E-5 and above, the original will be sent to the appropriate custodian for filing in the OMPF (Official Military Personnel File) located in iPERMS (Personnel Electronic Records Management System.)

3. "Performance Fiche" versus "Restricted Fiche"

a. The "performance fiche" is that portion of the OMPF in iPERMS that is routinely used by career managers and selection boards for the purpose of assignment, promotion, and schooling selection. The "restricted fiche" is that portion of the OMPF in iPERMS that contains information not normally viewed by career managers or selection boards except as provided in AR 640-10 or specified in the Secretary of the Army's written instructions to the section board.

b. A commander's decision whether to file a record of non-judicial punishment on the "performance fiche" of a Servicemember's Official Military Personnel File (OMPF) is as important as the decision relating to the imposition of non-judicial punishment itself. In making a filing determination, the imposing commander must weigh carefully the interests of the servicemember's career against those of the Louisiana National Guard to produce and advance only the most qualified personnel for positions of leadership, trust, and responsibility. In this regard, the imposing commander should consider the servicemember's age, grade, total service (with particular attention to the servicemember's recent performance and past misconduct), and the fact that the filing decision is final, except for those cases where the servicemember has more than one record of non-judicial punishment directed for filing in the "restricted fiche." (See (c) below). However, the interests of the Louisiana National Guard are compelling when the record of non-judicial punishment reflects unmitigated moral turpitude or lack of integrity, patterns of misconduct, or evidence of serious character deficiency or substantial breach of military discipline. In such cases, the record should be filed in the "performance fiche."

c. The decision to file the original DA Form 2627 on the "performance fiche" or the "restricted fiche" in the OMPF in iPERMS will be determined by the imposing commander at the time punishment is imposed. The filing decision of the imposing commander is final subject only to review when a previous DA Form 2627 that has not been wholly set aside is discovered to have been previously filed in the "restricted fiche". Records directed for filing in the "restricted fiche" will be redirected to the "performance fiche" if the servicemember has other records of non-judicial punishment reflecting misconduct in the grade E-5 or higher that have not been wholly set aside recorded in the "restricted fiche."

C. Copy One of DA Form 2627

1. Performance Fiche. For those Article 15's directed for filing on the "performance fiche" of the OMPF, the appropriate custodian must file in iPERMS. Copy one will be filed in the permanent section of the iPERMS unless the original Article 15 is transferred from the "performance fiche" to the "restricted fiche" of the OMPF. In this case, copy one will be withdrawn from the iPERMS and destroyed.

2. Restricted Fiche. For those Article 15's directed for filing on the "restricted fiche" of the OMPF, this copy will be filed in the unit personnel files and destroyed at the expiration of 2 years from the date of the punishment or on the servicemember's transfer, whichever occurs first. [See also DA Pam 600-8; chap 9, for use and preparation of DA Form 4187, Personnel Action.]

3. Servicemembers E-4 and Below. For servicemembers in grades E-4 and below, copy one will be destroyed. [See also DA Pam 600-8; chap 9, for use and preparation of DA Form 4187, Personnel Action.]

D. Copies Two and Three of DA Form 2627

1. Unsuspended Pay and/or Forfeiture of Pay Sentences. Copies two and three for use as substantiating documents will be forwarded to the MilPay and SIDPERS (J1) that services the MPRJ if the punishment includes an unsuspended reduction and/or forfeiture of pay. If the punishment includes an unsuspended forfeiture of pay, the unit will forward to the MilPay that maintains the servicemember's pay account.

2. Other Punishments. If all punishments affecting pay are suspended by the imposing commander, copies two and three will be retained by the unit where the punishment was imposed and destroyed on expiration of the period of suspension, unless forwarded for supplementary action in accordance with paragraph If the punishment, suspended or unsuspended, does not include reduction or forfeiture of pay, these copies will be destroyed. If a punishment affecting pay is suspended by superior authority acting on an appeal, copy two will be retained by the unit where the punishment was imposed. It will be destroyed when the period of suspension expires unless forwarded for supplementary action in accordance with paragraph if punishment includes only a reduction, copy three will be forwarded to the SIDPERS (J1) servicing the MPRJ. If the punishment includes a reduction and forfeiture or only forfeiture, copy three will be forwarded through the SIDPERS (J1) servicing the MPRJ to the MilPay office maintaining the servicemember's pay account for use as a substantiating document according to AR 37-104-3.

E. Copy Four of DA Form 2626

1. General. Immediately after imposition of punishment, copy four will be annotated in the left-hand corner of the title block sequentially in the order the Article 15 was given during the calendar year; i.e., 91-1, 91-2, etc. On the Reconciliation Log [See paragraph 4-31], and the appropriate information will be entered in it. Thereafter, copy four will be used according to and below.

2. Cases Involving an Appeal

a. On the date punishment is imposed, if item 7 is not completed or blocks b and c are initialed, and item 7 is signed by the servicemember and the punishment includes an unsuspended reduction or unsuspended forfeiture of pay, copy four of DA Form 2627 will be marked "APPEAL PENDING" in the right-hand margin.

b. Copy four will be sent to SIDPERS (J1) and to MilPay. On receipt, the local SIDPERS (J1) and the will check that proper action has been taken on unsuspended reductions and forfeitures of pay.

c. Upon receipt SIDPERS (J1)'s receipt of the copies of DA Form 2627 forwarded by the unit copy four will be returned directly to the imposing commander. Copy four will be destroyed after all periods of suspension of punishment affecting pay have expired.

d. If punishments affecting pay are suspended, copy four will not be transmitted to the SIDPERS (J1) and MilPay. It will be destroyed after all periods of suspended punishments affecting pay have expired.

e. If there are no punishments affecting pay, copy four will not be transmitted to the SIDPERS (J1) and MilPay and will be destroyed after the entry is made in the Reconciliation Log.

3. Cases Not Involving an Appeal

a. Where there is no appeal and the punishment imposed includes an unsuspended reduction or unsuspended forfeiture of pay, copy four will not be marked "APPEAL PENDING." If the punishment imposed includes only an unsuspended reduction, copy four will be forwarded with copies two and three to the SIDPERS (J1).

b. If punishments affecting pay are suspended, copy four will not be transmitted to the SIDPERS (J1) and/or MilPay and will be destroyed after all periods of suspended punishments affecting pay have expired.

c. Copy Five of DA Form 2626. Hand deliver to the servicemember punished.

F. Allied Documents. Allied documents will be transmitted for administrative convenience with the original DA Form 2627 for filing on the restricted fiche of the OMPF [See paragraph 4-34.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§430. Supplementary Action

A. Supplementary Action. Any action taken by an appropriate authority to suspend, vacate, mitigate, remit, or set aside a punishment (except punishment imposed under summarized proceedings, (para 4-28) after action has been taken on an appeal or DA Form 2627 has been distributed according to paragraph 4-29.

B. Recording. Supplementary action will be recorded on DA Form 2627-2, Record of Supplementary Action under Article 15.

C. Distribution and Filing

1. Original. The original will be forwarded to the appropriate custodian of the OMPF as provided in the preceding paragraph. This copy will be filed in the same OMPF fiche location as the DA Form 2627 that initially imposed the punishment. The imposing commander's filing determination on the initial DA Form 2627 will be annotated on the DA Form 2627-2.

2. Copy One. Copy one will be forwarded to the SIDPERS (J1) to be filed in the servicemember's MPRJ when the imposing commander directs filing on the performance fiche of the OMPF. This copy will be destroyed along with copy one of the initial DA Form 2627 if the original DA Form is transferred from the performance to the restricted fiche. In cases of filing on the restricted fiche of the OMPF, copy one will be filed in the unit personnel files.

3. Copies Two and Three. If the action affects a reduction, copy two (and copy two of the initial DA Form 2627, if maintained by the unit) will be forwarded to the SIDPERS (J1). If the action affects a forfeiture copy three will be forwarded to the MilPay which maintains the servicemember's pay account.

4. Copy Four. Copy four will be annotated with the same sequence number as the initial copy four. If the action affects a reduction, it will be forwarded to the SIDPERS (J1) servicing the MPRJ which will annotate it as indicated below. If the action affects forfeiture, it will be forwarded to the MilPay which maintains the servicemember's pay account which will annotate as indicated below. Either the SIDPERS (J1), finance, or both will see that the following is annotated in the left-hand margin and returned to the unit to verify the entry of subsequent actions in the Reconciliation Log.

5. Copy Five. Hand deliver to servicemember punished.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§431. Reconciliation Log

A. Imposing commanders will ensure that punishments imposed under the provisions of Article 15 are executed. Punishments of reduction and forfeiture of pay may be monitored by the mandatory use of the Reconciliation Log, DA Form 5110-R (Article 15 Reconciliation Log), showing the punishment and date imposed. Reconciliation Log, DA Form 5110-R may be locally reproduced. To properly use DA Form 5110-R, copy four of all DA Forms 2627 must be sequentially numbered and the required data entered in the DA Form 5110-R. These entries are to be compared with copy four of the DA Form 2627 that was returned to the unit by the SIDPERS (J1) and/or MilPay which maintains the servicemember's pay account. Sequential numbers on the DA Form 5110-R will correspond to the number noted on copy four. After information is verified on the DA Form 5110-R from copy four, this copy will be retained until the expiration of any period of suspension of punishments affecting pay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§432. Time for Distribution of Initial DA Form 2627

A. Distribution will be made IAW paragraph 4-27 after the punished servicemember indicates in item 7 that there will not be an appeal. If the servicemember appeals, the DA Form 2627, minus copy four (if it has been forwarded as an "APPEAL PENDING" copy), will be forwarded to the superior authority and distributed after completion of item 10. Completion of this item shows that the servicemember acknowledges notification of action on the appeal. If item 10 cannot be completed because the servicemember is not reasonably available or due to military exigencies, a statement signed by the imposing commander stating that the punished servicemember was informed in writing of the disposition of the appeal and why it was not possible to have item 10 completed will be placed in item 11 before distribution is made. When the servicemember appeals the punishment, an "APPEAL PENDING" copy will be distributed as prescribed in paragraph 4-29E. If the servicemember fails to complete or sign item 7, an explanation of the failure will be provided by the imposing commander in item 11 and distribution will be made as prescribed. A servicemember's refusal to declare whether or not he desires to appeal may be presumed to indicate an intention not to appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§433. Transfer or Removal of Records of Non-judicial Punishment.

A. Except as specifically addressed herein, applicable provisions of active component publications shall govern the transfer or removal of records of non-judicial punishment. [See also, AR 27-10, Chapter 3.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§434. Use of Non-Judicial Punishment Records

A. General. Records of proceedings and supplementary action under Article 15 recorded on DA Forms 2627 and 2627-2, previously or hereafter administered, may be used as directed by competent authority. Allied documentation transmitted with the original or copies of DA Forms 2627 and 2627-2, where filed with any of these forms, shall be considered to be maintained separately for the purpose of determining the admissibility of the original or copies of DA Forms 2627 or 2627-2 at courts-martial or administrative proceedings.

B. Admissibility. A record of non-judicial punishment or a duplicate as defined in M.R.E. 1001, not otherwise inadmissible, is a record of completed actions and may be admitted at courts-martial or administrative proceedings from any file in which it is properly maintained by regulation. A record or non-judicial punishment, otherwise properly filed, will not be inadmissible merely because the wrong copy was maintained in a file. It may be considered for use at courts-martial or administrative proceedings independently of any written statements or other documentary evidence considered by an imposing commander, a successor, or a superior authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§435. Effects of Errors

A. Failure to comply with any of the procedural provisions relative to non-judicial punishment shall not invalidate a punishment imposed unless the error materially prejudiced a substantial right of the punished servicemember.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§436. Announcement of Punishment

A. General. In order to be effective, the military justice system must not only function properly, but it must also appear to function properly. For this reason, the commander will announce the disposition of all cases involving non-judicial punishment of personnel in grade of E-4 and below. The punishment may be announced at the next unit formation after punishment is imposed or, if appealed, after the decision on the appeal. It also may be posted on the unit bulletin board. The purpose of announcing the results of

punishments is to preclude perceptions of unfairness of punishment and to deter similar misconduct by other servicemembers. An inconsistent or arbitrary policy should be avoided regarding the announcement of punishment that might result in the appearance of vindictiveness or favoritism.

B. Grades E5 and above. In the cases of personnel in grade E-5 and above, any announcement of Article 15 disposition is discretionary with the commander imposing the punishment. The commander must consider the impact on unit morale and the impairment to job or leadership effectiveness of the individual concerned. In deciding whether to announce punishment of servicemembers in the grade of E5 or above, the following should be considered:

1. the nature of the offense;
2. the individual's military record and duty position;
3. the deterrent effect;
4. the impact on unit morale or mission;
5. the impact on the victim (if any);
6. the impact on the leadership effectiveness of the individual concerned.

C. Article 15 Maximum Punishments Table (Figure 4-1)

Formal[1] Article 15 Maximum Punishments Chart

Commander Imposing Article 15	Upon Servicemember Ranks	Reduction In Rank[2]	Fine	Forfeiture of Pay	Admonition Or Reprimand	Restriction	Extra Duty	Arrest In Quarters
Company / Detachment Commander (O3 or below)	E-1 to E-4	One Pay Grade	None	$50	Yes	14 days[3]	14 days[3]	None
	E-5 to E-7	None	None	$50	Yes	14 days[3]	14 days[3]	None
Battalion / Squadron Commander (O4 or O5)	E-1 to E-4	To lowest or any intermediate grade	$25	$100	Yes	14 days[3]	14 days[3]	None
	E-5 to E-6	Not more than one grade[6]	$25	$100	Yes	14 days[3]	14 days[3]	None
	E-7*	None	$25	$100	Yes	14 days[3]	14 days[3]	None
DRU Commander / SPCMCA (O5 or O6)	E-7 to E-8*	Not more than one grade[6]	$25	$100	Yes	14 days[3]	14 days[3]	None
	E-9*	None	$25	$100	Yes	14 days[3]	14 days[3]	None
TAG or Designee	E-9*	Not more than one grade[6]	$25	$100	Yes	14 days[3]	14 days[3]	None
	Officers (Commissioned and Warrant)*	None	$100	$100	Yes[4]	15 days[5]	None	15 days[5]

Notes:
Summarized Article 15s carry maximum authorized punishments not exceeding any combination of: 14 days extra duties; restriction; oral admonition or reprimand.
Commanders may only demote from a grade within the commanders' promotion authority. Enlisted members above E-4 may not be reduced more than one grade.
Restrictions and extra duties must be performed while Servicemember is on duty status. They may be combined to run concurrently, but the combination may not exceed the maximum imposable for extra duty.
Admonitions and/or reprimands given to officers as NJP must be administered in writing.
Arrest in quarters may not be imposed in combination with restriction for officers.
Only TAG can reduce an E-9. Only TAG or an O6 DRU CDR (with TAG release of disposition) can reduce an E-7 or E-8. Only TAG, a DRU CDR, or an O5 BN CDR can reduce an E-5 or an E-6.
* TAG retains the authority to dispose of any and all allegations of misconduct involving officers and senior non-commissioned officers in the rank of E-7 and above. Subordinate commanders must transmit the allegations along with their recommendations through their servicing Judge Advocate to JFHQ-LA-SJA for review by TAG.

D. Reserved For Future Publication (Figure 4-2)

E. Formal Article 15 (Figure 4-3)

RECORD OF PROCEEDINGS UNDER ARTICLE 15, LCMJ

For use of this form, see AR 27-10; the proponent agency is TJAG

See Notes on Reverse Before Completing Form

NAME	GRADE	SSN	UNIT	PAY (Basic & Sea/Foreign)
Doe, James Ray	E-4	123-45-6789	Det 1, 1021st Eng Co Vert, 55420 N. Railroad Ave, Independence, LA	$ 186.06

1. I am considering whether you should be punished under Article 15, LCMJ, for the following misconduct: [1]

In that you, did, on or about 0800 hours until 1600 hours on 14 June 2008, without authority, absent yourself from your unit during drill, to wit: Det 1, 1021st Engineer Company Vertical, located at 55420 N. Railroad Ave, Independence, La 70443. This is in violation of Article 86, LCMJ.

2. You are not required to make any statements, but if you do, they may be used against you in this proceeding or at a trial by court-martial. You have several rights under this Article 15 proceeding. First I want you to understand I have not yet made a decision whether or not you will be punished. I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense(s). You may ordinarily have an open hearing before me. You may request a person to speak on your behalf. You may present witnesses or other evidence to show why you shouldn't be punished at all *(matters of defense)* or why punishment should be very light *(matters of extenuation and mitigation)*. I will consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. [2] If you do not want me to dispose of this report of misconduct under Article 15, you have the right to demand trial by court-martial instead. [3] In deciding what you want to do you have the right to consult with legal counsel located at Trial Defense Services at 225-7319-4650. You now have 48 hours to decide what you want to do. [4]

DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE
9 July 2008 TIME 1000	JOHN A. SMITH, O2, 1021st Engineer Company	

3. Having been afforded the opportunity to consult with counsel, my decisions are as follow: *(Initial appropriate block, date, and sign)*

a. ☐ I demand trial by court-martial.

b. ☒ I do not demand trail by court-martial and in the Article 15 proceedings:

(1) I request the hearing be ☒ Open ☐ Closed. *(2)* A person to speak in my behalf ☐ is ☒ is not requested.

(3) Matters in defense, mitigation, and/or extenuation ☒ Are not presented ☐ Will be presented in person ☐ Are attached.

DATE	NAME AND GRADE OF SERVICE MEMBER	SIGNATURE
10 July 2008	JAMES RAY DOE, E4	James Ray Doe

4. In a(n) ☐ Open ☐ Closed hearing [5] all matters presented in defense, mitigation, and/or extenuation, having been considered, the following punishment is imposed: [5] [6]

To be reduced to Private First Class (E3).

5. ~~I direct the original DA Form 2627 be filed in the ☐ Performance fiche ☐ Restricted fiche or the OMPF.~~ [7] N/A

6. You are advised of you right to appeal to the Cdr 205th EN BN within 5 calendar days. An appeal made after that time may be rejected as untimely. Punishment is effective immediately unless otherwise stated above.

DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE
10 July 2008	JOHN A. SMITH, O2, 1021st Engineer Company	

7. *(Initial appropriate block, date, and sign)*

a. ☒ I do not appeal b. ☐ I appeal and do not submit additional matters [8] [9] c. ☐ I appeal and submit additional matters [8] [9]

DATE	NAME AND GRADE OF SERVICE MEMBER	SIGNATURE
10 July 2008	JAMES RAY DOE, E3	James Ray Doe

8. I have considered the appeal and it is my opinion that:

DATE	NAME AND GRADE OF JUDGE ADVOCATE	SIGNATURE

9. After consideration of all matters presented in appeal, the appeal is:

☐ Denied ☐ Granted as follows: [10]

DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE

10. I have seen the action taken on my appeal.	DATE	SIGNATURE OF SERVICE MEMBER

11. ALLIED DOCUMENTS AND/OR COMMENTS [11] [12] [13]

DA FORM 2627, AUG 84 EDITION OF NOV 82 IS OBSOLETE ORIGINAL

USAPPC V1.00

F. Record of Supplementary Action under Article 15 with continuation page (Figure 4-4)

RECORD OF SUPPLEMENTARY ACTION UNDER ARTICLE 15, UCMJ

For use of this form, see AR 27-10; the proponent agency is The Judge Advocate General.

NAME AND GRADE	SSN	UNIT
BUZZWORTHY, LISA B., E4	444-11-3265	HHC, 754th AVN BN, Fort Atterbury, IN 46124-9000

TYPE OF SUPPLEMENTARY ACTION *(OTHER THAN BY SUPERIOR AUTHORITY ACTING ON APPEAL) (Check appropriate box)*

[ ] **SUSPENSION** *(Complete item 1 below)* [ ] **MITIGATION** *(Complete item 2 below)* [ ] **REMISSION** *(Complete item 3 below)*

[ ] **SETTING ASIDE** (Complete Item 4 below) [XX] **VACATION OF SUSPENSION** *(Complete item 5 below)*

1. SUSPENSION

The punishment(s) of _____

imposed on the above service member on _____ (is) (are) suspended and will automatically be remitted if not vacated
(date of punishment)

before _____ .
(date)

2. MITIGATION

The punishment(s) of _____

imposed on the above service member on _____ (is)(are) mitigated to _____
(date of punishment)

3. REMISSION

The punishment(s) of _____

imposed on the above service member on _____ (is) (are) remitted.
(date of punishment)

4. SETTING ASIDE

The punishment(s) of _____

imposed on the above service member on _____ (is) (are) set aside on the basis that _____
(date of punishment)

All rights. privileges, and property affected are hereby restored.

5. VACATION OF SUSPENSION

a. The suspension of the punishment(s) of reduction to PV1 (E1)

imposed on the above service member on 8 Oct 04 (is) ~~(are)~~ hereby vacated. The unexecuted portion(s) of the punishment(s) will be duly executed.
(date of punishment)

b. Vacation is based on the following offense(s): In that you did, at Fort Atterbury, IN, on or about 14 Oct 04, behave yourself with disrespect toward CPT Marvin Manning, your superior commissioned officer, then known by you to be your superior commissioned officer, by saying to him "go sit on an improvised explosive device" or words to that effect. This is a violation of Article 89, UCMJ. (see continuation sheet)

c. The member (was) (~~was not~~) given an opportunity to rebut (para *3-25, AR 27-10).*

d. The member (was) (~~was not~~) present at the vacation proceeding (para *3-25, AR 27-10).*

ORIGINAL DA FORM 2627 *(Check appropriate box)*

~~DIRECTED FOR FILING ON THE~~ [ ] ~~PERFORMANCE~~ [ ] ~~RESTRICTED FICHE OF THE OMPF~~. N/A

AUTHENTICATION *(Check appropriate boxes)*

[XX] BY MY ORDER: [XX] THE OFFICER WHO IMPOSED THE PUNISHMENT

[ ] THE SUCCESSOR IN COMMAND TO THE IMPOSING COMMANDER [ ] AS SUPERIOR AUTHORITY

DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE
15 Oct 04	JULIE WOOD, LTC, HQs, 754th AVN BN	

DA FORM 2627-2

DA Form 2627-2, BUZZWORTHY, Lisa B., 444-11-3265, HHC, 75th AVN BN, Fort Atterbury, IN 46124-9000

Item 5b, continued:

In that you, did, at Fort Atterbury, Indiana, on or about 14 Oct 04, behave yourself with disrespect toward CPT Marvin Manning, your superior commissioned officer, then known by you to be your superior commissioned officer, by contemptuously raising your hand in front of his face and then turning your back and walking away. This is a violation of Article 89, UCMJ.

G. Summarized Article 15 (Figure 4-5)

SUMMARIZED RECORD OF PROCEEDINGS UNDER ARTICLE 15, [redacted] LCMJ

For use of this form, see AR 27-10; the proponent agency is TJAG.

See Notes on Reverse Before Completing Form

This form will be used only in cases involving enlisted personnel and then *ONLY* when no punishment *OTHER THAN* oral admonition or reprimand, restriction for 14 days or less, extra duties for 14 days or less, or a combination thereof has been imposed.[1]

NAME	GRADE	SSN	UNIT
John A. Jones	Pfc	012-34-5678	A Co., 769 Engr Bn, 204th ASG

1. On 18 JULY 1992, the above service member was advised that I was considering imposition of nonjudicial punishment under the provisions of Article 15, UCMJ, Summarized Proceedings, for the following misconduct:[2]

On or about 19 July, without authority, you failed to go at the prescribed time, to your appointed place, to wit: A Co 769th Engr Bn, motor stables at Bldg 1000, Camp Beauregard, La., in violation of article 86, LCMJ.

2. The member was advised that no statement was required, but that any statement made could be used against him or her in the proceeding or in a court-martial. The member was also informed of the right to demand trial by court-martial[3], the right to present matters in defense, extenuation and/or mitigation, that any matters presented would be considered by me before deciding whether to impose punishment, the type or amount of punishment, if imposed, and that no punishment would be imposed unless I was convinced beyond a reasonable doubt that the service member committed the misconduct. The service member was afforded the opportunity to take 24 hours to make a decision regarding these rights. No demand for trial by court-martial was made. After considering all matters presented, the following punishment was imposed:[4]

Oral reprimand and 4 days extra duties while at A.T.

3. The member was advised of the right to appeal to the Cdr, 769th Engr Bn within 5 calendar days, that an appeal made after that time could be rejected as untimely, and that the punishment was effective immediately unless otherwise stated above. The member:

[JLM] Elected immediately not to appeal [ ] Requested time to decide whether to appeal and the decision is indicated in item 4, below.[5/6]

DATE	NAME, GRADE, AND ORGANIZATION OF IMPOSING COMMANDER	SIGNATURE
19 Jul 92	James L. Mitchell, CPT, A Co 769th Engr Bn.	James L. Mitchell

4. *(Initial appropriate block, date, and sign)*

a. [JAJ] I do not appeal b. [ ] I appeal and do not submit matters for consideration[7] c. [ ] I appeal and submit additional matters[7]

DATE	NAME AND GRADE OF SERVICE MEMBER	SIGNATURE

5. After consideration of all matters presented in appeal, the appeal is:

[ ] Denied [ ] Granted as follows:[8]

DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER	SIGNATURE

6. I have seen the action taken on my appeal.	DATE	SIGNATURE OF SERVICE MEMBER

7. ALLIED DOCUMENTS AND/OR COMMENTS[9/10/11]

DA FORM 2627-1 AUG 84 EDITION OF NOV 82 IS OBSOLETE

H. Judge Advocate Review of Article 15 (Figure 4-6)

LANG-XXX
DATE

MEMORANDUM FOR [Commander]

SUBJECT: Legal Sufficiency Review of Article 15, SGT JOHN DOE, XXX-XX-XXXX

ISSUE: Presented for decision is appeal of Article 15 administered to above named individual.

BACKGROUND AND DISCUSSION:
a. On 10 July 2006, LTC HARD CHARGER imposed Article 15 punishment on SGT JOHN DOE. Punishment imposed was reduction two (2) pay grades, fine of $25.00, and 2 days extra duties, to be performed during upcoming AT.
b. SGT DOE is appealing the Article 15 and has submitted additional matters. He is specifically contesting the amount of the extra duties.

RECOMMENDATION: Review of the attached evidence indicates that the punishment is within the range of appropriateness and the proceedings were properly conducted under the current law and regulations. It should be noted that extra duties, to be lawful, must be performed while Servicemember is on duty status. Accordingly, I recommend denial of the appeal.

[SIGNATURE BLOCK]

I. Request to Superior to Exercise Article 15 Jurisdiction (Figure 4-7)

LANG-XXX
DATE

MEMORANDUM FOR CDR, [Appropriate Command Level Unit]

SUBJECT: Request for Action UP LCMJ Article 15

The enclosed report indicates that on or about 5 May 1992 at North Fort Polk, LA, SGT John Q. Public, 123-45-6789, a member of this unit, was absent without leave. This act is punishable under LCMJ Article

I recommend you exercise your non-judicial punishment authority in the disposition of this case.

[SIGNATURE BLOCK]

NOTES: No recommendation may be made as to the kind or amount of punishment to be imposed this memorandum form may be used in lieu of DA Form 5109-K See paragraph 4-5(d).

J. Sample Endorsements for Remission. Mitigation. Suspension or Setting Aside of NJP (Figure 4-8)

LANG-XXX
DATE

MEMORANDUM FOR

On ____, 19_, (I) (my predecessor in command) (the Commander, ____) imposed non-judicial punishment on you, consisting of ____. (No part of the punishment) The time punishment) that portion of the punishment relating to ____) was suspended. (You have requested action be taken to remit [the punishment] [the unserved portion of the punishment] [that portion of the punishment relating to 1).

I hereby remit (the punishment) (the unserved portion of the punishment) (the portion of the punishment relating to _____) effective (immediately) 19J.

OR

I hereby mitigate (the punishment) (so much of the punishment as relates to portion of the punishment relating to _____) to _____.) (the unserved portion of the punishment)

OR

I hereby suspend (the punishment) (the unserved portion of the punishment) (the portion of the punishment relating to ____) until ____, 19_, at which time, unless the suspension is sooner vacated, it will be remitted.

OR

2. I hereby set aside (the punishment) (the unserved portion of the punishment) (the unserved portion of the punishment relating to]. All rights, privileges, and property of which you have been deprived by (that portion of) the sentence set aside will be restored.
NOTE: If the action taken results in eliminating or suspending a reduction which was previously in effect, a paragraph in substantially the following form should be added

Your date of rank as (Private First Class) is ____

[SIGNATURE BLOCK]

K. Sample Endorsement for Revocation of Suspension of NJP (Figure 4-9)

LANG-XXX
DATE

MEMORANDUM FOR

On ____, 19, (I) (my predecessor in command) (the Commander, imposed non-judicial punishment on you, consisting of ____. The portion of the punishment relating to ____ was suspended.

I hereby revoke the suspension of that portion of the punishment relating to ____, effective (immediately).

You are expected to ____ [here set out any special and necessary instructions as to how you expect the member to carry out the punishment ordered into effect.]

[SIGNATURE BLOCK]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

Chapter 5. Pretrial Procedures

§501. Report of Offense

A. There are a number of ways a commander can become aware of a criminal act committed by a servicemember, including personal observation, receipt of a report or complaint from an individual within or without the command, or receipt of a formal report from a law enforcement agency, including the military police or Criminal Investigation Command. This information may be incomplete and may require further investigation. Chapter 3 deals with the subject of Investigating and Obtaining Evidence. Any person may report an offense that is a violation of law. Ordinarily, any military authority who receives a report of an offense shall forward as soon as practicable the report and any accompanying information to the immediate commander of the suspect. However, competent authority superior to that commander may direct otherwise. [R.C.M.301(b).]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§502. Commander's Duties before Trial

A. General. Upon receiving a DD Form 458, Charge Sheet with its allied papers, a commander with authority to convene courts-martial must examine the file and decide which of the options available he will exercise. If he should decide to refer the case to trial, he incurs certain additional

duties. While a commander must have a good understanding of the military justice system and his role in that system, he must never hesitate to consult with the SJA or trial counsel if any questions arise concerning the proper disposition of a case.

B. Insure there is a Case. One of the most frustrating experiences a commander can face is to charge an individual and send him to trial only to have the Military Judge or First Circuit Court of Appeal, or other appellate court, dismiss the case for failure of the specification to state an offense. Part IV of the Manual for Courts-Martial, United States, shall be consulted for discussions and descriptions of the crimes which constitute offenses under the LCMJ. The MCM also includes a discussion of the proof which is required to sustain a conviction for each offense. The "elements of the offense" are those facts which must be proved beyond a reasonable doubt in order to sustain a conviction. The adequacy of the specification should always be checked by the trial counsel before the case is referred to trial. In the event an offense is not alleged, the convening authority should return the DD Form 458, Charge Sheet to the accuser for correction. In the event such action is necessary, it should be expedited to insure that the accused is not denied his right to a speedy trial.

C. Insure the Evidence Supports the Allegations. It is also essential to insure that there is sufficient competent evidence to support the allegations in the charges. In processing charges, it is not necessary for a commander to await the results of a Criminal Investigation Division (CID) Laboratory analysis before he forwards the DD Form 458, Charge Sheet. If a servicemember has been found with marijuana in his possession and the company commander desires to charge him with a violation of Article 112a, LCMJ, he may begin processing the DD Form 458, Charge Sheet and send it forward even though the lab analysis has not been completed.

D. Consider the Individual Servicemember. In addition, the commander and the convening authority must inquire into the background of the individual offender before he can make an intelligent decision as how to dispose of the charges. There may be factors in the servicemember's background or adjustment to his unit which, in part, caused or contributed to commission of the offense. Such factors should be considered by the convening authority.

E. Disposition of Charges. There are several options available to the commander when processing military justice actions among the options are:

1. Dismissal. A commander may dismiss charges that have been preferred. A decision to dismiss a charge does not bar other disposition of the offense, such as administrative action or Article 15 punishment by the same commander, or preferral or repreferral of a charge by the same or a superior commander. Charges are ordinarily dismissed by lining out and initialing the deleted specification. When all charges and specifications are dismissed, the accused and the accuser should ordinarily be informed. A charge should be dismissed when it fails to state an offense, when it is unsupported by available evidence, or when there are other sound reasons why trial by court-martial is not appropriate on the charge. If an accused has already refused Article 15 punishment, but later requests that the Article 15 be reoffered, charges are usually dismissed after Article 15 punishment is imposed.

2. Returning Charges to Subordinate Authority. Instead of dismissing charges or taking other action, a commander may return the charges to a subordinate commander for whatever action the subordinate deems appropriate. This might occur if the commander did not think the offense was as serious as did the subordinate commander. When returning charges to a subordinate commander, the superior commander may not normally direct that the subordinate dispose of the charges in any particular way. Normally the superior commander should only indicate that the subordinate commander dispose of the charges by a means within the subordinate's authority. Otherwise, an issue of "unlawful command influence" may result.

3. Referring Charges to Trial. When an accused's prior record, the seriousness of the offense, and the needs for justice and discipline indicate that a trial by court-martial is warranted, the convening authority may dispose of the charge by referring it for trial by court-martial. The referral of a case to trial is accomplished by completing part V of the DD Form 458, Charge Sheet, authenticated by the signature of an adjutant under the command line of the convening authority. Factors to consider in this analysis include:

a. the charges should be referred to the lowest court which can adjudge an appropriate punishment [See Figure 4-1 for Table of Maximum Punishments];

b. consistent with the needs of discipline and justice, there should be relative uniformity (or proportionality) in the treatment of military justice violations;

c. a commander should also analyze the type of offense before him, and determine whether the offense is one where there is an identifiable victim involved (e.g. larceny), or whether it is a crime where no identifiable victim is involved (e.g. AWOL). In conjunction with this, he should look to see what injury or threat, if any, was inflicted upon the victim and, if so, whether the offender has made meaningful steps toward restitution;

d. an inquiry should be made to determine what evidence, if any, there is of premeditation, reflection, conspiracy, and the relative culpability among multiple offenders;

e. in deciding upon his action or recommendation, a commander should take into account the character and age of the accused as well as his previous military and civilian history. The offender's prior military and civilian record is, or course, only one factor among many that must be considered by a commander;

f. additionally, an offender's mental state should be considered along with any problems the servicemember may have. The convening authority should also consider any signs the individual has shown toward rehabilitation. If the individual has performed well since the commission of the offense and there seems to be rehabilitation potential present, then perhaps a referral to a lower level court-martial might be appropriate;

g. the recommendations of subordinates should be given their due weight since they are closest to the situation and most likely know the facts and probable repercussions of a military justice violation within the unit. Such reliance should be tempered by caution, however, in that the

subordinate is also plagued with having the troublemaker in his unit

h. the previous disposition of similar offenses within the same command should also be considered, the administration of military justice should be even-handed in order to appear fair. If one servicemember is given an Article 15 for an offense and another servicemember is given a SPCM for the same offense under identical circumstances, the servicemembers may perceive the system as unfair. Still, each case must be evaluated individually, and there will often be factors that point toward the need for different treatment of servicemembers guilty of substantially similar wrongdoing.

i. Forwarding Charges to Superior Authority. The commander may feel that his power is inadequate to handle the case. If that is the case, then he must forward the file to a superior authority who's judicial or non-judicial powers are greater than his. For example, if a SCM convening authority believes that a punitive discharge is appropriate, he will have to forward the file through channels to the SPCMCA, the next highest authority who can convene a SPCM, the lowest court capable of adjudging a punitive discharge. [See Figure 5-1, Transmittal of Court-Martial Charges.]

4. Judge Advocate Advice. No charges shall be referred to a SPCM or GCM before the convening authority has consulted directly with the appropriate judge advocate or his representative for advice with regard to the investigation, disposition of the case, and guidance in procedural matters. [See Figure 5-2 for example of Judge Advocate Pretrial Advice.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§503. Referral of Offenses to Civilian Authorities

A. Evaluation of the Offense. Upon receipt of information that a servicemember of the command is suspected of committing an offense, the immediate Commander must make or cause to be made a preliminary inquiry into the suspected offense(s). [R.C.M. 303.] Upon determining that an offense has been committed, one of the issues that the Commander must decide is whether the conduct constituting the offense is characterized as a "felony," a "misdemeanor," a "dual" offense, a "purely civilian offense", or a "purely military offense." These terms are defined below and/or in the GLOSSARY to this Regulation. Commanders should consult with the servicing Staff Judge Advocate if in doubt on this evaluation.

B. "Dual" Offenses.

1. General. This would involve conduct that violates both civilian and military laws. Examples would include assault, battery, theft, drunk driving, riot, damage to property, disturbing the peace, and larceny.

2. Felonies. If the "dual" offense is a felony under the laws of Louisiana, federal law, or laws of another state where the incident occurred, [See GLOSSARY for definition] the commander must, at the earliest opportunity, consult with the Office of the Staff Judge Advocate regarding the advisability of referral to the proper civilian authorities in the Parish (or County) where the offense occurred. Many of the offenses defined as felonies under Louisiana law that are prohibited under the UCMJ are omitted from the LCMJ (e.g. Article 118 under the UCMJ defines and prohibits murder; this is omitted in the LCMJ, though homicide is defined and prohibited under general Louisiana laws applicable to all persons within the State. [See R.S. 14:29 et seq.] In the absence of extraordinary circumstances, each such case should be promptly referred to the appropriate civilian agency. When civilian felony charges have been filed against a servicemember, he shall be surrendered to civilian authorities.

3. Misdemeanors. If an offense against both civilian and military law is determined to involve a misdemeanor, [See GLOSSARY for definition] the commander should exercise discretion over his option of referring the matter to appropriate civil authorities or retaining the matter for disposition pursuant to courts-martial, non-judicial punishment, or non-punitive disciplinary sanctions. If circumstances permit, SJA advice should be sought.

C. Purely "Civilian" Offenses. Criminal conduct over which the LANG has no jurisdiction falls into this category. An example may be a crime committed in a non-duty status, not on a military facility, and when the victim has no service connection. Neither courts-martial nor commanders exercising non-judicial punishment shall have jurisdiction over purely civilian offenses, however a civilian conviction may afford basis for administrative action.

D. Purely "Military" Offenses. This is conduct that has no counterpart in the civilian law. Examples of purely military offenses are absence without leave (AWOL), missing movement, and disrespect to a superior commissioned officer. The commander's evaluation over how to deal with such offenses is not restricted by considerations of referral to civilian prospective agencies.

E. Policy. When the offense is punishable under the LCMJ and the State Criminal Code, the matter should ordinarily be referred to civilian authorities for disposition unless the interests of the Louisiana National Guard are better served by utilization of military administrative, non-judicial, or courts-martial procedures. Trial and punishment by civil authorities does not preclude trial and additional punishment by court-martial for any purely military offense related to a servicemember's commission of a referred offense, however caution and Judge Advocate advice should be obtained in such circumstances. A commander may re-evaluate any decision on referral should the appropriate civil authorities decline prosecution or fail to demonstrate an intention to timely initiate appropriate actions toward prosecution and/or punishment. [See LCMJ Article 14.]

F. Report to Superior Commander. If a case is referred to appropriate civilian authorities, the commander shall make an immediate report through operational channels to TAG. When the determination is made to precede within the LANG Military Justice system, the commander should complete the investigation (Chapter 3) in a timely manner to determine if there is probable cause that the accused committed the offense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§504. Arrest Warrant Procedures

A. Definitions

Apprehension—the taking of a person into custody. [LCMJ Article 7(A)]

Detention—the imposition of custody by competent authority, pending disposition of offenses for a period of longer than 8 hours. For purposes of this Regulation, the term "detention" shall be synonymous with "arrest" and "arrest warrant" under LCMJ Articles 8 and 9.

B. Grounds for Apprehension and Detention—a person subject to the LCMJ may be apprehended and detained only for an offense triable by court-martial upon probable cause to apprehend and when a properly executed arrest warrant is issued. Probable cause to apprehend exists when there are reasonable grounds to believe that an offense under the LCMJ has been or is being committed and the person to be apprehended committed or is committing the offense. Receipt of the sworn Charge Sheet (DD Form 458) is considered probable cause for the issuance of an arrest warrant.

C. Apprehension by Military Authorities. If probable cause exists to apprehend a servicemember who is located on property under control of the Louisiana National Guard, then persons authorized under LCMJ Articles 7 and 8 may apprehend persons for which, while in a duty status, there is probable cause to believe that an offense has been committed and those who take part in quarrels, frays, or disorders. An arrest warrant shall not be necessary to apprehend servicemembers located on military property or installations.

D. Apprehension by Civilian Law Enforcement

1. Apprehension of all servicemembers who are located outside of military installations or military property shall be conducted under the arrest warrant procedures under LCMJ Article 8 in accordance with this Regulation. Any apprehension conducted outside of military installations and property shall be conducted by civilian law enforcement agencies which have jurisdiction over the location where the accused may be found. In order to make an apprehension, a law enforcement officer may use such physical force as in reasonably justifiable and authorized for the officer to exercise under the laws of this state.

2. Upon making the apprehension, the officer shall take the offender without due delay before the officer directing the apprehension in the arrest warrant. If circumstances require that the accused must be detained prior to being taken to the apprehension authority, he may be placed in a confinement facility, but for no more than 8 hours and he may not be placed in the general population of such facility.

3. If circumstances are such that it is clear that the accused will not be released to his commander within 8 hours of apprehension, then the accused shall be released and given a written order to appear before the court martial on a certain time and date. The order shall provide a warning to the accused that failure to appear will result in another arrest warrant being issued and additional charges brought against him under the LCMJ.

4. Overnight detention or pre-trial confinement is not authorized and, in such circumstance, the arresting authority will release the accused to his unit as expeditiously as possible. Overnight pre-trial confinement pursuant to an arrest warrant shall not be authorized unless approved by the State Judge Advocate.

E. Arrest Warrant Procedure. Arrest warrants may be initiated by the SCMCA (i.e. the Battalion Commander) when, based upon his/her judgment and discretion, all other methods have failed to secure the presence of the accused for trial by court martial.

1. Before an arrest warrant will be approved, the unit must certify that all reasonable efforts to secure the presence of the accused have been exhausted and arrest is the last available means to secure the presence of the accused. Reasonable efforts include, but are not limited to telephone contact, personal contact, AWOL Recovery Team efforts and the like. All specific details of these attempts to contact the accused should be fully set forth in the DA Form 3744 (Affidavit Supporting Request for Authority to Search and Seize or Apprehend. All reasons given by the accused should be listed in the Affidavit, along with the details of the actions taken by the unit to address the accused's concerns.

2. AWOL Recovery Teams. AWOL Recovery Teams usually consist of two or more soldiers who travel to the home of a servicemember who is Absent Without Leave from a required drill or other assembly and attempt to convince the servicemember to voluntarily attend the required assembly. AWOL Recovery Teams are not authorized to involuntarily take the servicemember from his or her home to the assembly. Members of an AWOL Recovery team should include responsible and mature non-commissioned officers or officers. An AWOL Recovery Team which involuntarily secures a servicemember's presence at drill or other assembly violates this Regulation and may expose themselves to civil litigation pursuant to 28 U.S.C. 1983. If the servicemember refuses to return to drill or other assembly, the AWOL Recovery Team will leave, return to the armory. The unit then may request a warrant for the arrest of the AWOL servicemember. The DA Form 3744 (Affidavit Supporting Request for Authority to Search and Seize or Apprehend) and warrant application will describe the actions of the AWOL Recovery Team and the information learned by their activity.

3. Even after the warrant request is initiated, the unit shall continue to make calls and visits, and send letters to try to recover the servicemember if the Battalion Commander has not otherwise excused the servicemember from service.

4. A warrant for arrest must be completed in its entirety to include a copy of the completed charge sheet with required signatures for referral of the charges to a court-martial. A request for an Arrest Warrant [See Appendix G for Arrest Warrant Requirements] must include the following items:

a. warrant checklist;

b. request for warrant signed or endorsed by the battalion commander. In the request, give a summary of the servicemember's overall performance and answer the following questions.

i. Has the accused been deployed to Operation Iraqi Freedom or Operation Enduring Freedom?

ii. Has the accused experienced any extenuating circumstances or hardship recently or since the unsatisfactory participation?

iii. What specific actions has the unit taken to secure the presence of the accused including a description of all personal contact by the members of the unit?

iv. A characterization of the accused service.

c. DD Form 458, Charge Sheet

d. Arrest Warrant

e. Written Order to Report

f. DA Form 3744, Affidavit Supporting Request for Authority to Search and Seize or Apprehend. Include all elements of "who, what, where, when and why".

g. DRU Judge Advocate Legal Review and Recommendation

5. All arrest warrants shall be approved by the Adjutant General prior to execution. The Adjutant General, in writing, may delegate approval authority for arrest warrants. In order to secure approval, all requests for arrest warrants shall be:

a. sent through the Battalion Commander for recommendation and guidance;

b. sent to the DRU Judge Advocate for legal review. The DRU Judge Advocate or Paralegal will send to the State Judge Advocate for legal review and TAG decision;

c. the Arrest and confinement of any soldier shall be reported by the chain of command directly to the Adjutant General.

6. Written Authorization. A written arrest warrant [Figure 5-3] shall be executed by the authority ordering apprehension and/or detention. The warrant shall:

a. specify the name of the person to be apprehended;

b. specify the nature of the LCMJ offense violated;

c. state the date when issued;

d. state that it is in the name of the governor, be signed and bear the title of the person having authority to issue the order;

e. command any civilian law enforcement officer to arrest the person for whom the order was issued and to bring the person before the commanding officer issuing the order or superior authority (whose address and phone number shall be identified), or deliver the person apprehended to a civil jail to be held for delivery to military authorities;

f. state an amount of bail that may be posted by the soldier to secure his release, which shall not exceed:

i. Summary Court-Martial - $500.00;

ii. Special Court-Martial - $1,000.00;

iii. General Court-Martial - $2,500.00.

F. Use of Force. Any person authorized to make an apprehension is justified in using only such nondeadly force that such person reasonably believes is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest or while preventing or attempting to prevent an escape. Use of deadly force is prohibited except when a person authorized to apprehend reasonably believes such force is necessary for self-defense or for the defense of another person for the use or imminent use of deadly physical force by the person apprehended or to be apprehended.

G. Report of Apprehension. Any person who apprehends an alleged offender shall immediately cause a report to the offender's commander or superior authority, providing the commander or superior authority with the name of the prisoner, the time and place of confinement, if any, and the name of the person who ordered or authorized the apprehension. A similar report shall be made to the staff judge advocate serving the organization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§505. Apprehension and Detention by Peace Officers

A. Authority to Apprehend. Any peace officer having authority to apprehend offenders under the laws of the state may apprehend and detain an offender under the LCMJ.

B. Apprehension Procedures. A peace officer may apprehend and detain a person subject to the LCMJ:

1. for any court-martial offense committed in the presence of the peace officer, if the peace officer has probable cause to believe the person apprehended committed it, or

2. when the peace officer is notified by telegraph, telephone, radio, facsimile machine, or other mode of communication by a commissioned officer or by military law enforcement officials, or by another peace officer, that there exists a duly issued order for the apprehension of the person by a commanding officer to whose authority the person is subject, or by a military court.

C. Notice to Servicemember. The peace officer shall inform the person to be apprehended of the peace officer's authority and reason for the apprehension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§506. Pretrial Restraint

A. General. Pretrial restraint is moral or physical restraint on a Servicemember's liberty which may be imposed before and during disposition of offenses. Pretrial restraint may consist of conditions on liberty, restriction in lieu of arrest, arrest, or confinement.

B. Conditions on Liberty. Conditions on liberty are imposed by orders directing a person to do or refrain from doing specified acts. Such conditions may be imposed in conjunction with other forms of restraint or separately.

C. Restriction in Lieu of Arrest. Restriction in lieu of arrest is the restraint of a person by oral or written orders directing the person to remain within specified limits; a restricted person shall, unless otherwise directed, perform full military duties while restricted.

D. Arrest. Arrest is the restraint of a person by oral or written order not imposed as punishment, directing the person to remain within specified limits; a person in the status of arrest may not be required to perform military duties such as commanding or supervising personnel, serving as guard, or bearing arms. The status of arrest automatically ends when the Servicemember is placed, by the authority of the person who ordered the arrest or a superior authority, on duty inconsistent with the status of arrest. Arrest shall not prevent requiring the Servicemember arrested to do ordinary cleaning policing, or to take part in routine training and duties.

E. Confinement. Pretrial confinement is physical restraint, imposed by order of competent authority, depriving a person of freedom pending disposition of offenses for a period of longer than 24 hours. This should be distinguished

from detention, discussed in paragraph 5-4. Pretrial confinement will not be used except in accordance with paragraph 5-7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§507. Pretrial Confinement

A. Pre-trial confinement is not authorized. In the case of arrest pursuant to a warrant approved by the Adjutant General, the arresting authority will release the accused to the unit as expeditiously as possible. Overnight pre-trial confinement pursuant to the execution of National Guard warrants is not authorized unless approved by an exception to policy by the State Judge Advocate. In no case will a member of the National Guard be placed in the general population of any confinement facility.

B. Lesser Forms of Restraint. Less serious forms of restraint must always be utilized. The commander shall consider whether the servicemember could safely remain in the unit, at liberty or under some form of restriction, or conditions of liberty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§508. Bail

A. General. Any person in confinement charged with or convicted of an offense under the LCMJ is entitled to bail pending finality of the sentence. The order fixing the amount of bail shall be in writing, specify the amount of the bail, and designate the officer(s) authorized to accept the bail, and must be signed by the convening authority. [Figure 5-3.] Any person in confinement on a charge under the LCMJ may invoke the supervisory jurisdiction of a military judge on the claim that the convening authority has improperly refused bail or for a reduction of bail. The amount of such bail shall be fixed by the convening authority that ordered the confinement, and shall not exceed the following limits:

1. Summary Court-Martial—$500.00;
2. Special Court-Martial—$1000.00;
3. General Court-Martial—$2500.00.

B. Factors in Determining Bail Amount. The amount of bail shall be such as in the judgment of the convening authority will insure the presence of the accused before the proper court-martial, having regard to:

1. the seriousness of the offense charged;
2. the weight of the evidence against the defendant;
3. the previous criminal record, if any, of the defendant;
4. the ability of the defendant to give bail; and
5. any other circumstances affecting the probability of the defendant's appearance.

C. Procedures. The qualifications of sureties, the bail undertaking, the various types of bail authorized, the rights of surety, the surrender or arrest of the accused, and the exoneration of the surety, shall be governed by the provisions of Articles 323 to 343 inclusive of the Louisiana Code of Criminal Procedure. Proceedings relating to the forfeiture of bail and the collection thereof shall be conducted by the appropriate district attorney under the provisions of LA R.S. 15:85 to LA R.S. 15:89 inclusive, before the district court of the district in which the court-martial proceeding was held. Bail bond forms are located at Figures 5-5 and 5-6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§509. Preparation of the Charge Sheet

A. General. In preparing charges for trial by courts-martial, the unit commander will use the current DD Form 458, Charge Sheet. Detailed instructions for completing the Charge Sheet may be found at R.C.M. 307 and at Figure 5-8 of this Regulation. An example of a completed Charge Sheet is located at Figure 5-7 any person subject to the LCMJ may prefer charges, but trial counsel should always draft or review charges before they are preferred. While the unit commander is responsible for the preparation of the Charge Sheet, there is no legal requirement that he do it personally. He should, however, supervise its prompt and proper preparation and forwarding. Once the charge and specification has been prepared and signed under oath, it is a public record, and other than minor administrative changes, should not be altered, except upon the advice of a judge advocate. For minor administrative or typographical corrections, the officer making same should initial in the margin the correction.

B. Timeliness. When the Unit Commander has made the decision to prefer court-martial charges and to recommend trial by courts-martial, he should promptly dispose of the matter. It is longstanding military policy, both in the active forces and in the National Guard that military justice be given priority.

C. Personal Data. Section I of the Charge Sheet is personal data concerning the accused. This information is generally found in the accused's personnel file. The unit commander should have reviewed this personnel file before making his decision on disposition of the offense during his preliminary investigation. The accused's "grade or rank" (Block 3) is his military title (such as PFC) and his "pay grade" (Block 4) is his numerical designation (such as E-3). The initial date of the accused's current service is the date of his latest enlistment (Block 6). Paragraph 7 "Pay per Month" is the normal MUTA-4 pay which the accused would receive for one month to be inserted in the "basic" block. Louisiana National Servicemembers do not receive "sea or foreign duty pay". Block 8, entitled "nature of restraint of accused" should show all types of restraint imposed, and block 9 should show the corresponding duration (inclusive dates) of the restraint and any changes.

D. Charges and Specifications

1. General. Section II of the Charge Sheet is the section for charges and specifications. This is the most important part of the Charge Sheet. The "charge" indicates the section of the Louisiana Code of Military Justice violated. Since DD Form 458, Charge Sheet, is a federal form, the reference in Section II to a "violation of the UCMJ, Article __" should be changed to "violation of the Louisiana Code of Military Justice, Article __." The "specification," which is under the charge, must be written so that it clearly advises the accused of the date, time, place and circumstances of the alleged offense against him. The specification states the facts and circumstances which constitute a violation of the particular section of the LCMJ alleged to be violated. Neither the misdesignation of an

article nor the failure to designate any article is ordinarily material so long as the specification alleges an offense over which courts-martial have jurisdiction. If there is only one charge, it is not numbered. When there is more than one charge, each is numbered with a Roman numeral. [R.C.M. 307(c).]

2. Elements of the Offense. Part IV of the Manual for Courts-Martial, United States, lists each essential element of all equivalent punitive Articles in the LCMJ. It is imperative that commanders familiarize themselves with the contents of these materials. The Unit Commander should refer to one of these references for a discussion of "proof" and an outline of the "elements of the offense." This will help the Commander to recognize criminal conduct and in drafting a clear, complete specification. When the specification is written, the Commander should be able to find each of the discussed "elements" in the specification.

3. Legal Advice. The unit commander should not alter the words in a model specification without legal advice from a Judge Advocate. If he, or his legal clerk, has any questions in the selection or drafting of a specification, he should contact the Staff Judge Advocate of his Direct Reporting Unit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§510. Preferral and Transmittal of Charges

A. Preferral. Section III of the Charge Sheet is the preferral of charges. The person who believes that the specifications are true signs in block 11d as the accuser. The reference in the affidavit to the "Uniform Code of Military Justice" should be changed to read "Louisiana Code of Military Justice" by deleting the word "Uniform" and substituting in its place the word "Louisiana. While any person subject to the Louisiana Code of Military Justice may be an accuser, it is customary for the Unit Commander to sign as the accuser. A superior authority may not order anyone to act as accuser. The signing of the Charge Sheet by the accuser must be done in the presence of a commissioned officer serving in the capacity of Adjutant, Assistant Adjutant, acting Adjutant, or Personnel Adjutant. [See LCMJ Article 136.] Each unit is authorized to detail in writing an officer in the capacity of acting Adjutant for the purpose of taking such oaths.

B. Informing the Accused. After charges have been preferred, the accused's commanding officer or his designated representative will inform the accused of the charges preferred against him, and will sign the certificate confirming such that is located at the top of page two of the Charge Sheet. This individual shall also advise the accused regarding his right to consult with legal counsel pursuant to LCMJ Article 20. When, because of the unavailability of the accused, this notice cannot be accomplished by reading the charges to him, a letter notifying him of the charges mailed by first class mail to the accused at his address as shown on the unit alert roster will suffice, but the certificate will be amended to reflect that the accused was informed of the charges by mail.

C. Receipt by the Summary Court-Martial Convening Authority. The unit commander next will have all copies of the Charge Sheet and related papers promptly sent to the commander exercising summary court-martial jurisdiction over his unit. This is normally the battalion or squadron commander. The summary court-martial authority or his representative (preferably the S-1) will indicate the time the sworn charges were received and sign the receipt of charges on Page two, Section IV.

D. Referral of Charges for Trial by Courts-Martial. If the convening authority decides to refer the case to trial by court-martial, the appropriate block in Section V of the Charge Sheet should be completed. Ordinarily in the Louisiana National Guard, such referral will be to a summary court-martial and the Charge Sheet should be delivered to the summary court officer, with the convening authority retaining a copy for his records. In lieu of referring the charges for disposition by court-martial, the convening authority may impose non-judicial punishment on the accused, or, if he determines that neither judicial nor non-judicial action is indicated, he may dismiss the charges. The convening authority, in any case, should advise the unit Commander who initiated the charges of his decision.

E. Service of Charges. Section V of the Charge Sheet also contains in the last item the service of the charges. In summary courts-martial, the most common type of court-martial held in the Louisiana National Guard, this service will ordinarily be accomplished by the summary court officer. If the charges have been referred to a special or general court-martial, the service will be accomplished by the trial counsel or at his direction. If, at time of preparation of the Charge Sheet, the accused is present at either at a unit training assembly or annual training, a copy of the Charge Sheet, and a copy of Notice of Court Martial, [See Figure 6-1] will be furnished the accused by the summary court officer or other official who will then sign the certificate which is the last item on page two of the Charge Sheet. At times other than annual training or unit training assemblies, the summary court officer will either serve the accused personally or mail a copy of the Charge Sheet and any Notice of Trial to the accused by first class mail to his home address as shown on the Unit Alert Rosters. A copy will also be furnished to any attorney of record representing the accused whose whereabouts are known or may reasonably be ascertained. A certificate of such service along with the date thereof shall be made part of the record. Service may be waived in writing by either the accused or his counsel. Unless waived, the delay for service of the charges upon the accused or his counsel must be accomplished not later than:

1. five days before trial for GCM;
2. three days before trial for SPCM;
3. 24 hours before trial for SCM. [See, generally, LCMJ Article 35; R.C.M. 602.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§511. Transmittal of Charges

A. General. In addition to the Charge Sheet, often other documents must be prepared and forwarded by the accused's commander. [See Figures 5-1 and 6-1.] A copy of each such record should be retained by the unit for its files.

B. Minor Offenses. When charges are submitted with a view to trial by summary court-martial or non-judicial punishment action, they need not be forwarded by a formal letter of transmittal, but should be accompanied by evidence of previous court martial convictions (DD Form 493) and of

previous non-judicial punishments of the accused ant sufficient information about the circumstances, including an informal summary of the expected evidence, to enable the commander receiving them to make an intelligent disposition of the case without an additional investigation.

C. Serious Offenses. When charges are submitted with a view to trial by special or general court-martial, they will be forwarded by a letter of transmittal signed personally by the forwarding officer. The letter will include, or carry as enclosures, the following:

1. A summary of the evidence expected from each witness or other source. The signature of each witness to the summary of his testimony will be obtained unless the procurement of the signature(s) is not possible or would unduly delay the forwarding of the charges;

2. Copies of all reasonably available documentary evidence. Originals should not be forwarded with the Charge Sheet and letter of transmittal. The original documentary evidence should be properly marked, preserved, and referred to in the charges or the letter of transmittal with a statement as to where it may be found.

3. Evidence of admissible previous convictions by court-martial and non-judicial punishments, which, in the case of enlisted persons, is usually in the form of an attested copy of the pertinent entries in the accused's personnel records.

4. Explanation of any unusual features of the case, including such matters as the character of the accused's military service before the offense charged and his record before entry into the military service, if known.

5. Specific recommendation as to the disposition of the charges.

6. Certification that Judge Advocate advice has been obtained in the matter if the transmittal recommends a special or general court-martial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§512. Time Limits

A. General. The prompt disposition of charges is essential to our system of military justice. An unexplained delay in the processing of charges at any stage may result in dismissal of the charges. When a decision concerning a delay is brought up at trial, the burden is on the government to justify the delay, to show that it was not intentional nor due to an oppressive design or neglect on the part of the National Guard. The period of time for which the government is accountable starts to run when the accused is placed in restraint or when charges have been preferred. The following are guidelines for avoiding unreasonable delays in the processing of the court-martial charges:

1. promptly send all court-martial files to higher headquarters;

2. investigate an incident immediately after it happens;

3. do not allow a case to remain in a unit because of the pressure of other duties;

4. if the accused is placed in pre-trial confinement, he will be served with a copy of the charges and taken into military custody or brought before the court for trial not later than 24 hours after the commencement of his pre-trial confinement. Exception to this policy may only be granted by the State Judge Advocate or his designated representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§513. Detailing of Military Judge

A. In accordance with Article 26 of the LCMJ the authority convening the General or Special Court Martial shall detail a Military Judge thereto. A Military Judge will be made available to the convening authority by the State Judge Advocate. The written documentation detailing the military judge may be included in the court-martial convening order. [See Figure 5-12] Nothing in this regulation precludes the detail of a military judge from another armed service to preside over courts-martial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§514. Detailing of Trial Counsel

A. Trial Counsel will be made available to the convening authority by the State Judge Advocate or the DRU SJA. The order detailing trial counsel will be in writing, and will be announced orally on the record during the court-martial, and will indicate by whom the trial counsel was detailed. The written documentation detailing the trial counsel may be included in the court-martial convening order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§515. Assignment of Defense Counsel

A. Chief, LANG TDS will make available to GCMCA's and SPCMCA's military trial defense counsel for detail to all Special and General Courts Martial. The name of the military trial defense counsel will appear on the convening order and announced orally at the court martial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§516. Detailing and Duties of Court Members

A. The convening authority shall detail qualified persons as members for courts-martial. He may detail as members of general and special courts-martial persons under his command or others made available by another commander even if those persons are members of an armed force different from that of the convening authority or accused.

B. Qualifications. The members detailed to a court-martial shall be those persons who in the opinion of the convening authority are best qualified for the duty by reason of their age, education, training, experience, length of service, and judicial temperament. Each member shall be a member of the Louisiana National Guard and shall be:

1. a commissioned officer;

2. a warrant officer, except when the accused is a commissioned officer; or

3. an enlisted person if the accused is an enlisted person and has made a timely request under R.C.M. 503(a)(2).

C. Enlisted Members. An enlisted accused may, before assembly, request orally on the record or in writing that

enlisted persons serve as members of the general or special court-martial to which that accused's case has been or will be referred. If such a request has been made, an enlisted accused may not be tried by a court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total number of members unless eligible enlisted members cannot be obtained because of physical conditions or military exigencies. If the appropriate number of enlisted members cannot be obtained, the court-martial may be assembled, and the trial may proceed without them, but the convening authority shall make a detailed written explanation why enlisted members could not be obtained which must be appended to the record of trial.

D. Duties. The members of a court-martial shall determine whether the accused is proved guilty and, if necessary, adjudge a proper sentence, based on the evidence and in accordance with the instructions of the military judge. Each member has an equal voice and vote with other members in deliberating upon and deciding all matters submitted to them, except as otherwise specifically provided in these rules. No member may use rank or position to influence another member. No member of a court-martial may have access to or use in any open or closed session this Regulation, the Manual for Courts-Martial, reports of decided cases, or any other reference material, except for instructions or other documents provided by the military judge.

E. President. The president of a court-martial shall be the detailed member senior in rank then serving. He shall have the same duties as other members and shall also preside over closed sessions of the members of the court-martial during their deliberations and speak for the members of the court-martial when announcing the decision of the members or requesting instructions from the military judge.

F. Changes of Members

1. Before assembly. Before the court-martial is assembled, the convening authority may change the members of the court-martial without showing cause. The convening authority may delegate authority to excuse individual members to the State Judge Advocate or legal officer or other principal assistant to the convening authority. Before the court-martial is assembled, the convening authority's delegate may excuse members without cause shown; however, no more than one-third of the total number of members detailed by the convening authority may be excused by his delegate in any one court-martial. After assembly, the convening authority's delegate may not excuse members.

2. After assembly. After assembly, no member may be excused, except:

a. by the convening authority for good cause shown on the record;

b. by the military judge for good cause shown on the record;

c. as a result of a challenge under R.C.M. 912.

3. New Members. New members may be detailed after assembly only when, as a result of excusals under this Paragraph, the number of members of the court-martial is reduced below six, or the number of enlisted members, when the accused has made a timely written request for enlisted members, is reduced below one-third of the total membership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§517. Subpoenas

A. Convening Authority's Responsibility. The Convening Authority is responsible for assuring that witnesses sought by both government and defense are timely subpoenaed. Requests for subpoenas shall be made at the earliest practicable time to allow ample time for service. Unless otherwise directed, 30 days prior to scheduled trial is considered reasonable. [See Paragraph 4-8, Figures 5-2, 6-1 and 6-2.]

B. Civilian Witnesses. Civilian personnel will not be ordered to appear as witnesses at any SCM or SPCM unless prior approval has been obtained from the SJA or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§518. Expenses

A. General. The expenses of a court-martial other than pay and allowances of members and counsel detailed to the court will generally be paid with State funds.

B. Expenses of Witnesses. Subpoenas or other process issued to witnesses will be served as provided by LCMJ Article 46. The process will be accompanied by a letter explaining the penalty for failure to obey the process as outlined in LCMJ Article 47. The letter will also advise the witness of any statutory entitlement to expenses and the procedure for collecting payment. If state funds are to be used for payment of these expenses, the issuing authority will coordinate with the Office of the State Judge Advocate prior to issuing the process and letter.

C. Expenses of Court Reporters and Interpreters. Court reporters and interpreters may be employed when required by the LCMJ or when directed by TAG. A court reporter will not be provided in a non-judicial punishment proceeding or a summary court-martial. Scheduling and compensation of such court reporters and interpreters shall be coordinated by the Office of the State Judge Advocate.

D. Government Transportation. Government transportation will be utilized by counsel and members detailed to the court-marital unless not available. Travel Orders will be issued as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§519. Docketing of Trials

A. The Convening Authority's SJA shall review all requests for SPCM or GCM and, if approved by the Convening Authority, the SJA shall contact the Military Judge to arrange for arraignment and trial. te (SJA) by the quickest means available to announce this decision. The LANG TDS shall provide the name of the designated military defense counsel (DC). The State Judge Advocate shall provide the name of the designated Military Judge (MJ), and a case number. The Convening Authority's SJA

will then contact the DC and coordinate a tentative trial date. Thereafter, the Convening Authority's SJA shall contact the MJ for final selection of a trial date. The Convening Authority's SJA shall advise the MJ whether a court reporter's presence is specifically sought for the case. The MJ shall advise the State Judge Advocate of the final trial date selected, whether a court reporter will be required, and any other matters of special interest and significance. Appropriate notices of trial and subpoenas shall be timely dispatched after coordination with all parties. [See Figures 6-1, 6-2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§520. Continuance Requests

A. Requests for the continuance of regularly scheduled courts-martial are matters within the discretion of the assigned military judge. Requests based on failure to timely take appropriate action (e.g. witness subpoena requests) shall be looked on with disfavor, and shall be granted only in cases where a substantial and demonstrable prejudice is likely to result there from.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§521. Logistical Arrangements

A. The Convening Authority's SJA shall be responsible for conduct of the entire case, including summoning of all witnesses and production of documentary evidence, arranging for a courtroom facility, coordinating requests for court reporters with Office of State Judge Advocate, and coordination of trial details with the military judge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§522. Article 32 Investigations

A. The conduct of an LCMJ Article 32 Investigation shall be considered the principal or primary duty of the Investigating Officer (IO) until completed. The officer directing the investigation shall provide adequate clerical and staff assistance to the IO. Officers designated to conduct LCMJ Article 32 investigations shall consult with the Trial Counsel prior to undertaking their duties, and shall follow published guidance (active component and otherwise) concerning such tasks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§523. Plea Bargains and Pretrial Agreements

A. The convening authority may properly agree to refer charges to a certain type of court-martial, withdraw one or more charges or specifications from the court-martial, have trial counsel present no evidence as to one or more specifications, and/or take specified action on the sentence adjudged by the court-martial as set forth in R.C.M. 705. [See example at Figure 5-10.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

B. Transmittal of Court-Martial Charges (Figure 5-1)

UNIT HEADING

LANG-XXX July 5, 2008

MEMORANDUM FOR: Commander, 256th Infantry Brigade (M), 1806 Surrey St., Lafayette, LA 70508

SUBJECT: Referral of Charges to Court-Martial

Forwarded herewith are sworn court-martial charges for appropriate disposition.

Summaries of expected testimony and documentary evidence upon which the charges are based, if any, are enclosed.

The following material witnesses are expected to be available at the time of the trial:
(List Rank(s), Name(s), and Address (es)

There is evidence of _____ (list number, if any) of admissible previous court-martial conviction(s) of the accused. A duly authenticated extract copy of the accused's military records of previous conviction s showing such conviction(s), if any, is enclosed.

The character of the accused's military service prior to the offense(s) charged has been (excellent) (good) (fair) (unsatisfactory).

I recommend trial by (Summary) (Special) (General) Court-Martial, and further recommend that the Servicemember (be) (not be) retained in the Louisiana National Guard. [If applicable: The accused was offered and declined Summary Court-Martial for the charge.]

HARD CHARGER
MAJ, IN, LANG
Commanding

C. Judge Advocate Pretrial Advice (Figure 5-2)

UNIT HEADING

LANG-xxx DATE

MEMORANDUM FOR: Commander, 256th Infantry Brigade (M), 1806 Surrey St., Lafayette, LA 70508

SUBJECT: Advice on Disposition of Court-Martial Charges UP R.C.M. 406

1. ACCUSED: SSG JOHN DOE, 000-00-0000, Co A, 199th SPT BN, 256th INF BDE.

PERSONAL DATA: The accused's records indicate no prior court-martial convictions or non-judicial punishment.

DOB/AGE:8 Dec 56 (35)
RACE: White
TIME IN SVC:15 yrs, 1 mo.
CIV EDUCATION: HS Graduate
MIL EDUCATION: Advanced Course
ETS:21 Feb 94
MARITAL STATUS: Married
DEPENDENTS: 2
PRETRIAL CONF. None

CHARGES:

Disrespect [LCMJ Article 89]
Dereliction [LCMJ Article 92]

LEGAL CONCLUSIONS: After reviewing the attached charges and allied papers, I have reached the following conclusions:

Each charge/specification alleges an offense under the LCMJ;

The allegations in each charge/specification are warranted by the evidence;

There is court-martial jurisdiction over the accused and all charged offenses.

RECOMMENDATIONS: Company and Battalion Commanders recommend trial by Special Court-Martial. I concur in recommendation of Special Court-Martial.

LEGAL EAGLE
LTC, JA
Staff Judge Advocate

Attachments
(Charge Sheet)
(Allied Papers)

D. Arrest Warrant/Pretrial Confinement Order (Figure 5-3)

STATE OF LOUISIANA
Military Department

WARRANT FOR ARREST

TO ALL PEACE OFFICERS OF THE STATE OF LOUISIANA AND PROVOST MARSHALLS OF THE ARMED FORCES OF THE STATE OR FEDERAL GOVERNMENT, GREETINGS:

Pursuant to Articles 7 through 14 of the Louisiana Code of Military Justice (LA Revised Statutes 29:107 through 114), and considering the attached affidavit supporting a determination that probable cause exists to believe that an offense under the LCMJ was committed by the Servicemember named herein, YOU ARE HEREBY DIRECTED TO ARREST:

Name, Rank, Social Security Number, Address

whose description is as follows: Race: Weight: Height: DOB: Hair: Eyes:

and bring said person either before me, the undersigned authority at Address of unit
immediately, or, alternatively, to deliver said person to Name of Parish Jail or to the most appropriate detention facility within your jurisdiction for the purpose of answering to the State of Louisiana for an offense against the laws of said State, as follows: State LCMJ Article(s) from Charge Sheet as sworn to in writing before me. The accused may be fingerprinted and photographed if required by your agency, and while in your custody, the said individual shall be subject to the same treatment as other persons so restrained under the laws of the State of Louisiana. The accused may be released in to the custody of the Louisiana National Guard or admitted to bail in the amount of $500.00 and given written notice to report within 24 hours to his National Guard unit at the address below. This warrant shall expire six months from the date of issuance, and authorized detention SHALL NOT EXCEED EIGHT HOURS from the time of arrest. Upon release the arresting authority shall deliver the attached written direct order to report to the unit before 1600 the following working day. Immediately after the accused is in custody, and again when he is released, you are required under LA R.S. 29:111(c) to notify his National Guard unit by calling the following persons:

Name and Rank __ Daytime Phone No. ___ After Hours Phone No.
1.
2.

By authority of the Governor of the State of Louisiana, I affix my official signature, this _____ day of _____, 2008.

_____
(Typed Name & Rank of Convening Authority ("CA") (CA's Signature)

_____
(Military Unit and Location)

E. Affidavit in Support of Arrest Warrant (Figure 5-4)

STATE OF LOUISIANA
Military Department

AFFIDAVIT IN SUPPORT OF WARRANT FOR ARREST

STATE OF LOUISIANA

PARISH OF _____

Before me, the undersigned authority appeared _____,
(Affiant's name, address, and rank, if applicable)

who, being sworn, stated that the following facts are true to the best of his knowledge and belief:

On the _____ day of _____, 19____, in the Parish of _____,

_____ did then and there commit the offense(s) of LCMJ Article(s) _____.
(name and rank)

Affiant bases his belief that the offense(s) was (were) committed on the following facts:

F. Surety Appearance Bond (Figure 5-6)

STATE OF LOUISIANA
Military Department

COURT-MARTIAL APPEARANCE (BAIL) BOND - SURETY

STATE OF LOUISIANA
PARISH OF _____ _____
(Date)

KNOW ALL MEN BY THESE PRESENTS THAT WE _____,
(Defendant)

as principal, and _____, as surety, are held and firmly bound unto the State of

Louisiana Military Department in the penal sum of $_____, for the payment of which sum, well and truly to be made and all additional fees and expenses that may be incurred by peace officers in rearresting principal in the event the conditions of this bond are violated, we do bind ourselves and each of us, our heirs, executors and administrators, solidarily, as follows.

The conditions of the above obligation is such that, whereas the above named principal stands charged with a violation of the penal provisions of the Lousiana Code of Military Justice (LCMJ), as follows:

_____, for which offense trial by court-martial is authorized.
(Article Number and Description)

Now if the said principal shall appear at the _____,
(Name and Address of Court)

to answer the charge or any related charge(s) and shall appear at all stages of the proceedings thereafter scheduled until this matter is concluded, and shall at all times hold himself amenable to the orders and process of the court, and, if convicted, shall appear for pronouncement of the verdict, sentence, post-conviction hearings, and satisfaction of sentence, and, during pendency of these proceedings, shall keep his military unit advised of his correct home and work addresses and telephone numbers; shall accept and receipt for all mail sent to him by the military; shall satisfactorily attend and participate in all military duty which he is ordered to perform (and the principal acknowledges that he is responsible for informing himself as to all duty dates, times, places, etc); and shall not leave the state without the written permission of the court, then this obligation shall become void. Otherwise, this obligation is to remain in full force and effect, and if the principal fails to perform any of these conditions, we (I) shall pay to the Louisiana Military Department

the sum of $_____ dollars.

****

Bond approved by witnessing accused's and surety's signatures this ____ day of _____, 19____.

By: _____, Custodian/Jailer

_____
(Principal/Accused) *(Current Home Address and Phone)* *(Current Work Address and Phone)*

_____
(Surety) *(Current Home Address and Phone)* *(Current Work Address and Phone)*

LANG FORM No.
Rev. Feb. 92

G. Surety Appearance Bond Cash (Figure 5-7)

STATE OF LOUISIANA
Military Department

COURT-MARTIAL APPEARANCE (BAIL) BOND - CASH

STATE OF LOUISIANA

PARISH OF _____

KNOW ALL MEN BY THESE PRESENTS THAT I, _____,
(Accused)
hereinafter referred to as the accused, deposited with the custodian of funds whose signature appears below, the sum of $_____, to insure my performance of the obligations set forth below.

The conditions of the above obligation is such that, whereas I stand charged with a violation of the penal provisions of the Lousiana Code of Military Justice (LCMJ), as follows: _____, for which offense trial by court-martial is authorized.

Now if I shall appear at the _____,
(Name and Address of Court)
to answer the charge or any related charge(s) and shall appear at all stages of the proceedings thereafter scheduled until this matter is concluded, and shall at all times hold myself amenable to the orders and process of the court, and, if convicted, shall appear for pronouncement of the verdict, sentence, post-conviction hearings, and satisfaction of sentence, and, during pendency of these proceedings, shall keep my military unit advised of my correct home and work addresses and telephone numbers; shall accept and receipt for all mail sent to me by the military; shall satisfactorily attend and participate in all military duty which I am ordered to perform (and I acknowledge that I am responsible for informing myself as to all duty dates, times, places, etc); and shall not leave the state without the written permission of the court, then this obligation shall become void. Otherwise, this obligation is to remain in full force and effect, and if I fail to perform any of these conditions, the cash funds so deposited shall be forfeited to the Louisiana Military Department. I further agree to pay all fees and expenses that may be incurred by peace officers in rearresting me in the event I violate the conditions of this bond.

_____, Louisiana, this _____ day of _____, 19____.

****

Bond approved by witnessing accused's signature and accepting deposit of $_____

this _____ day of _____, 19_____.

By: _____, Custodian/Jailer

_____

(Principal/Accused) *(Current Home Address and Phone)* *(Current Work Address and Phone)*

LANG FORM No.
Rev. Feb. 92

H. SCM Rights Notification/Waiver Statement

SUMMARY COURT-MARTIAL RIGHTS NOTIFICATION/WAIVER STATEMENT

For use of this form, see AR 27-10; the proponent agency is TJAG.

1. STATEMENT CONCERNING REFUSAL TO ACCEPT QUALIFIED COUNSELING, ARTICLE 20, UCMJ AND UNDERSTANDING OF RIGHTS

a. On _____ (Date), I was afforded an opportunity to consult with legal counsel before making my decision to consent to Summary Court-Martial proceedings under Article 20, UCMJ.

b. I have decided not to see counsel in connection with this action.

c. I understand my rights under Article 20, UCMJ, including my right to object to trial by Summary Court-Martial, punishment limitations, potential use of the record of Summary Court-Martial in any subsequent courts-martial, and other consequences of my decision.

d. I voluntarily decide to consent to trial by Summary Court-Martial.

TYPED OR PRINTED NAME AND RANK OF SERVICE MEMBER	SIGNATURE OF SERVICE MEMBER
TYPED OR PRINTED NAME & RANK OF SUMMARY COURT-MARTIAL OFFICER	**SIGNATURE OF SUMMARY COURT-MARTIAL OFFICER**

2. STATEMENT ACKNOWLEDGING QUALIFIED LEGAL COUNSEL FOR ARTICLE 20, UCMJ, AND STATEMENT OF UNDERSTANDING OF RIGHTS

a. On 18 September 1984 (Date), I consulted with CPT James Watt (Name and Rank of Defense Counsel) who explained my rights to me under the provisions of Article 20, UCMJ, to include my right to object to trial by Summary Court-Martial, punishment limitations, potential use of the record of Summary Court-Martial proceedings in any subsequent courts-martial, and other consequences of my decision.

b. I understand my rights and voluntarily decide to consent to trial by Summary Court-Martial.

TYPED OR PRINTED NAME AND RANK OF SERVICE MEMBER	SIGNATURE OF SERVICE MEMBER
PFC Arthur N. Sherry	Arthur Sherry

c. I have advised PFC Arthur N. Sherry (Name and Rank of Service Member) of his or her statuatory and regulatory rights with regard to this Summary Court-Martial and the possible consequences of his or her consent or objection to trial by Summary Court-Martial.

TYPED OR PRINTED NAME, RANK, & BRANCH OF DEFENSE COUNSEL	SIGNATURE OF DEFENSE COUNSEL
CPT James Watt	James Watt

3. REFUSAL TO ACKNOWLEDGE RECEIPT OF ADVICE — ARTICLE 20, UCMJ

After I advised _____ (Name (First, MI, Last)) _____ (Rank) _____ (SSN) of his or her rights to consult with legal counsel before making a decision to consent or object to Summary Court-Martial proceedings under Article 20, UCMJ, he or she refused to complete and sign an acknowledgement of receipt of the advice.

TYPED OR PRINTED NAME & RANK OF SUMMARY COURT-MARTIAL OFFICER	SIGNATURE OF SUMMARY COURT-MARTIAL OFFICER

REMARKS

I. Charge Sheet (Figure 5-9)

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)	2. SSN	3. GRADE OR RANK	4. PAY GRADE
SNUFFY, JOE I.	999-99-9999	SGT	E5

5. UNIT OR ORGANIZATION	6. CURRENT SERVICE	
HEADQUARTERS SUPPORT COMPANY, 205TH ENGINEER BATTALION 104 AVENUE B, BOGALUSA, LA 70427	a. INITIAL DATE 19 OCTOBER 2002	b. TERM 8 YEARS

7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
$299.64	N/A	$299.64	None	N/A

II. CHARGES AND SPECIFICATIONS

10. **CHARGE I:** **VIOLATION OF THE LCMJ, ARTICLE 86.**

SPECIFICATION: In that Sergeant Joe I. Snuffy, a member of the Louisiana National Guard did, at 205th Engineer Battalion Armory, Bogalusa, Louisiana, on or about 4 April 2008 without authority, fail to go to his appointed place of duty, to wit: 1800 first formation 4 April 2008 and did remain so absent until 6 April 2008.

CHARGE II: VIOLATION OF THE LCMJ, ARTICLE 92.

SPECIFICATION: In that Sergeant Joe I. Snuffy, a member of the Louisiana National Guard, at 205th Engineer Battalion Armory, Bogalusa, Louisiana, on or about 4 April 2008, having knowledge of a lawful order issued by Sergeant First Class Walter B. Owens to "report to drill," or words to that effect, an order which it was his duty to obey, did fail to obey the same by wrongfully going to Oregon without permission to leave drill.

CHARGE III: VIOLATION OF THE LCMJ, ARTICLE 112.

SPECIFICATION: In that Sergeant Joe I. Snuffy, a member of the Louisiana National Guard was, at 205th Engineer Battalion Armory, Bogalusa, Louisiana, on or about 16 March 2008, found drunk while on duty as Battalion NBC Noncommissioned Officer.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI)	b. GRADE	c. ORGANIZATION OF ACCUSER
YOU, DID T.	E6	HEADQUARTERS SUPPORT COMPANY, 205TH ENGINEER BATTALION

d. SIGNATURE OF ACCUSER	e. DATE

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 3RD day of MAY, 2008, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

BETTER B. HONEST *Typed Name of Officer*	205TH ENGINEER BATTALION *Organization of Officer*
O-3 *Grade*	ADJUTANT *Official Capacity to Administer Oath* *(See R.C.M. 307(b) – must be a commissioned officer)*
Signature	

DD FORM 458, MAY 2000 PREVIOUS EDITION IS OBSOLETE.

12.

On 3 MAY, 2008, the accused was informed of the charges against him/her and of the name~~(s)~~ of The accuser~~(s)~~ known to me *(See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)*

JOHN T. BOOKER
Typed Name of Immediate Commander

HEADQUARTERS SUPPORT COMPANY, 205TH ENGINEER BATTALION
Organization of Immediate Commander

O-3
Grade

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at _____ hours, 3 May, 2008 at 205TH ENGINEER BATTALION
Designation of Command or

BOGALOUSA, LOUISIANA
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE [1] COMMANDER

BETTER B. HONEST
Typed Name of Officer

ADJUTANT, 205TH ENGINEER BATTALION
Official Capacity of Officer Signing

0-3
Grade

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE *(YYYYMMDD)*
205TH ENGINEER BATTALION	BOGALOUSA, LOUISIANA	

Referred for trial to the Summary Court-martial convened by this detail of Major IDE P. Judge as Summary Courts-martial on 3 May, 2008, subject to the following instructions:

None.

~~By~~ _____ ~~of~~ _____
Command or Order

EYE C. ALL
Typed Name of Officer

COMMANDER
Official Capacity of Officer Signing

O-5
Grade

Signature

15.

On _____, _____, I (caused to be) served a copy hereof on (each of) the above named accused.

Typed Name of Trial Counsel

Grade or Rank of Trial Counsel

Signature

FOOTNOTES: *1 — When an appropriate commander signs personally, inapplicable words are stricken.*
2 — See R.C.M. 601(e) concerning instructions. If none, so state.

DD FORM 458 (BACK), MAY 2000

J. Charge Sheet Completion Explanation Item (Figure 5-10)

Item 1 Enter last name, first name, and middle initial of accused.

Item 2 Enter Social Security Account Number of accused.

Item 3 See AR 600-200, Table 1-1, for proper rank/grade designations. Example: PFC; SFC.

Item 4 Enter numerical pay grade designation of officer or enlisted member, as appropriate. Example: E-4; E-1.

Item 5 Enter complete military address of unit to which the individual is assigned.

Item 6 Enter initial date and term of current enlistment.

Item 7 Enter amount of base pay for one inactive duty training period. Louisiana National Servicemembers do not receive "sea or foreign duty pay."

Item 8 Enter nature of any restraint imposed upon the accused at the time the charge sheet is prepared. Example: Arrest in Quarters; Confinement. If no restraint is imposed, enter NONE.

Item 9 Enter the date that restraint in Item 8 was imposed. If no restraint is imposed, enter N/A.

Item 10 Change "UCMJ" to "LCMJ." Each violation of a different section of the LCMJ requires a separate charge. Charges, if more than one, are numbered by Roman numerals. Examples: I; II; III; IV, etc. If only one charge is made, it need not be numbered. In the blank space following the word "Article," enter the appropriate section of the LCMJ. Each specification under a charge is numbered with Arabic numerals. Example: 1; 2; 3; 4, etc. If only one specification is shown under a charge, it need not be numbered. Do not use abbreviations or SSAN of the accused in any specification. Specifications will be free of typographical errors. Consult Part IV of the Manual for Courts-Martial, United States, for sample specifications. Do not alter the words in a model specification without advice from the servicing staff judge advocate.

Item 11 For "preferral of charges," enter name, grade, and organization of accuser. While it is customary for the unit commander to sign as accuser, any person subject to the LCMJ may be an accuser, though that individual may not thereafter refer the charges to a GCM or SPCM. [See LCMJ Article 30.] Signing for the accuser is not authorized, and rubber stamp signatures are not authorized. Charges must be sworn in all cases, with the accuser signing the charge sheet in the presence of the servicing staff judge advocate, his assistant, or one of the individuals so authorized to administer oaths for military justice purposes. [See LCMJ Article 136.] No accused may be tried on unsworn charges over his objection. Only a commissioned officer may swear the accuser to the charges. [LCMJ Article 136.]

Item 12 Enter date accused was notified of the charges. Enter name, grade, and organization of person informing accused of the charges. If possible, the accused's commander should make this notification personally. If personal notice is not possible, a letter notifying the accused should be mailed using first class postage, and the charge sheet should be noted to so reflect. The one notifying the accused of the charges should also complete the DA Form 5111-R, Summary Court-martial Rights Notification/Waiver Statement. [See Figure 5-6.]

Item 13 The unit commander then forwards the charge sheet to the Summary Court-martial Convening Authority, usually the battalion or squadron commander. The time and date on which the charges are received by the SCM Convening Authority is critical as it begins the statute of limitations clock running. [LCMJ Article 43.]

Item 14 The appropriate convening authority's decision on the level of court-martial is entered in this blank.

Item 15 Enter record of service of the charge sheet upon the accused. The Summary Court-martial Officer normally serves SCM process. It is Trial Counsel's responsibility to insure that timely service is made for SPCM and GCM. Service may be accomplished either by personal deliver or first class mail.

See R.C.M. 307 for further guidance. All blocks of Charge Sheet must carry an entry, and all changes, corrections, additions, and deletions must be initialed by the person who makes them.

K. Pretrial Agreement (Figure 5-11)

STATE OF LOUISIANA SPECIAL COURT-MARTIAL NO.____
versus
PRIVATE E-1 JOHN DOE
256TH INFANTRY BRIGADE (M)
LOUISIANA ARMY NATIONAL GUARD

OFFER TO PLEAD GUILTY

I, Private E-1 John Doe, the accused in a Special Court-Martial now pending, have had an opportunity to examine the charges preferred against me, the investigating officer's report, and the statements and documents attached thereto; and after consulting with my defense counsel, CPT _____, and being fully advised that I have a legal and moral right to plead not guilty to the Charge and Specification under which I am about to be tried, to wit:

Charge: Violation of the Louisiana Code of Military Justice, Article 86, containing one specification of AWOL from 4-11 July, 1992.

I offer to plead guilty to the Charge and the Specification, provided that the convening authority will not approve any sentence in excess of the sentence attached hereto as Appendix I.

In offering the above agreement, I declare that:

I agree upon acceptance of this offer to enter into a written stipulation with the trial counsel of the facts and circumstances surrounding the offenses and further agree that this stipulation may be used to inform the court-martial of matters pertinent to an appropriate finding and/or sentence. I am satisfied with the defense counsel who has been detailed to defend me. This offer to plead guilty originated with me and no person or persons have made any attempt to force or coerce me into making this offer to plead guilty. My defense counsel has advised me of the meaning and effect of my guilty plea and I understand the meaning and effect thereof. I understand that I may request a withdrawal of this plea at any time before sentence is announced and the military judge determines whether the request should be granted. I understand this offer and agreement and the fact that I have agreed to enter into the stipulation of fact as set out above. If my plea is not accepted, this offer to stipulate is null and void. I further understand that this agreement will be automatically canceled upon the happening of any of the following events:

Failure of agreement with the trial counsel on the contents of the stipulation of fact;
The withdrawal by either party from the agreement prior to trial;
The modification at any time of the agreed stipulation of fact without consent of trial counsel or myself; The changing of my plea by anyone during the trial from guilty to not guilty; or, The refusal of the Military Judge to accept my plea of guilty.

_____ _____
DEFENSE COUNSEL ACCUSED

The foregoing is (accepted) (not accepted).
_____, Louisiana, this ___ day of _____, 19__.

_____
COMMANDER

L. Pretrial Agreement, Continued (Figure 5-12)
On a separate sheet, the sentencing limitation language should be typed, substantially as follows:

APPENDIX I

I, Private E-1 John Doe, offer to plead guilty to the Charge and Specification herein provided the convening authority will not approve a sentence in excess of a fine of not more than $75.00 and confinement of not more than 60 days.

_____, Louisiana, this ___ day of _____, 19__.

_____ _____
DEFENSE COUNSEL ACCUSED

The foregoing is (accepted) (not accepted).

_____
COMMANDER

M. Court Martial Convening Order (Figure 5-13)

UNIT HEADING

LANG-xxx DATE

SPECIAL COURT-MARTIAL CONVENING ORDER 08-XX

1. All prior orders, as pertains to a Special Court-Martial are hereby rescinded.

2. A Special Court-Martial is hereby convened. It may proceed to try such person(s) as may be properly brought before it. LAARNG Judge Advocates are appointed with the approval of the State Judge Advocate. The Court will be constituted as follows:

MILITARY JUDGE

COL WILLIAM R. JUSTICE, Louisiana State Guard, certified in accordance with LCMJ Article 26(b) and previously sworn in accordance with LCMJ Article 42(a).

TRIAL COUNSEL

MAJ JOE BROWN, JA, HHC 225TH EN BDE, LAARNG, is detailed as TRIAL COUNSEL, certified in accordance with LCMJ Article 27(c) and previously sworn in accordance with LCMJ Article 42(c).

DEFENSE COUNSEL

CPT BLEEDING HEART, JA, Joint Forces Headquarters, Trial Defense Service, LAARNG, is detailed as DEFENSE COUNSEL, certified in accordance with LCMJ Article 27(c) and previously sworn in accordance with LCMJ Article 42(c).

SPECIAL COURT-MARTIAL CONVENING ORDER 08-XX
DATE

MEMBERS

RANK	NAME	UNIT NAME
COL	ADAM, JOHN ROGER	JFHQ-LA(-)
COL	BOAT, JAMES ERNEST	JFHQ-LA(-)
MSG	BROCH, TED ANTHONY	JFHQ-LA(-)
MSG	COOK, JOSEPH GREG	HHC, 225TH EN BDE
LTC	CHARLES, JERRY SCOTT	HHC, 225TH EN BDE
MSG	DANGLE, DENISE MARIE	JFHQ-LA(-)
MSG	GENNERY, DONNA JEAN	JFHQ-LA(-)
1SG	GOLF, JEFFERY BLAKE	926 MOBILITY AUG CO (MAC)
CSM	HUBERT, FRANKLIN RAY	HSC 527 EN BN
COL	JONES, JORDAN TODD	61ST TROOP COMMAND
SFC	LANDRY, LEROY	61ST TROOP COMMAND
CPT	MACFLUFF, AARON	JFHQ-LA(-)
MSG	MCGIBB, ROBIN KENDALL	JFHQ-LA(-)
SFC	MCNOOFUNHOUSER, NATASHA	HHC 256TH INF BDE (IBCT)
1SG	NUGENT, ROBERT EUGENE	DET 1, 199TH REG (LDR)
1SG	PARTINES, GREGORY ALFRED	812TH MED CO (AIR AMBL)
LTC	PINGER, LADENNA MAYEUR	JFHQ-LA(-)
1SG	ROUGH, DANNY ALFRED	843(-) HORIZONTAL EN CO
1SG	RALGER, JOHN MARTIN	CO C (MED), 199TH SPT BN
MAJ	RASSHOUSE, TINA DRACINE	JFHQ-LA(-)
MSG	RAINS, MELODY ANN	JFHQ-LA(-)
MSG	SALIVASTER, DENNIS JOYAUS	HHD 139 SUPPORT GROUP (REG)
CPT	ST. THOMAS, JOHN GREGORY	769 EN BN
LTC	TALLWOOD, VINCENT DOUGLAS	HHD 139 SUPPORT GROUP (REG)
SGM	TOILRER, PAT RAY	JFHQ-LA(-)
MSG	VICTOR, JAMES MICHAEL	HHC 225TH EN BDE
SGM	WILLIAMS, GREG ALLEN	JFHQ-LA(-)

BY ORDER OF THE COMMANDER:

BENNETT LANDRENEAU
MG, LANG
Commanding

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

Chapter 6. Trial Procedures

§601. Applicability of Trial Guides

A. Court-Martial Trial Guides. A guide for the conduct of Summary Courts-Martial is located in Appendix B of this Regulation. The Military Judge's Benchbook, DA Pam 27-9, shall be consulted as a guide for Special and General Courts-Martial. The benchbook contains scripts for GCMs and SPCMs. Trial procedures shall conform generally to the Guide applicable to the level of court-martial being conducted.

B. Deviation Not Necessarily Reversible Error. Deviation from the suggested script language shall not constitute reversible error unless a substantial right of the accused is thereby violated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§602. Courtroom Procedure Rules

A. Pursuant to LCMJ Article 36, and unless otherwise specifically stated by the military judge or other competent authority, the following rules of courtroom procedures shall apply to all non-judicial punishment proceedings and courts-martial conducted under the LCMJ.

1. Decorum of Courtroom

Rule 1. As a traditional mark of respect for the dignity of the military judicial system, as represented by the military judge, all persons in the courtroom, without regard to grade, will rise when the military judge enters or leaves.

Rule 2. The military judge, either at a Section 39(a) session or at the time of assembling the court, should make known any special rules relating to conduct which the accused, counsel, witnesses, members of the court, and others in the courtroom will be expected to follow which are not set forth in the Rules for Courts-Martial, Part II of the Manual for Courts-Martial, United States, these rules, and the Louisiana Code of Military Justice.

Rule 3. Except as otherwise provided by the military judge, all military personnel who participate in the trial, including court members, counsel, the accused, the reporter, the bailiff, guards, and witnesses, shall appear in appropriate service uniform. Unless a court-martial is conducted in the field the uniform shall be Class A. Military witness who are called unexpectedly may be permitted to appear in other than service uniform to avoid undue delay.

Rule 4. The military judge should be attired in a judicial robe during open sessions of the trial of a case with members. In other cases he should appear in appropriate service uniform.

Rule 5. Spectators are encouraged to attend trials and shall be permitted to observe any trial unless otherwise ordered by the trial judge. Spectators may enter and leave the courtroom during open sessions of court, subject to the rules established by the military judge, but they will not be permitted to disturb or interrupt court proceedings by their conduct.

Rule 6. It is improper for a spectator to demonstrate agreement or disagreement with testimony or other events at trial, whether verbally, by facial expressions, shaking or nodding of the head, or by any other conduct. Spectators who violate this rule may be ordered from the courtroom by the military judge. All counsel are responsible for advising their clients, witnesses, and acquaintances of such persons who are in attendance, of the demeanor required of them while the court is in session.

Rule 7. Smoking will not be permitted in the courtroom during open sessions of the court, and may be permitted by the military judge at other times only if smoking is permitted in the room when it is not being utilized as a courtroom. Food and beverages, other than water, will not be permitted in the courtroom, except with the prior express permission of the military judge.

Rule 8. Photographs, sound recordings designed for public release, and radio and television broadcasts shall not be made in or from the courtroom during sessions of the trial except with prior approval of the military judge.

2. Conduct of Counsel

Rule 9. Counsel owes a duty both to his client and to the court. Counsel shall assist the military judge in maintaining throughout the trial a quiet and dignified atmosphere in keeping with the highest traditions of judicial proceedings in the military services. All counsel are responsible for knowing and observing the proper relationship and decorum that must exist between themselves and the military judge.

Rule 10. Unless otherwise authorized or directed by the military judge, counsel shall stand when addressing the military judge or court members.

Rule 11. While the accused is present or the court is in session, counsel should refrain from any familiarity among themselves or with the military judge, members of the court or witnesses. Direct colloquy, argument or hostility between counsel serves no proper purpose in the trial and shall not be permitted.

Rule 12. Counsel should conduct the questioning of witnesses and arguments to the court at a reasonable distance from the witness or court. At the discretion of the military judge, counsel may be required to question witnesses and present arguments from a lectern, the counsel table, or other prescribed place. Except to present an exhibit, counsel should not approach a witness without asking permission of the military judge; nor should he position himself so as to block the view between witnesses and the other participants in the trial.

Rule 13. During argument of counsel, opposing counsel shall remain seated at the counsel table. Counsel shall not walk about, talk to others, or otherwise conduct himself so as to divert the attention of the court or any member.

Rule 14. Except with the permission of the military judge, only one counsel for each side (or, if there are multiple accused, one counsel for each accused) may examine any one witness or address the court on any particular issue or motion.

Rule 15. When counsel initially enters an objection, he shall state only the objection and the basis for it. Before proceeding to argue an objection, counsel will request permission of the military judge and ascertain whether argument will be entertained in open or in an out-of-court session. Although argument identifying legal issues and presenting authorities is ordinarily appropriate, an objection or argument for the purpose of making a speech, recapitulating testimony, or attempting to guide a witness is prohibited.

Rule 16. After the military judge has announced his decision on an objection, counsel shall not make further comment or argument except with the express permission of the military judge.

Rule 17. All requests for rereading of questions or answers shall be addressed to the military judge.

Rule 18. The military judge may initiate the voir dire examination by referring to the charge against the accused and putting to the members' questions touching upon their qualifications, including impartiality, to serve as members of the court. The military judge shall permit such additional questions, oral or written, as he deems reasonable and proper.

Rule 19. Counsel shall confine their opening statements to what they expect the evidence to prove. Counsel will not use the opening statement to argue the case or to instruct as to the law.

Rule 20. In closing argument, counsel may make reasonable comment on the evidence and may draw such inferences from the evidence as will support his theory of the case, but he shall not assert his personal belief in the justice of his cause or in the guilt or innocence of the accused; nor may he personally vouch for the credibility or lack of credibility of witnesses.

3. Witnesses

Rule 21. All witnesses will be treated with fairness and consideration; they will not be unnecessarily crowded, shouted at, ridiculed, humiliated, or otherwise abused.

Rule 22. A military witness should not salute the military judge or the president of the court. In a trial by members, the accused will salute and report to the president when he stands to receive the findings or sentence. Counsel should insure that witnesses they present understand the physical setup of the courtroom, where they should go, and what they should do.

Rule 23. The court will cooperate with commanders, senior staff officers, doctors and other professional witnesses and may accommodate them by permitting them to appear and testify out of order. Counsel should discuss such arrangements in advance with opposing counsel and the military judge.

Rule 24. Each counsel should make arrangements before each session to insure that his witnesses will be immediately available when called.

4. Exhibits

Rule 25. Exhibits intended to be used or introduced at trial should be marked "For Identification" prior to trial. Prosecution exhibits will be marked consecutively with Arabic numerals and defense exhibits with capital letters. When referring to an exhibit while questioning a witness or addressing the court, counsel shall specify the exhibit number or letter.

Rule 26. Counsel tendering an exhibit shall have sufficient copies made for the military judge and all opposing counsel. Proposed prosecution exhibits should be shown to the defense counsel before trial. Defense counsel may do likewise, but are not required to do so.

Rule 27. If an item of evidence cannot be included in the record of trial for any reason, counsel offering it should arrange to have a suitable substitute provided. Such a substitute shall include an accurate and detailed description, either pictorially or written, as to the exhibit's size, shape, weight, substance, color, and other relevant physical characteristics.

Rule 28. If a copy of a document is to be substituted in the record of trial for a document that was offered into evidence, only a permanent type copy may be used.

5. Support Trial Personnel

Rule 29. A bailiff should be present at every trial to announce the opening and closing of the court, to obtain witnesses as they are called to testify, to ask everyone to rise when the military judge enters or leaves the courtroom, and to take care of administrative errands during the trial. The trial counsel is responsible for briefing the bailiff as to his duties. If a bailiff is not present, the trial counsel or an assistant will perform the bailiff's duties.

Rule 30. Unless otherwise directed by the military judge, guards, if necessary, shall not be permitted inside the bar of the courtroom.

6. Docketing and Other Procedural Matters

Rule 31. Each military judge should maintain his calendar in a manner which will make efficient use of available time and provide for expeditious scheduling of trials when requested by the commands which he services.

Rule 32. When a number of uncontested cases are pending in a single area, such cases should be consolidated for trial at a continuous session of the court.

Rule 33. When a military judge is named to a case, the trial counsel will advise the military judge of the general nature of the charges. As preparation for the trial continues, he will keep the judge informed of the estimated duration of the trial, whether it will be by judge alone, and whether it will be contested. Counsel for both sides shall prepare for trial as expeditiously as possible and will arrange with the military judge for a firm trial date. Alternatively, in areas where the caseload justifies doing so, the military judge may schedule periodic pretrial sessions to conduct arraignments, enter pleas, hear motions, and set dates for future hearings and trials.

Rule 34. Counsel shall be prepared to dispose of all motions at one LCMJ Article 39(a) session. As soon as practicable after being detailed to serve, a defense counsel who wishes to present motions or other pleadings will prepare and furnish to the trial counsel, copy to the military judge, a Motions and Hearings Checklist, in substantially the form shown at the end of these rules, accompanied by the motions or other pleadings presented. He will indicate thereon those issues he wishes to litigate at a LCMJ Article 39(a) session, specifying whether the hearing will involve argument only, or also presentation of evidence. As soon as counsels have determined that a preliminary hearing is necessary, they will arrange a hearing date with the military judge. Motions or other pleadings which are required to be considered at a preliminary hearing which are not presented in accordance with this rule will not be entertained at a preliminary hearing or during trial except for good cause shown and with permission of the military judge. If the convening authority can provide the relief sought by counsel, thus making a preliminary hearing unnecessary, a timely application therefore should be made to him. Only those matters which are contested by the parties or which are not fully satisfied by the trial counsel or convening authority will be scheduled for preliminary hearing.

Rule 35. If defense counsel anticipates moving for dismissal of any charge on the basis that the accused has been denied his right to a speedy trial, counsel for both sides should endeavor, prior to trial, to enter into and prepare a stipulation of fact as to the chronology of events. In any case in which trial counsel anticipates that defense counsel may raise an issue of denial of speedy trial, trial counsel shall prepare a chronology of events in the case, even if defense counsel is not willing to stipulate to such facts. In such case, trial counsel should also be prepared to present evidence to prove the pre-trial events. If a motion or other issue involves only a dispute between the parties as to an

issue of law or ultimate question of fact, and not as to the underlying facts, counsel should endeavor to enter into and prepare, prior to trial, a stipulation of fact or a stipulation of expected testimony covering those matters. Counsel may enter into such a stipulation for the limited purpose of obtaining a ruling on a motion or other pleading.

Rule 36. In a trial with members, if either counsel desires any specialized instructions, including any summarization of the evidence or any instructions not contained in appropriate service publications (for example, as are contained in the Military Judge's Benchbook, DA Pam 27-9), he should submit such instructions to the military judge in writing prior to commencement of the Section 39(a) instructions conference. If either counsel desires a modification of a standard instruction from appropriate service publications, he should also submit his proposed modification in writing prior to commencement of the Section 39(a) instructions conference.

Rule 37. The military judge may enter special findings even though not requested to do so by counsel for either side. Such findings should not merely repeat what is available elsewhere in the record of trial, but should be limited to those special findings of fact and conclusions of law which were made by the military judge as the basis for his general findings of guilt or innocence or his disposition of important motions. If counsel for either side desires special findings, he should not only make a request therefore, but he should also submit proposed special findings to the military judge in writing, including when appropriate citations of legal authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§603. Article 39(a) Sessions/Conferences

A. General. An "LCMJ Article 39(a) Session" empowers the military judge to call the court-martial into session for consideration of any matters not requiring the presence of court members. It applies to both pre-trial and post-trial issues.

B. Purposes. The following illustrative general purposes may prompt an Article 39(a) Session:

1. Hearing and determining motions raising defenses or objections that are capable or determination without trial of the issues raised by a plea of not guilty.

2. Hearing and ruling upon any of the following matters under the LCMJ even though the matter may be appropriate for later consideration by the members:

a. unlawful command influence [See LCMJ Article 37];

b. verification and qualification of counsel [See LCMJ Article 38];

c. continuances [See LCMJ Article 40];

d. challenges or disqualification of counsel [See LCMJ Article 41];

e. statute of limitations [See LCMJ Article 43];

f. former jeopardy [See LCMJ Article 44];

g. correction or reconsideration of pleas [See LCMJ Article 45];

h. issuing process for witnesses or evidence [See LCMJ Article 46];

i. contempt [See LCMJ Article 48];

j. authorizing depositions [See LCMJ Article 49.]

k. holding arraignments and receiving pleas of the accused and entry of findings of guilt thereupon.

l. performing any other procedural function of the military judge not requiring the presence of the court members, to include, particularly, resolution of questions of trial procedure, the accused's choice of counsel and forum, admissibility of evidence, and motions for appropriate relief. [See, R.C.M. 803 discussion.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§604. Arraignment

A. The arraignment normally occurs during an Article 39(a) session. [See R.C.M. 904.] In the arraignment, the trial counsel informs the accused of the specific charges and the military judge asks the accused how he desires to plead. The accused may waive reading of the charges and specifications. The plea itself is not part of the arraignment. The accused may be validly arraigned only on charges and amendments thereto which have been properly referred to the arraigning court-martial for trial. After arraignment, no additional charges may be referred to the same trial without the consent of the accused.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§605. Motions

A. General. A motion is a request to the military judge for some particular relief, as set forth in R.C.M. 905- 907. Motions may be oral, or in the discretion of the military judge, in writing. Motion practice is primarily the province of the defense counsel.

B. Kinds of Motions. The three functional kinds of motions are "motions to dismiss," "motions for appropriate relief" and "motions to suppress." Another kind of motion similar to a motion to suppress is a motion in limine.

1. A Motion to Dismiss is a request to terminate further proceedings as to one or more charges and specifications on grounds capable of determination without trial of the general issue of guilt. Grounds, which include both "waivable" and "nonwaivable" bases, include statute of limitations, speedy trial, former jeopardy, pardon, immunity, constructive condonation of desertion, and prior punishment under LCMJ Articles 13 or 15 for the same offense, if it is a "minor offense." "Nonwaivable" grounds include lack of jurisdiction and failure of a specification to state an offense. "Waivable" grounds for motion to dismiss must be made before final adjournment of the court-martial.

2. A Motion for Appropriate Relief is designed to remedy defects of form or substance that require corrective action short of dismissal. It is made to cure a defect which impedes the party from properly preparing for trial or conducting his case. R.C.M. 906(a) lists 14 non-exclusive, different grounds for the motion for appropriate relief.

3. A Motion to Suppress may be directed to a confession or admission by an accused, evidence obtained from a search or seizure or believed to belong to the accused, and/or prior eyewitness identification of the accused. Once properly notified by trial counsel that such evidence exists, the accused must ordinarily make the motion to suppress the evidence before entering pleas.

Absent good cause, the military judge must conduct a hearing and make a ruling on a motion to suppress before requiring entry of a plea.

4. A Motion in Limine is similar to a motion to suppress in that it requests a preliminary ruling on admissibility of evidence which must be ruled on prior to the offering of the matter into evidence. The motion may be made by either side before or during trial.

C. Burden/Standard of Proof. The general rule is that where factual matters must be resolved in order to decide a motion, the burden of persuasion is generally upon the moving party, who must prove the matter by a "preponderance of evidence" (unless another standard, such as "clear and convincing evidence" is specifically required.) [See, e.g., Mil R. Evid. 313(b), regarding examination to locate weapon/contraband.]

1. Motion to Dismiss. Exception to general rule above applies to Motions based on lack of jurisdiction, denial of speedy trial, or running of statute of limitations, all of which place the burden on the government.

2. Motion for Appropriate Relief. The general rule placing the burden on the moving party by a "preponderance of evidence" applies.

3. Motion to Suppress. Exception to the general rule above in that the prosecution has the burden of demonstrating by a "preponderance of the evidence" (unless a different standard is specifically prescribed) that the offered evidence is properly admissible. [See M.R.E.. 311(e), 321(d).]

4. Motion in Limine. The burden of proof is on the proponent of the evidence.

D. Time for Filing. The general rule is that any defense, objection, or request which is capable of determination without the trial of the general issue of guilt may be raised before trial. The following motions must be raised before a plea is entered:

1. defenses or objections based on defects (other than jurisdictional defects) in the preferral, forwarding, investigation, or referral of charges (e.g. unsworn charges, inadequate Article 32 investigation, and inadequate pretrial advice.) [See R.C.M. 307, 401-7, 601-4, 905(b)(Discussion).];

2. defenses or objections based on defects in the charges and specifications (other than failure to show jurisdiction or to charge an offense, which objections shall be resolved by the military judge at any time during the pendency of the proceedings.);

3. motions to suppress admissibility of confessions, admissions, evidence obtained from unlawful searches and seizures, and eyewitness identification. [See M.R.E.. 304, 311, 321.] Challenges to admissibility of evidence on other grounds may be raised by objection at trial or by motion in limine;

4. motions for discovery under R.C.M. 701 or for production of witnesses or evidence;

5. motions for severance of charges or accused;

6. objections based on denial of request for individual military counsel or for retention of detailed defense counsel when individual military counsel has been granted.

E. Military Judge's Essential Findings. When factual issues are involved in determining a motion, the military judge is obliged to state his essential findings on the record. Such findings should contain a statement of the factual findings and essential legal findings which support the decision on the motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§606. Pleas

A. Types of Pleas and Their Effect

1. Not Guilty Plea. Such a plea places all matters in issue and requires the prosecution to prove the accused's guilt beyond a reasonable doubt. If an accused fails or refuses to plead, or makes an irregular plea, the military judge shall enter a plea of not guilty for the accused.

2. Guilty Plea. A plea of guilty, if accepted by the military judge, admits the accused's guilt and relieves the prosecution of the burden of proving guilt beyond all reasonable doubt. Before the plea is accepted, the accused must admit every essential element of the offense. [See R.C.M. 910(E) discussion.] The military judge must make a searching and detailed inquiry of the accused to determine if the accused understands the plea, that it is entered into voluntarily, and that the accused, is, in fact guilty. [See R.C.M. 910(c).]

3. Guilty by Exceptions or Guilty with Exceptions and Substitutions. These types of pleas "except out" certain language from the charged specification and/or substitutes words in the specification, thereby entering a plea to an offense included in the offense charged. The result is to plead not guilty to the charged offense but guilty to a different, and often lesser included offense. For example, if the charged offense were robbery and the guilty plea by exceptions and substitutions was to the lesser included offense of wrongful appropriation, the defense counsel would state:

4. "Your honor, the accused, _____, pleads to the specification: guilty, except the words, 'by means of force and violence steal from the person of _____ against his will,' substituting therefore the words 'wrongfully appropriate,' to the excepted words not guilty, to the substituted words guilty to the charge, not guilty, but guilty of a violation of Article 121."

5. A plea of guilty to a lesser included offense does not bar the prosecution from proceeding of the offense as charged and the prosecution need not prove the elements of the lesser offense admitted in the plea. The military judge must make a guilty plea inquiry into the plea of guilty by exceptions and substitutions.

6. Mixed Pleas. An accused may enter plea(s) of guilty to some specifications, guilty by exceptions and substitutions to others, and/or not guilty to other specifications. After a guilty plea inquiry and acceptance by the military judge of any guilty pleas, the prosecution may attempt to prove the remaining offenses. If the accused pleads guilty to some but not all of the specifications, the accused's admission of an element in one specification does not relieve the Government from the burden of proving the same element in the remaining, contested specifications. Thus, admissions implicit in a guilty plea to one offense cannot be used as evidence to support the findings of guilty of an essential element of a separate and different offense.

7. Conditional Pleas. With the approval of the military judge and the consent of the government, an accused may

enter a conditional plea of guilty, reserving in writing the right, on further review or appeal, to review of the adverse determination of any specified pretrial motion. The specified grounds preserved for appeal must be actually litigated at the trial court level. If the accused prevails on further review or appeal, he is allowed to withdraw the guilty plea. The conditional plea enables the accused to preserve his appeal and also saves the government the time and expense of a trial on the merits. Conditional pleas are not normally granted unless the motion is capable of full pretrial litigation. When the pretrial motion requires trial on the merits for a full development of the underlying factual issues or the motion is not "case dispositive," the conditional plea is normally denied.

B. Guilty Plea Inquiry. The guilty plea or "providence inquiry" is a dialogue between the military judge and the accused. It is made on the record to assure the military judge that the accused personally understands the meaning and effect of his plea and that an adequate factual basis exists for acceptance of an admission of guilt. The components of the guilty plea inquiry, listed in RCM 910(c) are:

1. The nature of the offense to which the plea is offered, the maximum possible penalty and any mandatory minimum penalty.
2. The right to representation by counsel.
3. The rights to confrontation and cross-examination of one's accusers, right against compulsory self-incrimination, right to trial of the facts by court-martial.
4. The factual basis for the plea.
5. The plea agreement inquiry.

C. Refusal to Accept Guilty Plea. The military judge will refuse to accept an accused's plea of guilty and enter a not guilty plea in the following situations:

1. The accused enters an "irregular" plea, such as a plea of guilty while denying criminality, or "guilty but insane," or "guilty to the charge but not guilty to the specification," or "nolo contendere".
2. There are substantial, irreconcilable inconsistencies between the plea and statements of the accused or the evidence. The military judge shall make inquiry to negate any defenses raised by the accused, and may call witnesses to resolve any such potential defense.
3. The accused enters an "improvident" plea (i.e. without understanding its meaning)
4. The accused refuses to enter a plea.

D. Withdrawal of Guilty Plea. Prior to acceptance of a guilty plea by the military judge, the accused has an absolute right to withdraw a guilty plea and enter a plea of not guilty or guilty to a lesser included offense. After acceptance of the plea, but before the sentence is announced, an accused can request permission from the military judge to withdraw a guilty plea. The military judge should ordinarily grant such a request if it is shown that the guilty plea was induced by fraud, mistake, imposition, misrepresentation, or misapprehension of the accused of his legal rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§607. Former Jeopardy, Mistrial, and Withdrawal

A. Former Jeopardy. A proceeding terminated by the government after evidence is introduced on the merits, without fault of the accused, is a trial. No person may, without his consent, be tried a second time for the same offense. Former jeopardy does not apply to offenses under civilian law, but the authority to try an accused for the same acts which constitute an offense under the LCMJ may be limited by regulation. [See LCMJ Article 44a and R.C.M. 907(b)(C).]

B. Mistrial. A declaration of mistrial may be ordered by the military judge when such action is manifestly necessary in the interest of justice to prevent unfairness. Mistrial is a drastic remedy and should be employed only when manifestly necessary to preserve the ends of justice. For instance, an error in admitting evidence can ordinarily be cured by striking the testimony or evidence and/or by a curative instruction to disregard. A mistrial may be granted either as to findings of some or all charges or only as to the sentence. The military judge shall inquire into the views of the parties prior to such declaration. A declaration of mistrial shall not prevent trial by another court-martial on the affected charges and specifications except when the mistrial was declared after jeopardy attached and before findings, and the declaration was an abuse of discretion and without the consent of the accused and/or the direct result of intentional prosecutorial misconduct designed to necessitate a mistrial. [See R.C.M. 915(a)-(c).]

C. Withdrawal of Charges. The convening authority or a superior competent authority may, for any reason, cause any charges or specifications to be withdrawn from a court-martial at any time before findings are announced. Charges that have been withdrawn from a court-martial may be referred to another court-martial unless the withdrawal was for an improper reason. Charges withdrawn after the introduction of evidence on the general issue of guilt may be referred to another court-martial only if the withdrawal was necessitated by urgent and unforeseen military necessity. Withdrawal before trial proceedings begin carries the presumption of regularity; however the reason for withdrawal should be made part of the record. [See R.C.M. 604.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§608. Contempt

A. Any level of court-martial has the power to punish for contempt "...any person who uses any menacing word sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder." The punishment for such conduct may not exceed confinement for 30 days or a fine of one hundred dollars ($100) or both. The convening authority approves or disapproves all or part of the sentence, with no further review or appeal. Any confinement will begin when adjudged unless it is deferred, suspended, or disapproved by the convening authority. Any fine adjudged does not become effective until ordered executory by the convening authority. [See LCMJ Article 48 and R.C.M. 809.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§609. Witnesses

A. During the case in chief, the counsel and court may call witnesses to testify. The party calling the witness conducts direct examination followed by cross-examination

of the witness by the opposing party. Redirect and recross-examination are conducted as necessary, followed by any questioning by the military judge and members. The military judge has the discretion to limit the number of redirect and recross-examinations. [See R.C.M. 913 and M.R.E.. 611 and 614.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§610. Stipulations

A. General. A "stipulation" is an agreement between the parties. There are two common types of stipulations, "stipulation of fact" and "stipulation of expected testimony." Stipulations may be made orally or in writing. The military judge rules on the admissibility of the stipulation, and should ordinarily inquire to insure that the accused understands the right not to stipulate, understands the stipulation, and consents to it. [See R.C.M. 811.]

B. Stipulation of Fact. The parties may stipulate that a certain facts exists or does not exist. Once accepted, a stipulation of fact, in whatever form, is binding on the court-martial and may not be contradicted by the parties.

C. Stipulation of Expected Testimony. The parties may also stipulate that, if a witness were present, he would testify in a specified manner or that, if an original document were introduce, the document's contents would include certain information. Unlike a stipulation of fact, the parties are free to contradict, attack, or explain the evidence presented in this manner.

D. "Confessional Stipulation". The accused may, after a plea of not guilty, enter into a stipulation that amounts to a confession. Such a stipulation is subject to the same constraint as a guilty plea, and the military judge must ascertain that:

1. the accused understands the right not to so stipulate;

2. the stipulation will not be accepted without the accused's consent;

3. the accused understands the contents and effect of the stipulation;

4. the accused, after consulting with counsel, consents to the stipulation; and

5. whether there are any agreements between the parties in connection with the stipulation, and, if so, the terms thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§611. Withdrawal of Stipulations

A. A party may withdraw from an agreement to stipulate or from a stipulation at any time before the stipulation is accepted. After a stipulation has been accepted by the military judge, he may permit withdrawal. If a party withdraws from an agreement to stipulate or from a stipulation, the opposing party may be entitled to a continuance to obtain proof of the matters which were to have been stipulated. If there is withdrawal of a stipulation previously accepted, the stipulation must be disregarded by the court-martial, and an instruction to that effect should be given.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§612. Motion for Finding of Not Guilty

A. General. A motion for finding of not guilty is a procedural device whereby the defense may test the sufficiency of the government's case. The motion may also be raised sua sponte by the military judge. The motion may be made at the conclusion of the government's case or at the conclusion of the defense's case, but must be made before the announcement of the findings on the general issue of guilt. The motion must specifically indicate where the government's evidence is insufficient and the military judge should give the parties an opportunity to be heard before ruling on the motion. The military judge should ordinarily allow the trial counsel to reopen the government's case as to the insufficiency specified in the motion if any such further evidence is reasonably available. [See R.C.M. 917.]

B. Test and Effect of Ruling. The test for granting the motion is whether there is some evidence, which together with all reasonable inferences and applicable presumptions, could reasonably tend to establish every essential element of the offense charged. The evidence is viewed in the light most favorable to the government and without evaluating the credibility of witnesses. The military judge may grant the motion as to part of a specification, as long as a lesser offense charged is alleged in the portion of the specification as to which the motion is not granted. A ruling granting a motion for a finding of not guilty is an acquittal and is final when announced; it may not be reconsidered by the military judge. A ruling which denies a motion for finding of not guilty may be reconsidered at any time prior to announcement of findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§613. Views and Inspections

A. In extraordinary circumstances, the military judge may, as a matter of discretion, permit the court-martial to view or inspect the premises or a place, or an article, or object. Such a view or inspection shall take place only in the presence of all parties, the members (if any) and the military judge. A person familiar with the scene may be designated by the military judge to escort the court-martial. Such a person shall perform the duties of escort under oath. The escort shall not testify, but may point out particular features prescribed by the military judge. Any statement made at the view or inspection by an escort, party, military judge, or any member shall be made part of the record. The fact that a view or inspection has been made does not necessarily preclude the introduction in evidence of photographs, diagrams, maps, or sketches or the place or item viewed, if these are otherwise admissible. [See R.C.M. 913(c).]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§614. Arguments

A. Types of Arguments

1. Opening Statements. The trial counsel may make an opening statement immediately before presenting the case in

chief, and defense counsel may make an opening statement either after trial counsel or after the prosecution has rested its case. [See R.C.M. 913(b).]

2. Motions. Before action is taken on a contested motion, each side has the opportunity to present evidence and make an argument. The military judge, in his discretion, may limit or refuse to hear arguments which are trivial, mere repetition, or designed as a delay tactic. [See R.C.M. 905(h).]

3. Evidentiary objections and any others questions or matters presented to the Court for decision during the course of the court-martial.

4. Closing Arguments on Findings [R.C.M. 919] and Sentencings [R.C.M. 1001(g).]

B. Permissible Argument

1. Counsel may make reasonable comment on the evidence and may draw such inferences from the evidence as will support his theory of the case. [R.C.M. 919(b).]

2. Counsel may comment on the testimony, conduct, motives, and evidence of malice of the witnesses.

3. Counsel may argue as though the testimony of his witnesses conclusively established the facts related by them. Comments may be direct and forceful so long as they are fair and not unfairly prejudicial.

4. Counsel may argue that deterrence of others should be considered in adjudging a sentence, but may not argue this to the exclusion of all other sentencing factors.

5. Counsel may argue for the maximum sentence, or may argue for a specific sentence which is less than the maximum authorized by law.

6. Both trial and defense counsel may properly argue for a sentence they know cannot approved as a result of a pretrial agreement.

C. Impermissible Argument

1. Facts that are not properly before the court as evidence or have no foundation in the record. However, it is permissible to argue the ordinary experience of mankind, facts of contemporary history, and other matters which are common knowledge.

2. Misstatement of facts which are in evidence.

3. Personal belief of counsel.

4. Comment on the accused's failure to testify. Trial counsel may not characterize the evidence as "uncontroverted," where the accused is the only person who could have contradicted that evidence. However, trial counsel may properly review the available evidence and note that the trier of fact must decide the case based on the evidence presented.

5. Comment on effect of outcome of the case on "civilian-military" relations.

6. Placing court members in shoes of victim or victims' relatives.

7. Implication that a particular sentence is the view of the convening authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§615. Objections to Impermissible Argument

A. It is not necessary for counsel to interrupt opposing counsel's argument in order to preserve an assignment of errors. An error is preserved for appeal so long as the objection is made before the military judge begins his instructions to members or, if none, renders his verdict.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§616. Sentence

A. General. When the court returns a finding of not guilty, the accused is acquitted and the proceedings terminate. When the court returns a finding of guilty, the court-martial proceeds to the sentencing phase. During the sentencing phase, the trial counsel has the first opportunity to present the "case in aggravation." Then the defense counsel has an opportunity to present a "case in extenuation and mitigation." Thereafter, counsel for both sides present their case in rebuttal and surrebuttal as appropriate. At the conclusion of the evidence and counsel arguments, the military judge announces the sentence (or, in a case with members, instructs members who then deliberate, vote, and announce their sentence).

B. The Case in Aggravation. The trial counsel's case in aggravation consists of matters which the sentencing authority may consider in arriving at an appropriate sentence. These matters can be presented by the trial counsel, and can be considered by the sentencing authority, regardless of what defense counsel decides to present during the case in extenuation and mitigation. The government's right to present presentencing evidence is the same in a contested case as it is in a guilty plea case. The M.R.E.. are not relaxed for the government during the case in aggravation, which necessitates that data must be properly authenticated and satisfy the requirements regarding hearsay testimony, if applicable. The case in aggravation consists of five enumerated categories of information:

1. Service data relating to the accused taken from the charge sheet concerning the accused's pay, time in service, and prior restraint. This information should be verified for accuracy with defense counsel. This may be read orally into the record. [See R.C.M. 1001(b).]

2. Previous convictions, military or civilian. Unless stipulated, documentary evidence used to prove a conviction must be properly authenticated. Courts-martial result in a "conviction" once sentence is adjudged in the case. To determine whether a civilian adjudication has resulted in a criminal conviction, refer to the law of the civilian jurisdiction where the proceeding took place. A juvenile adjudication is not a conviction for these purposes. The conviction must antedate the commencement of the presentencing proceeding in which it is offered; however, with the exception of SCM convictions, there is no requirement that the conviction be "final" to be admissible. [See R.C.M. 1001(b)(A).]

3. Personal data and character of prior service of the accused. Trial counsel may present to the military judge

copies of any personnel records that reflect the past military efficiency, conduct, performance, and history of the accused, prepared and maintained according to departmental regulations. [See R.C.M. 1001(b).]

4. Matters in aggravation. The trial counsel may present evidence directly related to the circumstances surrounding the offense and evidence concerning the repercussions of the offense. It must be in a form admissible under the M.R.E.. (e.g. relevant, non hearsay, properly authenticated, etc.) and must satisfy the balancing test of M.R.E.. 403 (i.e. probative value outweighs prejudicial effect). [See R.C.M. 1001(b).]

5. Opinion evidence of rehabilitative potential and past duty performance. Any opinion testimony should be based on personal observation, but may also be based on reports and other information provided by subordinates. The government cannot use this as an opportunity to influence the court to punish the accused by imposing a punitive discharge. Also, the trial counsel cannot explore specific incidents of misconduct during direct examination, but if defense counsel "opens the door" by inquiring specific instances of conduct during cross-examination, redirect examination on that subject is appropriate. The military judge has broad discretion in limiting collateral inquiries into specific instances of conduct.

C. The Case in Extenuation and Mitigation. Matters in extenuation are those matters which serve to explain the circumstances surrounding the commission of an offense. Mitigation evidence relates to the accused's character and those aspects or the individual which indicate that sentence leniency is warranted. [See R.C.M. 1001(c).] The rules of evidence are generally relaxed for the defense presentation of the case in extenuation and mitigation. The military judge has discretion in relaxing the rules of evidence, but should not admit any evidence that is irrelevant or has no indicia of reliability. The military judge should personally advise the accused of the right to present matters in extenuation and mitigation including the rights of allocution. [See R.C.M. 1001(a).] The accused may make a sworn statement, an unsworn statement, both, or remain silent. If the accused makes a sworn statement he may be cross-examined. His unsworn statement is not subject to cross-examination, but may be rebutted by the government by independent evidence.

D. Other Factors Which May Be Considered on Sentencing.

1. Plea of Guilty. It is appropriate to consider that a guilty plea usually saves the government time, effort, and expense.

2. Time Spent in Pretrial Confinement. The accused is entitled to credit for time served in pretrial confinement. [See R.C.M. 305(k).]

3. The Accused's False Testimony on the Merits. The court-martial may consider the accused's mendacity as bearing on rehabilitative potential during sentencing if it concludes that the accused willfully lied about a material matter.

4. The Accused's Absence from Trial. If the accused is tried in absentia, the sentencing authority may consider the accused voluntary absence as an indication of rehabilitative potential.

5. Administrative Consequences of a Sentence. Command policies and directives regarding the disposition of offenders or directives impacting on the military corrections system are not appropriate sentencing factors, however, the sentencing authority may consider that a punitive discharge deprives an individual of substantially all benefits administered by the Department of Veterans' Affairs.

6. Purposes of Sentencing. The sentencing authority must consider that the principal reasons for adjudging a sentence are:

a. protection of society from the wrongdoer;

b. punishment of the wrongdoer;

c. rehabilitation of the wrongdoer;

d. preservation of good order and discipline in the military; and,

e. deterrence of the wrongdoer and those who know of his crime and sentence from committing the same or similar offenses.

E. Permissible Punishments by Courts-Martial. See Figure 6-2.

F. Reconsideration of Sentence. The sentencing authority may reconsider a sentence with a view towards decreasing it anytime before the record of trial is authenticated. [R.C.M. 1009(b).]

G. Defective or Illegal Sentence. After sentence is announced, the military judge can seek a clarification of the ambiguity or illegality of a sentence any time prior to adjournment. [R.C.M. 1009(c)(B).] After the case is adjourned, the military judge may initiate a reconsideration proceeding but only with a view to clarifying or decreasing the sentence; the convening authority can order a proceeding to seek clarification; or the convening authority can approve the lowest legal, unambiguous sentence adjudged. [R.C.M. 1009(c).]

H. Suspension of Sentences. The military judge, summary court martial officer, or the convening authority may suspend execution of any sentence. [LCMJ Article 71(B).] No penalty or sentence may be suspended beyond a reasonable period. The suspension period cannot extend beyond the expiration of an enlisted accused's present term of service, and is subject to the following maximum periods:

1. 12 months for a SCM;
2. 18 months for a SPCM;
3. 24 months for a GCM.

I. Sample Notice of Court-Martial (Accused) (Figure 6-1)

[UNIT HEADING]

LANG-BDE-SJA DATE

MEMORANDUM FOR: SPC JOHN DOE, 400-00-0000, 1234 Elm Street, Anywhere, LA 70000

SUBJECT: Notice of Court-Martial

You are hereby furnished a copy of the charge sheet for which a Special Court-Martial was ordered on this date.

You are directed to appear at the Special Court-Martial entitled STATE OF LOUISIANA versus SPC JOHN DOE to be conducted at 1000 hours, 21 Sep 91, in the 199th Support Battalion Armory located at Alexandria, Louisiana. You are ordered to appear at 0800 on that date in Class A uniform. FAILURE TO APPEAR WILL RESULT IN ISSUANCE OF A BENCH WARRANT FOR YOUR ARREST.

CPT HUNT DOWNER has been appointed as your military defense counsel and will be present at your court-martial. It is your responsibility to contact CPT DOWNER as soon as possible during normal business hours at (504) 876-5432. You have a right to retain civilian counsel of your own choosing and at your own expense if you so elect. If you intend to be represented by a civilian counsel, you should make arrangements to have that attorney present with you at the court-martial. CPT DOWNER will be present to assist you regardless of your decision concerning hiring civilian counsel.

If you have witnesses in your defense, you must immediately provide the full name(s), home and work address(es) to your defense counsel so that subpoenas may issue. Your failure to take immediate action in this regard will not be grounds for a postponement of your Court-Martial. It will not be necessary for your witnesses to appear in Class A uniform.

Any questions concerning the content of this notice may be directed to the undersigned at (318) 765-4321.

GLENN GREMILLION
CPT, JA
Trial Counsel

CF: Military Judge
Staff Judge Advocate, 256th Bde
Defense Counsel
Office of the State Judge Advocate
S-1, 199th Support Battalion

NOTE: This Notice, which may be tailored to meet existing conditions and requirements, should be hand-delivered or, if that is not possible, mailed CERTIFIED MAIL, RETURN RECEIPT REQUESTED

J. Court Martial Maximum Punishment Table (Figure 6/2)

1. This table reflects recent changes in Louisiana law that became effective on 1 JUL 07.

General Court-Martial (LCMJ Article 18)

A fine of not more than one thousand dollars ($1,000.00);
Forfeiture of pay and allowances;
A reprimand;
Dismissal, bad conduct, or dishonorable discharge;
Reduction of a noncommissioned officer to the ranks;
Confinement of not more than two years; or
Any combination of these punishments.

Special Court-Martial (LCMJ Article 19)

A fine of not more than $200;
Forfeiture of pay and allowances;
A reprimand;
Bad conduct discharge or dishonorable discharge;
Reduction of a noncommissioned officer to the ranks;
Confinement of not more than 12 months;
Any combination of these punishments.

Summary Court-Martial (LCMJ Article 20)

Confinement of not more than one week;
Reduction of enlisted personnel to the lowest grade;
A fine of not more than one hundred dollars ($100.00);
Forfeiture of up to one month pay and allowances;
A reprimand; or
Any combination of these punishments.

K. Sample Notice of Court-Martial (Participants) (Figure 6-3)

[UNIT HEADING]

LANG-BDE-SJA DATE

MEMORANDUM FOR: CPT Courageous, 123 Main Street, Houma, LA 70360

SUBJECT: Notice of Court-Martial

A Special Court-Martial entitled STATE OF LOUISIANA versus SPC JOHN DOE to be conducted at 1000 hours, 21 Sep 2008, in the 199th Support Battalion Armory located at Alexandria, Louisiana. A copy of the Charge Sheet and allied documents are attached.

You have been appointed as defense counsel for SPC DOE by the Commander, Headquarters, 256th Infantry Brigade (M), by Convening Order Number 08-1, dated 12 January, 2008. You are ordered to report on said date at 0800 hours to perform such duty as the Court-Martial may direct. The uniform of the day is Class A.

Witness subpoena information (full names, home and work addresses) should be telephonically furnished to the undersigned as soon as possible, but in no case less than 20 days before the scheduled Court-Martial.

Any questions concerning the content of this notice may be directed to the undersigned at (318) 765-4321.

GLENN GREMILLION
CPT, JA, LANG
Trial Counsel

CF: Military Judge
Staff Judge Advocate, 256th Bde
Office of the State Judge Advocate
S-1, 199th Support Battalion

[NOTE: The contents of this letter may be revised as necessary for other Court-Martial participants.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

Chapter 7. Post-Trial Procedures

§701. Report of Result of Trial

A. After final adjournment of the court-martial in a case, the trial counsel shall promptly notify the accused's immediate commander, the convening authority or the convening authority's designee, and, if appropriate, the officer in charge of the confinement facility, of the findings and sentence. R.C.M. 1101.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§702. Deferral of Sentences to Confinement

A. Sentences to confinement are deferred until the sentence has been approved and ordered executed by the convening authority unless he denies deferral of confinement in writing. Denial of deferral of confinement should ordinarily be accomplished prior to announcement of sentence; however, the convening authority may, for cause deemed good and sufficient by him, deny deferral and order the accused into confinement after announcement of sentence and before he approves the sentence and orders it executed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§703. Preparation of Record of Trial

A. Each general, special, and summary court-martial shall keep a separate record of the proceedings in each case brought before it. The record of each general and special court-martial shall include a verbatim written transcript of all sessions except sessions closed for deliberations and voting when confinement, forfeitures of pay, or a punitive discharge has been adjudged. When a verbatim transcript is not required under this Paragraph, a summarized report of the court-martial proceedings may be prepared instead of a verbatim transcript. The Record of Trial will be properly prepared Trial Counsel. A copy of the complete Record of Trial will be forwarded to the convening authority. The original Record of Trial will be forwarded to and maintained by the Office of the State Judge Advocate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§704. Legal Reviews

A. Upon conclusion of a court-martial, the military judge forwards the court-martial file to the appropriate staff judge advocate, who prepares a written legal review for the convening authority. For an example, see Figure 7-7. If the approved sentence of a SPCM includes a dishonorable discharge, the State Judge Advocate will also review the record, after the SPCMCA's SJA's review and before the convening authority's action. All GCM's will also be reviewed by the State Judge Advocate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§705. Matters Submitted by the Accused

A. After a general or special court-martial, the accused may submit matters under R.C.M. 1105 within the later of 10 days after a copy of the authenticated record of trial or, if applicable, the recommendation of the staff judge advocate or legal officer, or an addendum to the recommendation containing new matter is served on the accused, whichever is later. An accused in a summary court-martial may submit matters under R.C.M. 1105 within 7 days after the sentence is announced. If, within the 7 or 10-day period, the accused shows that additional time is required for the accused to submit such matters, the convening authority or that authority’s staff judge advocate may, for good cause, extend the 7 or 10-day period for not more than 20 additional days; however, only the convening authority may deny a request for such an extension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§706. Convening Authority's Action

A. General. Upon completion of the legal review(s), the convening authority takes action on the case.

1. He may approve all or part of the adjudged sentence or for any or no reason disapprove the findings and sentence.

2. He may approve only findings of guilty and the sentence or part or amount of the sentence that he finds correct in law and fact and that he in his discretion determines should be approved (unless he indicates otherwise, approval of the sentence is approval of the findings).

3. If he approves any part of the adjudged sentence which has not been executed, he may order the approved sentence executed, or he may suspend the sentence. Exception: The record of trial of all general courts-martial and all special courts-martial in which the approved sentence includes dishonorable discharge must be reviewed by the State Judge Advocate General, after the convening authority's approval but before the sentence is ordered executed.

4. If the convening authority disapproves the findings and sentence, he may order a rehearing, except where there is a lack of evidence of guilt in the record to support the findings. When he disapproves the findings and sentence, he will state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he will dismiss the charges.

B. Concurrent or Consecutive Sentences. Unless otherwise specifically so designated by the military judge or court members, if a sentence to confinement is adjudged on two or more separate and distinct offenses, the convening authority may order the periods of confinement into execution consecutively (one punishment starts after the other has been served) or concurrently (the punishments are served at the same time).

C. Dismissal, Bad Conduct, or Dishonorable Discharge. If the adjudged sentence includes dismissal, bad conduct discharge, or dishonorable discharge and total forfeiture of all pay and allowances, and if the convening authority disapproves the dismissal, bad conduct discharge, or dishonorable discharge, he must mitigate the adjudged forfeitures. In doing so, he is bound by the same limitations which exist on the power of a court-martial to adjudge forfeitures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§707. Suspension of Sentences

A. General. The military judge, summary court-martial officer, or the convening authority may suspend execution of any sentence. [LCMJ Article 71(B).] No penalty or sentence may be suspended beyond a reasonable period.

B. Partial Suspension of Sentence. The military judge, summary court-martial officer, or convening authority may suspend any part or amount of any sentence which has not previously been paid or served. For example, an accused who has been sentenced to 7 days' confinement could be ordered into confinement for 3 days and the remaining 4 days suspended; or an accused who has been sentenced to a $25 fine could be ordered to pay $10 and payment of the remaining $15 suspended.

C. Length of Suspension Term. A court-martial sentence may be suspended by the military judge or convening authority for a reasonable period of time. The suspension period cannot extend beyond the expiration of an enlisted accused's present term of service, and is subject to the following maximum periods:

1. NJP—6 months;
2. SCM—12 months;
3. SPCM—18 months;
4. GCM—24 months.

D. Procedure. If the military judge or convening authority does suspend the sentence, the terms of the suspension shall be stated on a document entitled, Conditions of Suspended Sentence, [See Figure 7-5] and the convening authority may include any additional terms the accused may have agreed to in a pretrial agreement (for example, to make restitution). To avoid any misunderstanding or dispute regarding what the terms of suspension are, it is important to obtain the probationer's written acknowledgement of receipt of such terms. If a pretrial agreement was entered into, it will contain the probationer's signature and should set out all terms of suspension. However, if a pretrial agreement does not set out the terms of suspension, the convening authority shall:

1. specify in writing the terms of the suspension;

2. cause a copy of the terms to be served in person on the probationer (do not serve them by mail), and;

3. cause a receipt to be secured from the probationer for service of the terms of the suspension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§708. Execution of Sentence Involving Custody

A. General. Sentences of confinement adjudged by military courts shall be served in the Dabadie Correctional Center at Camp Beauregard, Louisiana. When special circumstances require confinement at another facility, placement of military prisoners in such other facilities may be approved by the Adjutant General or the State Judge Advocate.

B. Order of Commitment. If the convening authority approves any portion of a court-martial sentence that includes confinement and does not suspend that confinement, he will issue an Order of Commitment, if confinement has not been deferred. [See Figure 7-3.] The convening authority may allow the convicted accused to serve his sentence to confinement on some basis other than "straight-time" (for example, by allowing service on weekends or participation in a work-release program), in which case he should make the appropriate arrangements with confinement authorities prior to issuing the Order of Commitment. Any such arrangements are set out in that portion of the Order of Commitment following the words "Special Instructions". The interests of the State of Louisiana and the convicted accused are usually best served by making arrangements through defense counsel for the convicted accused to voluntarily surrender to begin service of sentence, rather than by causing service of the Order of Commitment without prior notice to the convicted accused. Any special medical and/or dental needs of military prisoners should be made known on the Order of Commitment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§709. Publication of Results

A. Upon completion of his action, the convening authority publishes a Promulgating Order setting forth the results of the trial and his actions. R.C.M. 1114 governs the content and use of Promulgating Orders. Figure 7-4 is a sample Promulgating Order. Consult the Judge Advocate and/or appropriate service regulations to adapt this sample to the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§710. Distribution and Filing of Charge Sheet

A. When the convening authority has completed his action as outlined above, the original Charge Sheet with all exhibits attached is filed in accordance with instructions promulgated by active component publications as the record of trial. The convening authority forwards a complete and legible copy of the package to the accused, defense counsel and the reviewing staff judge advocate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§711. Appeal

A. As provided for in LCMJ Article 66, the First Circuit Court of Appeal shall have appellate jurisdiction over appeal of all LANG courts-martial, excluding summary courts-martial. Once an accused has been provided with notice of final action in a court-martial by the convening authority, he shall have sixty days in which to file a notice of appeal with the military judge and the convening authority. After an accused files a notice of appeal, the trial counsel who prosecuted the court-martial, shall lodge the record of trial, after certification by the military judge, with the Court. Consult LCMJ Article 66 for relevant brief filing deadlines.

B. Once the court acts on the case, the record is returned to the trial counsel, who notifies the state judge advocate and the convening authority of the court's decision. The convening authority will then take further action based on the court's decision. A supplemental promulgating order may be issued to supplement or amend the original court-martial promulgating order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§712. Fine Payment and Disposition

A. Fines are due when assessed, unless a reasonable delay for payment (normally not to exceed 30 days) is fixed by the military judge or the convening authority. Within 5 days after a fine is paid, the money shall be remitted to Office of the State Judge Advocate. The State Judge Advocate shall then transmit the fine to the comptroller of the State Military Department where it shall be deposited in the State Treasury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§713. Nonpayment of Fines

A. General. Subject to the limitations set out below, when the sentence of a court-martial includes a fine which is not paid in full within the time allowed by the convening authority after being ordered executed, the convening authority may issue an Order of Commitment, directing law enforcement officers to arrest the accused and confine him for 1 day for every $1.00 of the fine which remains unpaid. [See LCMJ Article 21.]

B. Nonpayment Because of Indigency. Confinement may not be ordered executed for failure to pay a fine if the accused has made good faith efforts to pay but cannot because of indigency, unless the convening authority determines, after giving the accused notice and opportunity to respond, that no other punishment is adequate to meet the State's interest in appropriate punishment. The burden is on the accused to establish his good faith attempts to pay and his inability to do so because of indigency. If the convening authority intends to order confinement in lieu of an unpaid court-martial fine, he shall give written notification of such intent to the accused, delivered in person or by certified mail, return receipt requested, in a postage and fees paid envelope deposited in an office of the United States Postal Service, addressed to the accused at his address as shown on

the records of the unit. Receipt of notice sent by mail is presumed seven days following date of deposit. If the accused requests additional time to consult with counsel prior to responding, the convening authority should grant a reasonable amount of additional time so that the accused has the opportunity to prepare and present a meaningful response. If the accused fails or refuses to accept personal delivery, or if the notice by mail is returned undelivered, or if the accused does not respond by the time set, the convening authority may proceed summarily. After receiving the accused's response, the convening authority must consult the servicing judge advocate. If, after consultation with the servicing judge advocate, the convening authority finds either that the accused has not demonstrated that he has made good faith efforts to pay the fine, or that the accused has not demonstrated that his failure to do so is because of indigency, he may order confinement executed. If vacation of suspension of a sentence to confinement is also ordered, the convening authority will issue an Order of Commitment [Figure 7-3] in the appropriate amount of days; the convening authority may order the two periods of confinement to run concurrently or consecutively. If, after consultation with the servicing judge advocate, the convening authority finds that the accused has demonstrated that he has made good faith efforts to pay the fine, and that his failure to do so is because of indigency, the convening authority may not order confinement; he will recall and modify his earlier action approving the fine, either by granting additional time to pay the fine (if the accused has demonstrated a likelihood of future ability to pay, or can only pay in installments), by remitting the fine, or by modifying approval of the fine to approval of forfeitures in the same or a lesser amount (in doing so, he is not bound by the limitations to adjudge forfeitures which exist on a court-martial. The convening authority must satisfy himself that he has all relevant information before him prior to making his findings. If he deems it necessary, he may appoint a court of inquiry under Section 135, or he may request that a military judge be detailed to conduct a hearing into the matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§714. Vacating Suspensions

A. General. Subject to the limitations of the preceding paragraph, if during the period of suspension the convening authority receives information that the probationer may have violated any term of that suspension, he may, after consulting with the appropriate judge advocate, begin proceedings to consider whether the suspension will be vacated (terminated).

Notice Requirement. The procedure is initiated by written notification to the probationer, delivered in person or by certified mail, return receipt requested, in a postage and fees paid envelope deposited in an office of the United States Postal Service, addressed to the probationer at his address as shown on the records of the unit. If the probationer fails or refuses to accept personal delivery, or if the notice by mail is returned undelivered, the convening authority may proceed summarily. Receipt of notice sent by mail as set out above is presumed seven days following date of deposit.

B. Requests for Continuance. If the accused requests additional time to consult with counsel or to gather additional information prior to responding, the convening authority should grant a reasonable amount of additional time so that the accused may have the opportunity to prepare and present a meaningful response.

C. Hearing Procedures. The convening authority must satisfy himself that he has the facts of the matter before him prior to deciding whether to vacate the suspension. If he deems it necessary, he may appoint an investigating officer and/or consult with his servicing staff judge advocate. After carefully and thoroughly considering all information before him, the convening authority must determine what disposition to make of the alleged violation of suspension. He may:

1. continue the accused on suspension;

2. vacate the suspension, remit any part or amount of the unexecuted part of the sentence, and order the remainder of the sentence into execution (if the vacation is based on failure to pay a fine); or

3. he may vacate the suspension and order the unexecuted portion of the sentence into execution. In addition, he may initiate court-martial charges or non-judicial punishment for the act constituting the alleged violation of suspension, if such act also is a violation of the Code.

D. Written Orders. If the convening authority vacates the suspension, an appropriate order is published [See Figure 7-6] and, if confinement is ordered executed, he issues an Order of Commitment [See Figure 7-3.]

E. SCM Record of Trial (Figure 7-1)

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL

1a. NAME OF ACCUSED *(Last, First, MI)*	b. GRADE OR RANK	c. UNIT OR ORGANIZATION OF ACCUSED	d. SSN
SNUFFY, JOE I.	SGT	HEADQUARTERS SUPPORT COMPANY, 205TH ENGINEER BATTALION, 104 AVENUE B, BOGALUSA, LA 70427	999-99-9999

2a. NAME OF CONVENING AUTHORITY *(Last, First, MI)*	b. RANK	c. POSITION	d. ORGANIZATION OF CONVENING AUTHORITY
ALL, EYE, C.	LTC	Commander	205TH ENGINEER BATTALION, 104 AVENUE B, BOGALUSA, LA 70427

3a. NAME OF SUMMARY COURT-MARTIAL *(If SCM was accuser, so state)*	b. RANK	c. UNIT OR ORGANIZATION OF SUMMARY COURT-MARTIAL
JUDGE, IDE P.	MAJ	205TH ENGINEER BATTALION, 104 AVENUE B, BOGALUSA, LA 70427

(Check appropriate answer)	YES	NO
4. At a preliminary proceeding held on 4 MAY, 2008, the summary court-martial gave the accused a copy of the charge sheet.	X	
5. At that preliminary proceeding the summary court-martial informed the accused of the following:		
a. The fact that the charge(s) had been referred to a summary court-martial for trial and the date of referral.	X	
b. The identity of the convening authority.	X	
c. The name~~(s)~~ of the accuser~~(s)~~.	X	
d. The general nature of the charge(s).	X	
e. The accused's right to object to trial by summary court-martial.	X	
f. The accused's right to inspect the allied papers and immediately available personnel records.	X	
g. The names of the witnesses who could be called to testify and any documents or physical evidence which the summary court-martial expected to introduce into evidence.	X	
h. The accused's right to cross-examine witnesses and have the summary court-martial cross-examine on behalf of the accused.	X	
i. The accused's right to call witnesses and produce evidence with the assistance of the summary court-martial if necessary.	X	
j. That during the trial the summary court-martial would not consider any matters, including statements previously made by the accused to the summary court-martial, unless admitted in accordance with the Military Rules of Evidence.	X	
k. The accused's right to testify on the merits or to remain silent, with the assurance that no adverse inference would be drawn by the summary court-martial from such silence.	X	
l. If any findings of guilty were announced, the accused's right to remain silent, to make an unsworn statement, oral or written or both, and to testify and to introduce evidence in extenuation or mitigation.	X	
m. The maximum sentence which could be adjudged if the accused was found guilty of the offense(s) alleged.	X	
n. The accused's right to plead guilty or not guilty.	X	

6. At the trial proceeding held on 4 MAY, 2008, the accused, after being given a reasonable time to decide, ☐ did ☒ did not object to trial by summary court-martial.
(Note: The SCM may ask the accused to initial this entry at the time the election is made.)

7a. The accused ☐ was ☒ was not represented by counsel. *(If the accused was represented by counsel, complete b, c, and d below.)*

b. NAME OF COUNSEL *(Last, First, MI)*	c. RANK *(if any)*

d. COUNSEL QUALIFICATIONS

DD Form 2329, AUG 84 (EG)

8. The accused was arraigned on the ~~attached~~ charge(s) and specification(s). The accused's pleas and the findings reached are shown below:

CHARGE(S) AND SPECIFICATION(S)	PLEA(S)	FINDINGS *(Include any exceptions and substitutions)*
CHARGE I: ARTICLE 86.	Guilty	Guilty
SPECIFICATION: Sergeant Joe I. Snuffy, on or about 4 April 2008 without authority, fail to go to her appointed place of duty, to wit: 1800 first formation 4 April 2008 and did remain so absent until 6 April 2008.	Guilty	Guilty
CHARGE II: VIOLATION OF THE LCMJ, ARTICLE 92.	Guilty	Guilty
SPECIFICATION: Sergeant Joe I. Snuffy, on or about 4 April 2008, having knowledge of a lawful order issued by Sergeant First Class Walter B. Owens to "report to drill," or words to that effect, an order which it was her duty to obey, did fail to obey the same by wrongfully going to Oregon without permission to leave drill.	Guilty	Guilty
CHARGE III: VIOLATION OF THE LCMJ, ARTICLE 112.	Guilty	Guilty
SPECIFICATION: Sergeant Joe I. Snuffy, on or about 16 March 2008, found drunk while on duty as Battalion NBC Noncommissioned Officer.	Guilty	Guilty

9. The following sentenced was adjudged:

To receive a written reprimand, to be reduced to the grade of E4, and to forfeit $273.04 pay per month for one month.

10. The accused was advised of the right to request that confinement be deferred. *(Note: When confinement is adjudged.)*

☐ ~~YES~~ N/A ☐ ~~NO~~

11. The accused was advised of the right to submit written matters to the convening authority, including a request for clemency, and of the right to request review by the Judge Advocate General.

☒ YES ☐ NO

12. AUTHENTICATION

Signature of Summary Court-Martial — *Date*

13. ACTION BY CONVENING AUTHORITY

The sentence is approved and will be executed.

EYE C. ALL
Typed Name of Convening Authority

COMMANDING
Position of Convening Authority

LTC
Rank

Signature of Convening Authority — *Date*

DD Form 2329 Reverse, AUG 84

F. Report of Result of Trial (Figure 7-2)

DEPARTMENT OF THE ARMY REPORT OF RESULT OF TRIAL

For use of this form, see AR 27-10; the proponent agency is OTJAG

TO:

Commander, 205TH ENGINEER BATTALION, 104 AVENUE B, BOGALUSA, LA 70427

1. Notification under R.C.M. 1101 and AR 27-10, paragraph 5-30 is hereby given in the case of the State of Louisiana v_____

SGT Joe I. Snuffy, 999-99-9999 , HSC, 205TH EN BN, 104 AVENUE B, BOGALUSA, LA 70427. .

2. Trial by Summary court-martial on 4 May , 2008 at BOGALUSA, LA 70427.

convened by: ~~CMCO Number~~ ~~HQ,~~ detail of Major IDE P. Judge on 3 May 2008.

3. Summary of offenses, pleas, and findings:

CH	ART UCMJ	SPEC	BRIEF DESCRIPTION OF OFFENSE(S)	PLEA	FINDING
I	86	The	AWOL Period 4 April 2008 until 6 April 2008.	Guilty	Guilty
II	92	The	Disobeying a lawful order.	Guilty	Guilty
III	112	The	Drunk while on duty.	Guilty	Guilty

4. SENTENCE: To receive a written reprimand, to be reduced to the grade of E4, and to forfeit $273.04 pay per month for one month.

5. Date sentence adjudged and effective date of any forfeiture or reduction in grade *(YYYYMMDD):20080504*
(See UCMJ Articles 57-58b and R.C.M. 1101.)

6. Contents of pretrial agreement concerning sentence, if any: N/A

7. Number of days of presentence confinement, if any: N/A

8. Number of days of judge-ordered administrative credit for presentence confinement or restriction found tantamount to confinement, if any: N/A

9. Total presentence confinement credit toward post-trial confinement: N/A

10. Name(s) and SSN(s) of companion accused or co-accused, if any: N/A

11. DNA processing IAW 10 U.S.C. § 1565 ☐ is ☒ is not required.

12. Conviction(s) ☐ does ☒ does not require sex offender registration IAW 42 U.S.C. § 14071.

CF:
Cdr, HSC, 205th EN BN; Service Member, S1, 205th EN BN

TYPED NAME	SIGNATURE
IDE P. JUDGE	
RANK	BRANCH OF SERVICE
MAJ	Army

DA FORM 4430, SEP 2002 DA FORM 4430-R, MAY 87, IS OBSOLETE USAPA V1.00ES

G. Order of Commitment Pursuant to Court-Martial (Figure 7-3)

DEPARTMENTS OF THE ARMY AND AIR FORCE
UNIT HEADING
UNIT ADDRESS

LANG- 4 May 2008

ORDER OF COMMITMENT PURSUANT TO COURT-MARTIAL

TO: Warden, Dabadie Correctional Facility, Camp Beauregard, Louisiana

The defendant, SGT JOE I. SNUFFY, XXX-XX-9999, HEADQUARTERS SUPPORT COMPANY, 205TH ENGINEER BATTALION, has been convicted of violating one specifications of Louisiana Code of Military Justice Article 86 (AWOL), one specification of the Louisiana Code of Military Justice Article 92, (DISOBEYING A LAWFUL ORDER), AND one specification of the Louisiana Code of Military Justice Article 112, (DRUNK WHILE ON DUTY) by a Louisiana National Guard Summary Court-Martial convened by the commander of the 205th Engineer Battalion, LTC Eye C. All.

Therefore, pursuant to Louisiana Code of Military Justice Articles 11 and 58 (La. Revised Statutes 29:111 and 158), the sentence of this Court-Martial, and the action of the convening authority in this matter:

YOU ARE DIRECTED TO COMMIT TO CONFINEMENT FORTHWITH THE ABOVE-NAMED MEMBER OF THE LOUISIANA NATIONAL GUARD AND TO KEEP SAID PERSON IN YOUR CUSTODY FOR THE FOLLOWING PERIODS OF COMMITMENT:

23 May 2008 through no later than 0800 on 30 May 2008

While committed, the said individual shall be subject to the same discipline and treatment as other persons so confined and/or committed under the laws of the State of Louisiana.

When the above-named individual has been released, you are requested to notify the following representative of the Louisiana National Guard:

SFC Readiness NCO (985) 999-9999

By authority of the Governor of the State of Louisiana, I affix my official signature, this 4th day of February, 2008.

EYE C. ALL
LTC, EN, LANG
Commanding

H. Promulgating Order (Figure 7-4)

[UNIT HEADING]

LANG-SJA DATE

SPECIAL COURT-MARTIAL ORDER NUMBER 08-01

Private (E2) John Doe, 000-00-0000, Company A, 199th Support Battalion, 256th Infantry Brigade (M), Lafayette, Louisiana, was arraigned at Fort Polk, LA, on the following offenses at a special court-martial convened by the Commanding General, 256th Inf. Bde.

Charge I. Article 86. Plea: Guilty Finding: Guilty

Specification 1: Unauthorized absence from unit from 25 June 1993 to 27 June 1993. Plea: Guilty. Finding: Guilty

Specification 2: Failure to repair on 24 June 1993. Plea: None entered. Dismissed on motion of defense for failure to state an offense.

Charge II. Article 91. Plea: Not Guilty. Finding: Not Guilty.

Specification: Disrespect to superior noncommissioned officer on 24 June 1993 by saying to him, "Stick it in your ear." Plea: Not Guilty. Finding: Guilty.

Charge III. Article 112a. Plea: Guilty. Finding: Guilty

Specification 1: Wrongful possession of 150 grams of marijuana on 24 June 1993. Plea: Guilty. Finding: Guilty

Specification 2: Wrongful use of marijuana while on duty as a sentinel on 23 June 1993. Plea: Guilty. Finding: Guilty.

SENTENCE

Sentence was adjudged on 8 July 1993. A fine of $100.00, forfeiture of all pay and allowances, Dishonorable discharge, reduction to the lowest enlisted grade, and confinement of 6 months.

ACTION

The sentence is approved and will be executed.

[SIGNATURE BLOCK]

I. Conditions of Suspension of Sentence (Figure 7-5)

UNIT HEADING]

LANG-XXX DATE

FROM: (Individual Concerned,
Name, Grade, Organization)_____

TO: (Convening Authority,
Court-Martial No._____

I hereby accept suspension of any sentence imposed against me in the subject court-martial. I have had advice and assistance of my Defense Counsel in preparing this Request. I hereby agree to abide by the following terms and conditions of suspension:

I will at all times keep my military unit advised of my home and work address(es) and telephone number(s).

I will accept and receipt for all mail sent to me by the military.

I will pay any fine imposed against me by this court-martial which has been approved, within a period of ten (10) days from approval thereof, unless such period of time is extended by the convening authority.

I will commit no violation of the Louisiana Code of Military Justice during the period of suspension.

I specifically agree to satisfactorily attend and participate in all military duty to which I am ordered and I agree and understand that it is my responsibility to inform myself of and comply with all duty dates, times, places, proper uniform, and standards of appearance and conduct.

I understand that my failure to fulfill any of the above conditions can result in vacation of my suspension and imposition of the sentence imposed.

Signature blocks for Accused and Defense Counsel (with dates)
Home/Work address/phone for Accused
"Received and Filed" Signature for Military Judge
and convening authority representative (with dates)

J. Notification Regarding Vacation of Suspension (Figure 7-6)

[UNIT HEADING]

TO: _____, Accused

FROM: _____, Convening Authority

SUBJECT: Court-Martial [or Article 15] Number _____
On _____, I [or my predecessor in office] suspended execution on that portion of the sentence of the subject court-martial [Article 15] that called for you to_____
_____

In doing so, certain conditions of suspension were imposed on you. I have received information that you may have violated the following terms of your suspension:

_____ To keep your unit commander advised of your home and work address(es) and home and work phone number(s) at all times.

_____ To accept and receipt for all mail sent to you by the military.

_____ To pay the fine imposed against you.

_____ To commit no violation of the LCMJ.

Specifically, I have been told that you
_____
_____
_____

You are required to reply in writing to me concerning this matter. Your written response must be received at this headquarters no later than _____ hours on _____.

You may, in lieu of a response to the allegations, request a reasonable amount of additional time to consult with defense counsel prior to responding to the allegations. Your response to the allegations will then be required at the expiration of that additional time, if additional time is granted.

In the event this or any other response required of you is not received by the time set, I will act on this matter without further notice to you.

[SIGNATURE BLOCK]
CF: Servicing SJA
Trial Counsel
Defense Counsel

K. SJA's Review for Legal Sufficiency (Figure 7-7)

[UNIT HEADING]

LANG-EN-SJA 1 July 2008

MEMORANDUM FOR: Commander, 225th Engineer Brigade

SUBJECT: Legal Sufficiency Review of Special Court-martial, SPC JOHN DOE, XXX-XX-XXXX

STATEMENT OF FACTS: SPC John Doe was accused of unlawfully wearing the Purple Heart Ribbon.

STATEMENT OF LAW: SPC John Doe was charged under Article 134, Louisiana Code of Military Justice. The elements are that the accused wore certain insignia on his uniform, the accused was not authorized to wear the insignia on his uniform, the wearing was wrongful, and the conduct of the accused was prejudice of the good order and discipline of the armed forces or brought discredit to the armed forces.

STATEMENT RELATING LAW TO FACTS: SPC John Doe admitted, under oath, that he wore the insignia without authorization in violation of the Louisiana Code of Military Justice Article 134.

RECOMMENDATION: The convening authority approve the findings and sentence as adjudged.

POC is the undersigned at (225) 555-1212.

JOHN B. DUNLAP, III
COL, JA, LANG
State Judge Advocate

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

Chapter 8. Reserved.

Chapter 9. Complaints Under Article 138, LCMJ

§901. General

A. Purpose. This chapter establishes procedures for the preparation, submission, and disposition of complaints made pursuant to Article 138, LCMJ by a member of the Louisiana National Guard against a commanding officer.

B. Applicability. This chapter applies to all members of the Louisiana National Guard as defined in LCMJ Article 1.

C. Resolution of Complaints. LANG policy is to resolve complaints at the lowest level of command and to provide adequate administrative procedures for such resolution. Article 138, LCMJ, is one of several methods available. It provides for consideration at three successive levels. The first attempt to resolve a perceived wrong must be between the servicemember and the commanding officer whom the servicemember believes committed the wrong. If conventional measures are unsuccessful, the servicemember may submit a request for redress under Article 138. Every reasonable measure should be taken to resolve complaints at this lowest level. The principal responsibility for acting on Article 138 complaints lies with the Adjutant General (TAG).

D. Right to Complain. A member of the Louisiana National Guard has a statutory right to submit an Article 138 complaint. Commanders will not restrict the submission of such complaints or retaliate against a member for submitting a complaint.

E. Complaint to be Forwarded. Every complaint will be expeditiously forwarded to the the Adjutant General unless voluntarily withdrawn by the complainant.

F. Complainant Not a Participant. A servicemember who submits an Article 138 complaint does not have a right to participate in any ensuing procedures under this regulation. However, the servicemember may be asked to testify, provide additional information, or otherwise assist in resolving the complaint.

G. Presumption of Regularity. If the available evidence does not establish the validity of a complaint, despite vigorous, good faith investigative efforts to do so, a commanding officer is presumed to have acted properly.

H. Processing Complaints Through Command Channels. Complaints are processed in the chain of command. Area jurisdiction and attachments and assignments for LCMJ or other administrative purposes do not affect the processing of Article 138 complaints. When forwarding a complaint to the Adjutant General, intermediate commanders may deviate from strict adherence to command channels if such deviation will facilitate action on the complaint. However, no commander who has a direct interest in the complaint will be bypassed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§902. Explanation of Terms

A. The terms, "complainant," "complaint," "request for redress," "respondent," "superior commissioned officer," and "wrong" are explained in the Glossary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§903. Inappropriate Subject Matter for Article 138

A. General. The procedures prescribed in this chapter are intended to ensure that an adequate official channel for redress is available to every servicemember who believes the servicemember's commanding officer has wronged the servicemember. For many adverse actions, however, there are other, more specific channels and procedures to ensure the servicemember has an adequate opportunity and forum to be heard. Those specific procedures usually are more effective and efficient for resolving such matters, and Article 138 procedures should neither substitute for nor duplicate them. Generally, an action is an inappropriate subject for resolution under Article 138 procedures when:

1. review is specifically provided by the LCMJ or the action is otherwise reviewable by a court authorized by the LCMJ or by a military judge or military magistrate;

2. it is taken pursuant to the recommendation of a board authorized by LANG regulation at which the complainant was substantially afforded the rights or a respondent [See Chapter 5, AR 15-6.];

3. LANG regulations specifically authorize an administrative appeal;

4. it is a commander's recommendation or initiation of an action included in, or above.

B. Examples. Examples of actions for which Article 138 is inappropriate include:

1. matters relating to court-martial, non-judicial punishment, confinement, and similar actions taken pursuant to the LCMJ, the MCM, or military criminal law regulations;

2. officer or enlisted elimination actions [AR 635-100; AR 635-200.];

3. MOS reclassification board actions [AR 635-200.];

4. withdrawals of flying status [AR 600-107;

5. appeals from findings of pecuniary or financial liability [See AR 37-103, AR 735-5 for examples.];

6. appeals from administrative reductions in enlisted grades [AR 600-200.];

7. appeals from officer evaluation reports [AR 623-105] or enlisted evaluation reports [AR 600-205.];

8. filing of adverse information (e.g. administrative reprimand) in official personnel records [AR 600-37.].

C. Referral to Alternate Channels. When TAG receives an Article 138 complaint apparently involving an adverse action for which more specific channels and appropriate procedures are available, the officer will act on it as prescribed by regulation. [See AR 27-10, paragraph 20-11.] A decision to leave the matter to be processed in those alternate channels and to so advise the complainant constitutes "proper measures for redressing the wrong complained of" within the meaning of Article 138.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§904. Making a Complaint

A. Complainant's Request for Redress. Before submitting a complaint under Article 138, a member of the Louisiana National Guard must make a written request for redress of the wrong to the commanding officer the member believes has wronged the member. The request for redress.

1. Generally should be prepared in the format shown in Figure 9-1.

2. Must clearly identify the commanding officer against whom it is made, the date and nature of the alleged wrong and, if possible, the specific redress desired.

3. Will be submitted through command channels to the commanding officer who is alleged to have committed the wrong.

C. Response by the Commanding Officer. A commanding officer receiving a request for redress submitted under this regulation will respond, in writing, within 60 days from receipt. If a final response within 60 days is not possible, an interim response will be provided that indicates the estimated date of a final response.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§905. Complaint

A. General. A member of the Louisiana National Guard may submit an Article 138 complaint for any act or omission by the member's commanding officer which the member believes to be a wrong and for which the member has requested redress and been refused. A member who, through no fault of the member's own, has not received a final or interim response within 60 days may elect to treat that fact as a refusal of his request for redress.

B. Form of Complaint. Figure 9-1 contains sample format for Article 138 complaints. The complaint should:

1. be typed or legibly written and signed by the complainant.

2. identify the complainant as a member of the Louisiana National Guard subject to the LCMJ;

3. identify the complainant's current military organization and address;

4. identify the complainant's military organization at the time of the alleged wrong;

5. identify the commanding officer whose act or omission is complained of;

6. indicate the date a written request for redress was submitted to that commanding officer and either that:

a. the request was refused, in whose or in part, and the date thereof; or

b. a final interim or response was not received within 60 days;

7. include a statement that it is a complaint submitted under the provisions of Article 138 and this regulation;

8. clearly and concisely describe the specific wrong complained of. When not readily apparent, state the reason the complainant considers it a wrong;

9. state the specific redress the complainant seeks. Unless it is readily apparent, state the reason the complainant considers that redress appropriate;

10. Have attached to it:

a. the complainant's request to the complainant's commanding officer for redress and the commanding officer's response, if any;

b. any supporting information or documents the complainant desires to be considered.

C. Timeframe for Submitting Complaint. The complainant will deliver the complaint to his immediate superior commissioned officer within 90 days of the date of the complainant's discovery of the wrong, excluding any period during which the request for redress was in the hands of the respondent. If the complainant corrects and resubmits the complaint after TAG has returned it as deficient, the days the complaint was in military channels between submission by and return to the complainant will also be excluded in computing the 90-day period.

D. Withdrawal. The complainant may withdraw the complaint at any time before final action is taken by TAG. If a complaint is withdrawn, it must be a completely voluntary act on the part of the complainant. Prior to receipt by the TAG, the complaint may be withdrawn by an oral request of the complainant. After receipt by the TAG, the complainant must submit a written request to the officer in possession of the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§906. Legal Advice

A. Complainant. A member who desires to submit an Article 138 complaint may:

1. a member who desires to submit an Article 138 complaint may consult a Judge Advocate assigned to member of LANG TDS for advice and assistance in drafting the complaint. The member also should be advised of any

other laws or regulations under which he may proceed to seek redress. In connection with Article 138 complaints, LANG TDS will be provided only for such consultation and advice, but not to represent the member in any ensuing Article 138 proceedings;

2. consult or retain other legal counsel at no expense to the Government. Such counsel may attend any proceedings under this regulation which are open to other members of the public, but may not participate in them.

B. Respondent. A commanding officer who receives a request for redress or against whom an Article 138 complaint is submitted may obtain necessary legal advice from the commanding officer's servicing Judge Advocate.

C. TAG. The TAG shall obtain a review for legal sufficiency from the State Judge Advocate prior to notifying the complainant of action taken on the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§907. Action by Person Receiving the Complaint

A. A superior commissioned officer who receives an Article 138 complaint will promptly forward it to the Adjutant General. The person receiving the complaint, or through whom it is forwarded, may add pertinent material to the file or grant any redress within that person's authority. If either action is taken it will be noted in the transmittal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§908. Determination Not Required by The Adjutant General

A. Deficient Complaint. If a complaint does not substantially meet the requirements of Article 138, as implemented by this Chapter, no determination as to the merits of the complaint is required. Unless the deficiency is waived [See b. below], such a complaint will be returned to the complainant with a written explanation of the deficiency and, if correctable, how it may be corrected. Neither the deficient complaint nor the TAG's action on the complaint should be forwarded to the Governor.

B. Waivable Deficiencies. The TAG may waive the following deficiencies when he considers it necessary in the interest of fairness, based upon good cause, and appropriately so noted in the correspondence forwarding the complaint.

1. The complaint was not delivered to the complainant's superior commissioned officer within 90 days of the date of discovery of the wrong.

2. Redress has not been requested and refused.

3. The complaint is repetitive in that it is substantially the same as a previous complaint by the same complainant on which official action has already been taken.

C. Nonwaivable Deficiencies. The following deficiencies may not be waived by the TAG:

1. The complainant was not a member of the Louisiana National Guard and subject to the LCMJ when the complaint was delivered to his superior commissioned officer.

2. The wrong complained of was not a discretionary act or omission, or it was not by the complainant's commanding officer, or it was not under color of Federal or State military authority, or it did not adversely affect the complainant personally.

3. The complaint does not adequately identify a respondent or the wrong complained of.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§909. Withdrawal of Complaint

A. Once a voluntary request for withdrawal has been received, no further action will be taken under this Chapter. This does not preclude other appropriate action to resolve any matters raised by the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§910. Determination Required by the Adjutant General

A. Except where the TAG's determination is not required on the Article 138 complaint under the preceding paragraphs, the TAG will take the following actions.

1. Examination into the Complaint. The TAG will examine into the complaint. Except as provided below, the nature and method of the examination is discretionary. The examination may be delegated, but not to a person subordinate to the respondent in the chain of command nor, except for good cause explained in the correspondence forwarding the complaint, to a person junior in rank to the respondent. Examinations so delegated will be conducted in accordance with AR 15-6 and will include a specific recommendation regarding the appropriateness of the redress requested and of any other corrective action.

2. Nature and Extent of Examination. Unless the TAG believes that established channels for redressing the alleged wrong would be inadequate in the particular case, the examination will be limited to determining whether the other channels are, in fact, available for resolving the alleged wrong. Specific findings will be made as to whether the act or omission complained of was:

a. in violation of law or regulation;

b. beyond the legitimate authority of the respondent;

c. arbitrary, capricious, or an abuse of discretion;

d. materially unfair.

3. Action on the Complaint. The TAG must act personally on the Article 138 complaint. This authority may not be delegated. After examination into the complaint is completed, TAG will take the first of the following actions which applies to the particular complaint:

a. If the alleged wrong is of an inappropriate subject matter for an Article 138 complaint [See paragraph 9-3], unless the TAG believes that established channels for redressing the alleged wrong would be inadequate in the particular case, such commanding officer will advise the complainant that:

i. the alleged wrong already is being considered in other official channels, if that is the case; or

ii. a more appropriate official channel is available to redress the alleged wrong. TAG will specify that channel, any applicable regulation under which the complainant may proceed, and any DA or DAF assistance available to the complainant in using that channel.

iii. determine the merits of the complaint and of the redress requested. If no redress is appropriate, the TAG will deny the redress. The TAG will grant whatever redress is appropriate and is within such his authority to provide.

b. TAG will notify the complainant in writing of the action taken on the complaint.

4. Action by TAG. Before final disposition by TAG, each Article 138 file will be reviewed by the State Judge Advocate (or that officer's designee) for legal sufficiency. The SJA may, in that officer's discretion, return the file for additional information or investigation or for other action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§911. Forwarding Complaint to Governor

A. Upon completion of action on the complaint, TAG will forward a summary of the complaint and the action taken to the Governor, as required by LCMJ Article 138.

B. Complaint (Figure 9-1)

[UNIT HEADING]

LANG-xxx Date

MEMORANDUM FOR Commander, HHC, 199th Support Battalion, 5500 Coliseum Blvd, Alexandria, LA 71303-3707

SUBJECT: Request for Redress (LCMJ Article 138)

On 7 July, 1992 you announced that all members of the unit were encouraged, but not required to join in a work project on the following day, 8 July, 1992, which a domestic action activity was involving cleaning public areas in Leesville, LA. As I had previously made plans for that day, I elected not to participate. Thereafter, you turned down my request for special leave to participate in my cousin's wedding scheduled for 14 July, 1992.

I think your refusal to approve my leave is unreasonable and is in retaliation for my absence from the voluntary domestic action program described above. I consider this a wrong within the meaning of Article 138, LCMJ and LAARNG Reg 27-10, Chapter 11.

As redress, I request approval of my leave request.

JOHN Q. SERVICEMEMBER
SGT, HHC
199th Support Battalion

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§912. Military Justice Abbreviations

A. The following abbreviations shall apply throughout this regulation unless otherwise expressly provided.

AD—active duty
AR—Army Regulation
ARNG—Army National Guard
AT—annual training
AWOL—absent without leave
BCD—bad conduct discharge
CID—Criminal Investigation Division
DA—Department of Army, District Attorney
DAF—Department of Air Force
DD—Dishonorable Discharge
DOD—Department of Defense
DRU—direct reporting unit
ETS—expiration term of service
F & AO—(MilPay)
GCM—General Court-Martial
GCMCA—General Court-Martial Convening Authority
IO—investigating officer
JA—judge advocate
JAGC—Judge Advocate Generals' Corps
LA ANG—Louisiana Air National Guard
LAARNG—Louisiana Army National Guard
LCMJ—Louisiana Code of Military Justice (R.S. 29:101-242)
MCM—Manual for Courts-Martial, United States, as amended
M.R.E.—Military Rules of Evidence, contained within the MCM
MOS—Military Occupational Specialty
MPRJ—Military Personnel Records Jacket
MUTA—Multiple Unit Training Assembly
NCO—noncommissioned officer
NGB—National Guard Bureau
NJP—non-judicial punishment under LCMJ Article 15
OMPF—official military personnel file
OTH—other than honorable (discharge)
R.C.M.—rules for courts-martial, contained within the MCM
SCM—summary court-martial
SJA—the state judge advocate
SPCM—special court-martial

SPCMCA—special court-martial convening authority
TAG—the Adjutant General of the State of Louisiana
TJAG—the Judge Advocate General of the U.S. Army
UCMJ—Uniform Code of Military Justice (10 U.S. Code, Chapter 47)
U.S.C.—United States Code

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§913. Military Justice Definitions

A. The following definitions shall apply throughout this regulation unless otherwise expressly provided.

Abet—to encourage, incite, or aid another to commit a crime. [LCMJ Article 77.]

Accessory After the Fact—any person subject to the LCMJ who, knowing that an offense punishable by the Code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial or punishment. [LCMJ Article 78.]

Accused—one who is charged with an offense under the LCMJ. Synonymous with "Defendant."

Accuser—any person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than official interest in the prosecution of the accused.

Act—includes a failure or omission to perform a legal duty.

Actual Knowledge—a state wherein the person in fact knows of the existence of an order, regulation, fact, etc., in question.

Additional Charges—new and separate charges preferred while other preferred charges are still pending against the same accused.

Adjutant General—a general officer appointed by the Governor to act as the Adjutant General of the Louisiana Military Forces pursuant to R.S. 29:10. Abbreviated as TAG.

Admission—a self-incriminatory statement falling short of a complete acknowledgement of guilt. See also, "Confession."

Admonition—a warning or reminder given to an offender that a specific act is considered to be misconduct; given to deter repetition and to advise the offender of the consequences that may flow from a recurrence of that misconduct. May be oral or written, but usually oral.

Affirmation—see *Oath*.

Aider and Abettor—one who shares the criminal intent or purpose of the perpetrator, and hence is liable as a principal. [LCMJ Article 77.]

Allegation—the assertion, declaration, or statement of a party in a pleading of what he expects to prove.

Allege—to assert or state in a pleading; to plead in a specification.

Appeal—a complaint to a superior court of an injustice done or error committed by an inferior court whose judgment or decision the court above is called upon to correct or reverse.

Appellant—one who brings an appeal.

Apprehension—the taking of a person into temporary custody upon a reasonable belief that the person apprehended has committed an offense under the LCMJ. [See LCMJ Article 7(A) and definitions of Arrest and Detention.]

Arraignment—the reading of the charges and specifications to the accused or the waiver of their reading coupled with the accused's plea thereto.

Arrest—the moral restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. [See LCMJ Article 9(A) and definitions of Apprehension and Detention.]

Arrest in Quarters—a moral restraint limiting an officer's liberty, imposed as a non-judicial punishment by the governor, TAG, or a designee. [See LCMJ Article 15.]

Article 15—see "Non-judicial Punishment."

Article 32 Investigation—a formal investigation that must precede the referral of any charge to a general court-martial. See LCMJ Article 32.

Article 39(a) Session—a session of a general or special courts-martial called by the military judge, to dispose of matters not amounting to trial of the accused. [LCMJ Article 39.]

Assault—an attempt or offer with unlawful force or violence to do bodily harm to another, whether or not the attempt or offer is consummated. [LCMJ Article 128.]

Attempt—an act, or acts, done with a specific intent to commit an offense under the LCMJ, amounting to more than mere preparation, and tending, but failing to effect the commission of such offense.

Bad Conduct Discharge—one of two types of punitive discharges that may be awarded an enlisted person under a GCM or SPCM, designed as a punishment for bad conduct. Also called a "BCD." [LCMJ Articles 18 and 19.]

Battery—an unlawful and intentional or culpably negligent application of force to the person of another by a material agency used directly or indirectly. [LCMJ Article 128.]

Challenge—a formal objection to a member of a court or the military judge continuing as such in subsequent proceedings. May be either a challenge for cause - objections based on a fact or circumstance which disqualifies the person challenged from further participation in the proceedings, or peremptory challenge - an objection permitted without a showing of grounds or basis, except that the military judge cannot be peremptorily challenged.

Charge—a formal statement of the LCMJ article(s) which the accused is charged with having violated.

Charge and Specification—a description in writing of the offense(s) which the accused is alleged to have committed; each specification, together with the charge under which it is placed, constitutes a separate accusation.

Circumstantial Evidence—evidence which tends directly to prove or disprove not a fact in issue, but a fact or circumstance from which, either alone or in connection with other facts, a court may, according to the common experience of mankind, reasonably infer the existence or nonexistence of another fact which is in the issue; sometimes called indirect evidence.

Clear Injustice—existence of unwaived legal or factual error which clearly and affirmatively injured the substantial rights of a Servicemember (e.g., discovery of new evidence unquestionably exculpating a convicted Servicemember). See also, "Setting Aside and Restoration."

Command—an organization having a commander who is regarded by superior authority as the individual chiefly responsible for maintenance of discipline therein. Includes companies and batteries, numbered units and detachments, battalions, brigades, service schools, squadrons, wings, groups, flights, and area commands. For example, an infantry company, whether or not separated or detached, is considered to be a command. An infantry platoon, however, which is part of a company and is not separate or detached, is not a command. If the platoon were located in an armory separate from the main company's armory, the platoon normally would be considered a separate, detached command. An order. Any demanding of another to do an act towards commission of a crime. [LCMJ Article 77.]

Commander or Commanding Officer—includes any commissioned officer who by virtue of rank and assignment exercises primary command over a military organization. Primary command authority does not include staff officers. However, for purposes of administration of military justice under LCMJ, all assistant adjutants general serving in the federally-recognized grade of brigadier general or above are considered commanding officers. For LCMJ Article 138 purposes, this includes an officer in the complainant's chain of command, up to and including the first officer exercising special court-martial jurisdiction over the complainant. A commanding officer against whom an Article 138 complaint has been lodged as referred to in this regulation is called the "respondent," (not to be confused with the identical term used in connection with administrative board proceedings under AR 15-6).

Commissioned Officer—an officer who holds a commission issued by the President of the United States or the Governor of the State of Louisiana.

Common Trial—a trial in which two or more persons are charged with the commission of an offense or offenses which, although not jointly committed, were committed at the same time and place and are provable by the same evidence.

Complainant—under LCMJ Article 138, a member of the Louisiana National Guard who has submitted an Article 138 complaint as referred to in Chapter 9 of this regulation. In civilian criminal law, a complainant refers to anyone who has reported a crime.

Concurrent Jurisdiction—jurisdiction which is possessed over the same parties or subject matter at the same time by two or more separate tribunals. [See Paragraph 5-3 regarding referral to civilian authorities.]

Conditional Guilty Plea—a plea of guilty that reserves in writing the right to appeal adverse determinations of pretrial motions.

Conditions on Liberty—a form of pretrial restraint; orders directing a person to do or refrain from doing certain acts.

Confession—an acknowledgement of guilt of an offense. See also, "Admission."

Confinement—the physical restraint of a person, imposed by either oral or written orders of competent authority, depriving him of freedom. [LCMJ Article 9(A).]

Confinement Facility—facility for the confinement of military prisoners. It applies to transient confinement facilities, installation confinement facilities, area confinement facilities and hospitalized prisoner wards.

Conspiracy—a combination of two or more persons who have agreed to accomplish, by concerted action, an unlawful purpose or some purpose not in itself unlawful but accomplished by unlawful means, and the doing of some act by one or more of the conspirators to effect the object of that agreement. [LCMJ Article 81.]

Constructive Knowledge—knowledge which may be found to have existed because the regulation, notice, fact or directive, etc., at issue was of so notorious a nature, or was so conspicuously posted or distributed, that the accused ought to have known of its existence; knowledge is constructive when it is shown that the accused would in the ordinary course of events, or by the exercise of ordinary care, have secured knowledge of the order, notice or movement, etc.

Court Members—persons designated to serve upon courts-martials for purposes of adjudication as addressed in LCMJ Article 25.

Convening Authority—the officer having the authority to convene a court-martial and/or his successor(s) in command.

Convening Order—the document by which a court-martial is created, which specifies the type of court and lists the time and place of meeting, the names of the members (if any), trial and defense counsel, the military judge, and, when appropriate, the authority by which the court is created.

Convicted—adjudicated guilty after a guilty plea or after trial on the merits.

Copy—an accurate representation, however made. When necessary and feasible, includes a copy by handwriting.

Counseling—actions designed to advise subordinates of their errors and specific ways to improve. Directly or indirectly advising or encouraging another to commit an offense. [LCMJ Article 77.]

Court-Martial—a military tribunal composed of one or more eligible members of the armed forces (the number depending on the type of court), the functions of which are to decide whether a person subject to military law has committed a violation of the LCMJ, and, if so, to adjudge an appropriate punishment therefore. Includes:

a. the military judge and members of a general court-martial;

b. the military judge when a session of a special court-martial is conducted;

c. the summary court-martial officer. [LCMJ Articles 18-20.]

Court-Martial Orders—either a "Convening Order" or a "Promulgating Order." See respective definitions.

Court of Inquiry—the most formal fact-finding body convened in the Military Department, governed by LCMJ Article 135.

Credibility—worthiness of belief.

Culpable—deserving blame.

Custody—that restraint of free movement which is imposed by lawful apprehension.

Custom—a practice which: has been long continued; is certain or uniform; is compulsory, consistent, general, and known; and is not in opposition to the terms and provisions of a statute or lawful regulation or order.

Dangerous Weapon—a weapon used in a manner likely to produce death or grievous bodily harm.

Days—when a period of time is expressed in a number of days, the period shall be in calendar days, unless otherwise specified. Unless otherwise specified, the date on which the period begins shall not count, but the date on which the period ends shall count as one day.

Defendant—see *Accused*.

Defense Counsel—a commissioned officer of the Louisiana National Guard, certified and detailed by the SJA to represent an accused at a special/general courts-martial. Such military counsel will be provided to the accused without expense. The term may also refer to "Individual Civilian Counsel" retained by an accused to defend him.

Deferment of Confinement—a postponement of the running and service of a sentence to confinement.

Deposition—the testimony of a witness taken out of court, reduced to writing, under oath or affirmation, before a person empowered to administer oaths, in answer to interrogatories (questions) and cross- interrogatories submitted by the party desiring the deposition and the opposite party, or based on oral examination by counsel for accused and the prosecution.

Design—specifically intended; inferred from conduct so shockingly and grossly devoid of care as to leave room for no reasonable inference but that the result was contemplated as a probable result of the course of conduct followed.

Destroyed—not completely demolished or annihilated, but only sufficiently injured to be useless for the purpose for which it was intended. [LCMJ Article 108.]

Detail—order to a person to perform a specific temporary duty.

Detention—the imposition of custody by competent authority, pending disposition of offense(s) for a period no longer than 24 hours. [See LCMJ Article 7(A) and 9(A) and definitions of Apprehension and Arrest.]

Discharge—complete severance from all military status gained by the enlistment or induction concerned.

Dishonorable Discharge—the most severe punitive discharge, reserved for those who should be separated under conditions of dishonor, after having been convicted of offenses usually recognized by the civil law as felonies, or of offenses of military nature requiring severe punishment.

Dominion—control of property; possession of property with the ability to exercise control over it.

Dual Offense—conduct that constitutes an offense punishable under both civilian criminal laws and the LCMJ.

Due Process—a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights, such as exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe.

Duty Status—duty in the National Guard under an order issued by authority of law, and includes travel to and from such duty. [LCMJ Article 1.]

Elements—the essential ingredients of an offense; the acts or omissions which form the basis of any particular offense. Listed in the LCMJ, Annotated (Yellow Tab of Louisiana Military Justice Law Manual) Part IV of the Manual for Courts-Martial.

Enlisted Member—a person in an enlisted grade. LCMJ Article 1.

Evidence—information admissible before a court of law which tends to prove or disprove any matter in question or to influence belief respecting it.

Exigent Circumstances—circumstances calling for immediate action or remedy, as in imperative need to search when no time exists to obtain a search warrant. [See M.R.E.. 315(g), 316(d)(4)(B), and R.C.M. 302(e)(B).]

Felony—under Louisiana law, an offense punishable by death or imprisonment at hard labor [La. C.Cr.P. Article 933; See also, R.S. 14:2, and the definition of Misdemeanor.]

Financial Liability—personal, joint, or corporate statutory obligation to reimburse the Louisiana Military Department or the U.S. Government for Government property lost, damaged, or destroyed because of negligence or misconduct, including wrongful appropriation. [See AR 735-5.]

Fine—punishment that makes the accused liable to the State of Louisiana for a specified amount of money.

Forfeiture of Pay—punishment that deprives the accused of all or part of his future pay.

Formal Proceedings—non-judicial Punishment proceedings that are accompanied by the full procedural and substantive requirements of LCMJ Article 15, this Regulation, and other published guidance.

Former Jeopardy—the rule of law that no person shall be tried for the same offense by the same sovereign a second time without his consent. Known also as "double jeopardy." [LCMJ Article 44.]

General Court-Martial—a military tribunal comprised of (copy from LCMJ) whose function is to decide whether a member subject to the LCMJ has committed a violation of that Code and, if so, to adjudge punishment therefore. Also known as "GCM."

Grade—a step or degree, in a graduated scale of office or military rank that is established and designated as a grade by law or regulation. LCMJ Article 1.

Inference—a deduction based upon reason from a fact or facts proved.

Judge Advocate—a commissioned officer of the Judge Advocate General's Corps of the U.S. Army, Air Force, Navy, Marine Corps, or Coast Guard.

Jurisdiction—the power of a court to hear and decide a case and to impose any appropriate and lawful punishment.

Knowingly—with knowledge; consciously, intelligently.

Lesser Included Offense—an offense necessarily included in the offense charged; an offense containing some, but not all, of the elements of the offense charged, so that, if one or more of the elements of the offense charged is not proved, the evidence may still support a finding of guilty of the included offense.

Magistrate—a Judge Advocate empowered to perform judicial functions such as issuing search warrants. Also includes a U.S. Magistrate as defined in 28 U.S.C. Article 631 and following.

Matter in Aggravation—any circumstance attending the commission of a crime which increases its enormity.

Matter in Extenuation—any circumstance serving to explain the commission of the offense, including the reasons that actuated the accused, but not extending to a legal justification.

Members—the members of a court-martial are the voting members detained by the convening authority. As

used in this regulation, "member" also may refer to a Servicemember, Servicemember, Soldier or Airman.

Mental Responsibility—the concept that a person is not responsible for criminal conduct if at the time of such conduct as a result of a mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

Military Court—a court-martial or court of inquiry.

Military Judge—a Judge Advocate who has been certified by TJAG or the SJA as qualified to preside over GCM's and/or SPCM's in accordance with LCMJ Article 26. LCMJ Article 1.

Misdemeanor—offense other than a felony, including ordinance violation that provides a penal sanction [La. C.Cr.P. Article 933.]

Mistrial—the situation existing when it becomes apparent that either party cannot receive a fair and impartial hearing before the sitting tribunal.

Mitigation—a reduction in either the quantity or quality of a punishment appropriate because of an accused's subsequent good conduct or disproportionateness of an original sentence.

Motion to Dismiss—a motion raising any defense or objection in bar or trial.

National Guard—the Louisiana Army and Air National Guard.

Neglect—omission or failure to do an act or perform a duty due to want of due care or attention.

Negligence—the omission to do something which a reasonable person, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent person would not do; the absence of due care; the legal standard that defines what would have been done by a reasonable, prudent person in the same or similar circumstances; as used in the LCMJ, the failure to exercise the care, prudence, or attention to duties which the interests of the Government require to be exercised by a prudent and reasonable person under the circumstances.

Non-Judicial Punishment—also known as "Article 15." Disciplinary punishment levied under LCMJ Article 15 for minor offenses, without the intervention of a court-martial. See Chapter 4.

Oath—a solemn declaration to testify truthfully, administered in a form calculated to awaken the conscience and impress the mind with the duty to so do. Includes "Affirmation."

On Duty—as used in LCMJ Article 112, the exercise of duties of routine or detain in garrison, at a station, or in the field. Does not relate to those periods when, no duty being required of them by order regulations, officers and enlisted persons occupy the status of leisure known as "off duty" or on "liberty."

Party—the accused and any defense or associate or assistant defense counsel and agents of the defense counsel when acting on behalf of the accused with respect to the court-martial in question. Any trial or assistant trial counsel representing the government, and any agents of the trial counsel with respect to the court-martial in question.

Performance Fiche—that portion of the Official Military Personnel File (OMPF) that is routinely used by career managers and selection boards for the purpose of assignment, promotion, and schooling selection. See also Restricted Fiche.

Pleading—the written formal indictment by which an accused is charged with an offense; in military law, the pleadings are called charges and specifications.

Possession—physical control over an item of property.

Preferral—the act of signing and swearing to court-martial charges.

Presumption—a justifiable inference; a well-recognized example of the use of circumstantial evidence, the weight or effect of which should be measured only in terms of its logical value.

Principal—one who aids, abets, counsels, commands, or procures another to commit an offense which is subsequently perpetrated in consequence of such counsel, command or procuring, whether he is present or absent at the commission of the offense; The perpetrator of an offense. [LCMJ Article 78.]

Private Dwelling—a servicemember's dwelling, on or off military premises, such as a single family house or apartment. The quarters may be owned, leased, rented by the servicemember, or assigned, and may be occupies on a temporary or permanent basis. It does not include living areas in military barracks, aircraft, vehicles, tents, bunkers, field encampments, and similar places, whether or not subdivided into individual units.

Probable Cause—prerequisite for a valid search and seizure or arrest. It consists of reliable facts indicating to a reasonable person the probability that a crime has been committed and the person in question committed it or that evidence of a crime is located in the place to be searched.

Procedural Law—the rules of pleading and practice by which rights are accorded and enforced.

Promulgating Orders—an order issued by the Convening Authority publishing the result of a court-martial and the convening authority's action and any later action taken of the case. Not required for Summary Courts-Martial.

Punitive Articles—LCMJ Articles 77 through 134, which generally tract the corresponding UCMJ Articles and state how they may define the conduct made criminal.

Punitive Discharge—a Bad Conduct Discharge (BCD) or a Dishonorable Discharge (DD) from military service.

Rank—the order of precedence among members of the Louisiana National Guard. LCMJ Article 1.

Redress—under LCMJ Article 138, authorized action by any officer in the complainant's chain of command to effect the revocation of a previous official action or otherwise to restore to the complainant any rights, privileges, property, or status lost as a result of a wrong.

Referral of Charges—the order of a convening authority that charges against an accused will be tried by a specified court-martial.

Remission—the cancellation of any portion of the unexecuted punishment.

Reprimand—an act of formal censure that reproves or rebukes an offender for misconduct; a reproof, rebuke, censure, strong criticism, or "chewing out" for failing to comply with the established standard. May be oral or written, but usually written.

Request for Redress—under LCMJ Article 138, the complainant's written request directed to the commanding

officer whom he believes has committed the wrong. See Paragraph 9-4.

Respondent—the one against whom an Administrative Discharge Board action has been initiated. Under LCMJ Article 138, a commanding officer against whom an Article 138 complaint has been made.

Restricted Fiche—that portion of the Official Military Personnel File (OMPF) that contains information not normally viewed by career managers or selection boards except as provided in AR 640-10 or specified in the Secretary of Army's written instructions to the selection board. See also Performance Fiche.

Restriction in Lieu of Arrest—moral restraint, less severe than arrest, imposed upon a person by oral or written orders, limiting him or her to specified areas of a military command, with the further provision that he or she will participate in all military duties and activities of the organization while under such restriction.

Revision—a procedure to correct an apparent error or omission or improper or inconsistent action of a court-martial with respect to a finding or a sentence.

Self-Incrimination—the giving of evidence against oneself which tends to establish guilt of an offense.

Separation—an all-inclusive term applied to personnel actions resulting from release from active duty, discharge, retirement, dropped from the rolls, release from military control or personnel without a military status or death.

Setting Aside and Restoration—action in which the punishment or any part or amount, whether executed or unexecuted, is set aside and any rights, privileges, or property affected by the portion of the punishment set aside are restored based on finding of "clear injustice."

Special Court-Martial—a military tribunal comprised of (copy from LCMJ) whose function is to decide whether a member subject to the LCMJ has committed a violation of that Code and, if so, to adjudge punishment therefore. Also known as "SPCM."

Specification—a formal statement of specific acts and circumstances relied upon as constituting the offense charged. See also, Charge.

State—the State of Louisiana. LCMJ Article 1(13).

State Judge Advocate—the Judge Advocate responsible for supervising the administration of military justice in the Louisiana National Guard, and designated as the principal legal advisor to TAG. Also known as "SJA."

State Military Forces—the National Guard of the State, as defined in 32 U.S.C. Section 101 , , and any other military forces organized under the laws of the state, when not in a status subjecting them to jurisdiction under Chapter 47 of Title 10, U.S.C. (LCMJ Article 1).

Statute of Limitations—the rule of law which establishes the time within which an accused must be charged with an offense. Synonymous with Prescription.

Substantive Law—that portion of the body of law which contains rights and duties and regulations of the government, as distinguished from Procedural Law, which is that part containing the rules and remedies by which the substantive law is administered.

Superior Commissioned Officer—a commissioned officer superior in rank or command. [LCMJ Article 1.] Under LCMJ Article 138, a commissioned officer in the complainant's current chain of command that is senior to the complainant in grade, rank, or position. [See paragraph 9-5.]

Supplementary Action—in Non-judicial Punishment proceedings, any action taken by an appropriate authority to suspend, vacate, mitigate, remit, or set aside a punishment (except punishment imposed under summarized proceedings after action has been taken on an appeal or DA Form 2627 has been distributed.

Suspension—to hold a punishment in abeyance and not put it into effect for a specified period of time, resulting in a probationary period during which time the Servicemember may demonstrate his good conduct and efficiency.

Trial on the Merits—trial on the issue of guilt or innocence.

Usage—a general habit, mode, or course of procedure.

Unlawful Command Influence—improper attempts by the convening authority to affect the outcome of a court-martial. Each commander is vested by law with the authority and sole discretion to take - or decline to take - action under the LCMJ in cases arising in his command, unless a superior commander has restricted or withheld the authority to act. Any unauthorized interference by superior authority with the free and independent exercise of this power is called "unlawful command influence" and is itself punishable under the Code.

Vacation of Suspension—termination of a period of probation under a suspended sentence so that a Servicemember's original punishment may be effectuated.

Willful—deliberate, voluntary, and intentional, as distinguished from acts committed through inadvertence, accident, or ordinary negligence.

Wrong—under LCMJ Article 138, a discretionary act or omission by a commanding officer, under color of Federal or State military authority, which adversely affects the complainant personally and which is:

a. in violation of law or regulation;

b. beyond the legitimate authority of that commanding officer;

c. arbitrary, capricious, or an abuse of discretion; or

d. materially unfair.

Wrongful—contrary to law, regulation, lawful order or custom.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§914. Nonjudicial Punishment Guide—Appendix

[General Note to Commander: This guide is designed to ensure that the proceedings comply with all legal requirements. It contemplates a three-step process, conducted in the presence of the member, consisting of notification, hearing (that may be omitted if the member admits guilt), and imposition of punishment (if the findings result in a determination of guilt). It is not the purpose of this guide to answer all questions which may arise during an Article 15 proceedings. When this guide, Chapter 5 of the LAARNG Regulation 27-10/LA ANG Regulation 111-1, Chapter 3 of AR 27-10, and other legal materials available fail to provide sufficient information concerning law or procedure, the administering Commander should seek advice on these matters from a judge advocate. The SCM should examine the format for record of trial located at Figures 7-1 and 7-2 of LAARNG Regulation 27-10/LA ANG Regulation 11It may be useful as a checklist during the proceedings to ensure

proper preparation after trial. The Commander should become familiar with this guide before using it. Instructions for the Commander are contained in brackets, and should not be read aloud. Language in parentheses reflects optional or alternative language. The Commander should read the appropriate language aloud].

Section 1 - Notification

[If the notification of punishment is to be accomplished by other than the imposing commander, the procedures under this provision should be appropriately modified (see note 10d, below)].

CO: As your commander, I have disciplinary powers under Article 15 of the LCMJ. I have received a report that you violated the Louisiana Code, and I am now considering imposing nonjudicial punishment. This is not a formal trial like a court-martial. As a record of these proceedings I will use DA Form 2627. I now hand you this form. Read

items 1 and 2. Item 1 states the offense(s) you are reported to have committed and item 2 lists the rights you have in these proceedings. Under the provisions of Article 31 of the LCMJ, you are not required to make any statement or provide any information concerning the alleged offense(s). If you do, it may be used against you in these proceedings or in a trial by court-martial. You have the right to consult with a lawyer as stated in item 2.

[Note 1. Wait for the member to read items 1 and 2 of DA Form 2627. Allow him or her to retain copy five of the form until the proceedings are finished and you have either imposed punishment or decided not to impose it].

CO: Do you understand item 1? Do you understand the offense(s) you are reported to have committed?

Member: (Yes) (No)

[Note 2. If the member does not understand the offense(s), explain the offense(s) to him. Reference may be made to the LCMJ and to Part IV of the Manual for Courts-Martial, United States, and Annotated which contains an explanation of each of the punitive articles together with the essential factual elements necessary to constitute the offense].

CO: Do you understand item 2? Do you have any questions about your rights in these proceedings?

Member: (Yes) (No)

[Note 3. If the member does not understand his or her rights, explain them in greater detail. If the member asks a question you cannot answer, recess the proceedings. You can probably find the answer in one of the following sources:

Article 15, LCMJ; Paragraph 3-4 of LAARNG Reg 27-10/LA ANG Reg 111-1;

Part V, MCM. If you cannot find the answer in one of those sources, contact your servicing Staff Judge Advocate Office.].

CO: There are some decisions you have to make: You have to decide whether you want to demand trial by court-martial. If you demand a court-martial these proceedings will stop. I would then have to decide whether to initiate court-martial proceedings against you. If you were to be tried by court-martial for the offense(s) alleged against you, you could be tried by summary court-martial, special court-martial, or general court-martial. If you were to be tried by special or general court-martial, you would be able to be represented by a military lawyer appointed at no expense to you or by a civilian lawyer of your choosing at no expense to the government.

If you do not demand trial by court-martial, you must then decide whether you want to present witnesses or submit other evidence in "defense," "extenuation," and/or "mitigation." Your decision not to demand trial by court-martial will not be considered as an admission that you committed the offense(s); you can still submit evidence in your behalf.

Evidence in "defense" are facts showing that you did not commit the offense(s) stated in item 1. Even if you cannot present any evidence in "defense," you can still present evidence in "extenuation" or "mitigation."

Evidence in "extenuation" are circumstances surrounding the offense, showing that the offense was not very serious.

Evidence in "mitigation" are facts about you, showing that you are a good Servicemember and that you deserve light punishment.

You can make a statement and request to have a spokesperson appear with you and speak on your behalf. I will interview any available witnesses and consider any evidence you think I should examine.

Finally, you must decide whether you wish to request that the proceedings be open to the public. Do you understand the decisions you have to make?

Member: (Yes) (No)

CO: If you do not demand trial by court-martial and after you have presented your evidence, I am convinced that you committed the offense, I could then punish you. The maximum punishment I could impose on you under Article 15 would be as follows:

[Note 4. Maximum punishments under LCMJ Article 15 varies depending on the level of command imposing punishment and the rank of the member being punished. A ready reference maximum punishments chart is located in LAARNG Reg 27-10/LAANG Reg 11Explain to the member each punishment which could be imposed in his individual case. It is not necessary for you to read the following statute, however, understand that LCMJ Article 15 authorizes the imposition of any one or more of the following punishments:

Upon officers in his command:

Restriction to certain specified limits, with or without suspension from duty, for not more than fifteen consecutive days;

A fine of not more than one hundred dollars ($100.00);

If imposed by the governor, the adjutant general, or an officer of a general or flag rank in command;

Arrest in quarters for not more than fifteen consecutive days;

Forfeiture of pay of not more than one hundred dollars ($100.00);

Upon other military personnel of his command:

Forfeiture of pay of not more than fifty dollars ($50.00);

Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

Extra duties, including fatigue or other duties, for not more than fourteen (14) consecutive days;

Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) consecutive days;

If imposed by an officer of the grade of major or lieutenant commander, or above (otherwise known as a "Field Grade Article 15"):

Forfeiture of pay of not more than one hundred dollars ($100.00);

Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

Extra duties, including fatigue or other duties, for not more than fourteen (14) consecutive days;

Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) consecutive days;

A fine of not more than twenty-five dollars ($25.00)]."

CO: You should compare this punishment with the punishment you could receive in a court-martial.

[Note 5. If the member requests to be informed of the maximum court-martial sentence(s), you may advise him that the maximum possible punishments for courts-martial under the LCMJ are as follows:

Summary Courts-Martial (LCMJ Article 20):

Confinement of not more than one week;

Reduction of enlisted personnel to the lowest pay grade;

A fine of not more than $100 per single offense or, in lieu thereof, confinement of not more than 1 day for each dollar of said fine;

Forfeiture of up to one month pay and allowances;

A reprimand;

Any combination of these punishments.

Special Courts-Martial (LCMJ Article 19):

A fine of not more than $200 per single offense, or, in lieu thereof, confinement of not more than 1 day for each dollar of said fine;

Forfeiture of pay and allowances;

A reprimand;

Bad conduct or dishonorable discharge;

Reduction of a noncommissioned officer to the ranks;

Confinement of not more than twelve months; or

Any combination of these punishments.

General Courts-Martial (LCMJ Article 18):

A fine of not more than $1,000 per single offense, or, in lieu thereof, confinement of not more than 1 day for each dollar of said fine;

Forfeiture of pay and allowances;

A reprimand;

Dismissal, bad conduct, or dishonorable discharge;

Reduction of a noncommissioned officer to the ranks;

Confinement of not more than two years; or

Any combination of these punishments.

[You should not inform the member of the particular punishment you may consider imposing until all the evidence has been considered].

CO: As item 2 points out, you have a right to talk to an attorney before you make your decisions. A military lawyer whom you can talk to free of charge is located at _____. Would you like to talk to an attorney before you make your decisions?

Member: (Yes) (No)

[Note 6. If the member desires to talk to an attorney, arrange through the servicing Judge Advocate Office for the consultation to take place. The member should be encouraged to consult the attorney promptly. Inform the member that consultation with an attorney may be by telephone. The member should be advised that he or she is to notify you if any difficulty is encountered in this undertaking].

CO: You now have 48 hours (or 15 days, if in an IDT status) to think about what you should do in this case. You may advise me of your decision at any time within the aforementioned period. If you do not make a timely demand for trial or if you refuse to sign that part of DA Form 2627 indicating your decision on these matters, I can continue with these Article 15 proceedings even without your consent. Do you understand?

Member: (Yes) (No)

CO: You are now dismissed.

[Note 7. At this point, the proceedings should be recessed unless the Servicemember affirmatively indicates that he or she has made a decision and does not want additional time or to consult with an attorney. In the event the member does not make a decision within the specified time or refuses to complete or sign item 3 of DA Form 2627, the imposing commander may continue the proceedings. In such instances,

the Servicemember will be informed that failure to complete and sign item 3 may be treated as a voluntary withdrawal of any oral demand for trial. If the Servicemember persists in his refusal and punishment is imposed, in addition to recording the punishment, the following entry will be made in item 4, DA Form 2627: "Advised of his rights, the Servicemember (did not demand trial during the decision period) (refused to (complete)(sign) item 3.)" When you resume the proceedings, begin at item 3, DA Form 2627].

CO: Do you demand trial by court-martial?

Member: (Yes) (No)

[Note 8. If the answer is yes, continue as follows:]

CO: Initial block a, sign and date item 3. Because you have demanded trial by court-martial, these proceedings will stop. I now must decide whether to initiate court-martial proceedings against you. I will notify you when I have reached a decision. You are dismissed.

[Note 9. If the answer is no, continue as follows:]

CO: An open hearing means that the proceeding is open to the public. If the hearing is closed, only you, I, designated members of the chain of command, available witnesses and a spokesperson, if designated, will be present. Do you request an open hearing?

Member: (Yes) (No)

CO: Do you wish to be accompanied by a spokesperson?

Member: (Yes) (No)

CO: Initial block 3b and indicating your decision. Do you want to submit any evidence showing that you did not commit the offense(s), or explaining why you committed the offenses(s), or any other information about yourself that you would like me to know?

Do you wish to have any witnesses testify, including witnesses who would testify about your good past military record or character?

Member: (Yes) (No)

CO: Now initial block 3b indicating your decision, and sign and date the form in the space provided under that item.

[Note 10. a. Wait until the member initials the blocks and signs and dates the form. If the answers to all the questions are no, you may proceed to impose punishment.

If the answer regarding witnesses and evidence is yes, and the member is prepared to present his or her evidence immediately, proceed as follows. Consider the evidence presented. If the evidence persuades you that you should not punish the member, terminate the proceedings, inform the member, and destroy all copies of DA Form 2627. If you are convinced beyond a reasonable doubt that the member committed the offense(s), and deserves punishment, proceed to impose punishment as appropriate.

If the member needs additional time to gather his or her evidence, give the member a reasonable period of time to gather the evidence. Tell the member when the proceedings will resume and recess the proceedings. A reasonable period of time for these purposes would ordinarily be until the following MUTA during IDT periods and would vary depending on circumstances during AT periods. Consult your servicing Judge Advocate if you have questions on this subject.

If someone else conducted the notification proceedings, the imposing commander should conduct the remainder of the proceedings. When you resume the proceedings, consider the member's evidence. Insure that the member has the opportunity he or she deserves to present any evidence. Ask the member, "Do you have any further evidence to present?"

If the evidence persuades you that you should not punish the member, terminate the proceedings, inform the member of your decision, and destroy all copies of DA Form 2627. If you are still convinced that the member committed the offense(s) and deserves to be punished, impose punishment as appropriate].

Section 2 - Imposition of Punishment

CO: I have considered all the evidence. I am convinced that you committed the offense(s) of _____. I impose the following punishment(s): _____ [Announce punishment.]

[Note 11. After you have imposed punishment, complete items 4, 5, and 6 of DA Form 2627, and sign the blank below item 6].

Section 3 - Appellate Advice

[Note 12. Hand the DA Form 2627 to the member]

CO: Read item 4 which lists the punishment I have just imposed on you. Now read item 6 which points out that you have a right to appeal this punishment to (title and organization of next superior authority under Article 15e). You can appeal if you believe that you should not have been punished at all, or that the punishment is too severe. Any appeal should be submitted within 5 calendar days, excluding today. An appeal submitted after that time may be rejected. Even if you appeal, the punishment is effective today (unless the imposing commander sets another date). Once you submit your appeal, it must be acted upon by (title and organization of next superior) within 5 calendar days, excluding the day of submission. Otherwise, any punishment involving deprivation of liberty (restriction or extra duties), at your request, will be interrupted pending the decision on the appeal. Do you understand your right to appeal?

Member: (Yes) (No)

CO: Do you desire to appeal?

Member: (Yes) (No)

[Note 13. If the answer is yes, go to Note 15. If the answer is no, continue as follows:]

CO: If you do not want to appeal, initial block a in item 7 and sign the blank below item 7.

[Note 14. Now give the member detailed orders as to how you want him or her to carry out the punishments].

CO: You are dismissed.

[Note 15. If the answer is yes, continue as follows:]

CO: Do you want to submit any additional matters to be considered in an appeal?

Member: (Yes) (No)

[Note 16. If the answer is yes, go to Note 17. If the answer is no, continue as follows:]

CO: Initial block b in item 7 and sign the blank below item 7. I will notify you when I learn what action has been taken on your appeal. You are dismissed.

[Note 17. If the answer is yes, continue as follows:]

CO: If you intend to appeal and do not have the additional matters with you, item 7 will not be completed until after you have obtained all the additional material you wish to have considered on appeal. When you have obtained this material, return with it by _____(specify a date 5 calendar days from the date punishment is imposed) and complete item 7, by initialing the box and signing the blank below. After you complete item 7, I will send the DA Form 2627 and the additional matters you submit to (title and organization of next superior authority). Remember that the punishment will not be delayed (unless the imposing commander sets another date). Do you understand?

Member: (Yes) (No)

CO: You are dismissed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§915. Summary Courts-Martial Guide—Appendix

ADMINISTRATION OF MILITARY JUSTICE

SUMMARY COURTS-MARTIAL GUIDE

Preliminary Proceedings

Identity of SCM Officer

SCM:

I am _____ have been detailed to conduct a summary court-martial by Summary Court-Martial Convening Order Number _____, Headquarters, _____, dated _____.

Referral of charges to trial

SCM:

Charges against you have been referred to me for trial by summary court-martial_____, Commander,_____ on _____.

Note 1. Hand copy of charge sheet to the accused.

I suggest that you keep this copy of the charge sheet and refer to it during the trial. The charges are signed by _____, a person subject to the Louisiana Code of Military Justice, as accuser, and are properly sworn to before a commissioned officer of the armed forces authorized to administer oaths. The charges allege, in general,

Violation of Article_____, _____

_____

_____

Violation of Article_____, _____

_____

_____

Violation of Article_____, _____

_____

_____

Violation of Article_____, _____

_____

_____

I am now going to tell you about certain rights you have in this trial. You should carefully consider each explanation because you will soon have to decide whether to object to trial by summary court-martial. Until I have completed my explanation, do not say anything except to answer the specific questions which I ask you. Do you understand that?

ACCUSED:

No or Yes, Sir.

Duties of SCM

SCM:

As summary court-martial officer, it is my duty to obtain and examine all the evidence concerning any offense(s) to which you plead not guilty, and to thoroughly and impartially inquire into both sides of the matter. I will call witnesses for the prosecution and question them, and I will help you in cross-examining those witnesses. I will help you obtain evidence and present the defense. This means that one of my duties is to help you present your side of the case. You may also represent yourself, and if you do, it is my duty to help you. You are presumed to be innocent until your guilt has been proved by legal and competent evidence beyond a reasonable doubt. If you are found guilty of an offense, it is also my duty to consider matters which might affect the sentence, and then to adjudge an appropriate sentence. Do you understand that?

ACC:

No or Yes, Sir.

Right to object to SCM

SCM:

You have the absolute right to object to trial by summary court-martial.

If you object the appropriate authority will decide how to dispose of the case. The charges may be referred to a special or general court-martial, or they may be dismissed, or the offenses charged may be disposed of by nonjudicial punishment [if not previously offered and refused] or by the imposition of non-punitive administrative measures. [See R.C.M. 306.]

Do you understand that?

ACC:

No or Yes, Sir.

Right to inspect allied papers and personal records

SCM:

You may inspect the allied papers and personnel records.

Hand those documents which are available to the accused for examination in your presence. You may have time to examine these if you wish.

Witnesses and other evidence for the government

SCM:

The following witnesses will probably appear and testify against you:

_____

_____

_____

_____

The following documents and physical evidence will probably be introduced:

_____

_____

_____

_____

Right to cross-examine

After these witnesses have testified in response to my questions, you may cross-examine them. If you prefer, I will do this for you after you inform me of the matters about which you want the witness to be questioned.

Do you understand that?

ACC:

No or Yes, Sir.

Right to present evidence

SCM:

You also have the right to call witnesses and present other evidence.

This evidence may concern any or all of the charges. (I have arranged to have the following witnesses for you present at the trial.) I will arrange for the attendance of other witnesses and the production of other evidence requested by you. I will help you in any way possible. Do you understand that?

ACC:

No or Yes, Sir.

Evidence to be considered

SCM:

In deciding this case, I will consider only evidence introduced during the trial. I will not consider any other information, including any statements you have made to me, which is not introduced in accordance with the Military Rules of Evidence during the court-martial. Do you understand that?

ACC:

No or Yes, Sir.

Right to remain silent

SCM:

You have the absolute right during this trial to choose not to testify and to say nothing at all about the offense(s) with which you are charged. If you do not testify, I will not hold it against you in any way. I will not consider it as an admission that you are guilty. If you remain silent, I am not permitted to question you about the offense(s).

Right to testify concerning the offense(s)

However, if you choose, you may be sworn and testify as a witness concerning the offense(s) charged against you. If you do that, I will consider your testimony just like the testimony of any other witness.

SCM:

If you decide to testify, you may limit your testimony to any particular offense charged against you and not testify concerning any other offense(s) charged against you. If you do this, I may question you about the whole subject of the offense about which you testify, but I may not question you about any offense(s) concerning which you do not testify. Do you understand that?

ACC:

No or Yes, Sir.

Right to testify, remain silent make an unsworn statement in extenuation and mitigation

SCM:

In addition, if you are found guilty of an offense, you will have the right to testify under oath concerning matters regarding an appropriate sentence. You may, however, remain silent, and I will not hold your silence against you in any way. You may, if you wish, make an unsworn statement about such matters. This statement may be oral, in writing, or both. If you testify, I may cross-examine you. If you make an unsworn statement, however, I am not permitted to question you about it, but I may receive evidence to contradict anything contained in the statement. Do you understand that?

ACC:

No or Yes, Sir.

Maximum Punishment

SCM:

If I find you guilty (of the offense) (of any of the offenses charged), the maximum sentence which I am authorized to impose is:

Confinement of not more than one week;

Reduction of enlisted personnel to the lowest grade;

A fine of not more than $100.00 or, in lieu thereof, confinement for not more than one day for each dollar of the authorized fine or combination thereof;

Forfeiture of up to one month pay and allowances;

A reprimand;

Any combination of these punishments.

SCM:

Do you understand the maximum punishment which this court-martial is authorized to adjudge?

ACC:

No or Yes, Sir.

Plea Options

SCM:

You may plead not guilty or guilty to each offense with which you are charged. You have an absolute right to plead not guilty and to require that your guilt be proved beyond a reasonable doubt before you can be found guilty. You have the right to plead not guilty even if you believe you are guilty. Do you understand that?

ACC:

No or Yes, Sir.

SCM:

If you believe you are guilty of an offense, you may, but are not required to, plead guilty to that offense. If you plead guilty to an offense, you are admitting that you committed that offense, and this court-martial could find you guilty of that offense without hearing any evidence, and could sentence you to the maximum penalty I explained to you before. Do you understand that?

ACC:

No or Yes, Sir.

SCM:

Do you need more time to consider whether to object to trial by summary court-martial or to prepare for trial?

ACC:

No or Yes, Sir.

SCM:

[If time is requested or otherwise appropriate.] We will convene the court-martial at _____. When we convene, I will ask you whether you object to trial by summary court-martial. If you do not object, I will then ask for your pleas to the charge(s) and specification(s), and for you to make any motions you may have.

Trial Procedure

Convene

SCM:

This summary court-martial is now in session.

Objection or consent to trial by SCM

SCM:

Do you object to trial by summary court-martial?

ACC:

No or Yes, Sir.

[Note 4. If there is an objection, adjourn the court-martial and return the file to the convening authority. If the accused does not object, proceed as follows. The accused may be asked to initial the notation on the record of trial that the accused did or did not object to trial by summary court-martial. This is not required, however.]

Reading of the charges

SCM: Look at the charge sheet. Have you read the charge(s) and specification(s)?

ACC:

No or Yes, Sir.

SCM:

Do you want me to read them to you?

ACC:

No or Yes, Sir.

[If accused requests, read the charge(s) and specification(s).]

Arraignment

SCM:

Before you plead to the offenses, if you have any motion to dismiss (the) (any) charge or specification, or for other relief, you should make it now.

ACC:

No or Yes, Sir.

[Note 5. Motions. If the accused makes a motion to dismiss or to grant other relief, or such a motion is raised by the summary court-martial, do not proceed with the trial until the motions have been decided. See R.C.M. 905-907, and R.C.M. 1304(b)(2)(c). After any motions have been disposed of and if termination of the trial has not resulted, have the accused enter pleas and proceed as indicated below.]

Pleas

ACC:

I plead: _____.

[Note 6. If the accused refuses to plead to any offense charged, enter pleas of not guilty. If the accused refuses to enter any plea, evidence must be presented to establish that the accused is the person named in the specification(s) and is subject to court-martial jurisdiction. See R.C.M. 202, 1301(c).]

[Note 7. If the accused pleads not guilty to all offenses charged, proceed to the section entitled "Procedures-Not Guilty Pleas."]

[Note 8. If the accused pleads guilty to one or more offenses, proceed as follows.]

Procedures - guilty pleas

SCM

I will now explain the meaning and effect of your pleas, and question you so that I can be sure you understand. Refer to the charge(s) and specification(s). I will not accept your pleas of guilty unless you understand their meaning and effect. You are legally and morally entitled to plead not guilty even though you believe you are guilty, and to require that your guilt be proved beyond a reasonable doubt. A plea of guilty is the strongest form of proof known to the law. On your pleas of guilty alone, without receiving any evidence, I can find you guilty of the offense(s) to which you have pleaded guilty. I will not accept your pleas unless you realize that by your

pleas you admit every element of the offense(s) to which you have pleaded guilty, and that you are pleading guilty because you really are guilty. If you are not convinced that you are in fact guilty, you should not allow anything to influence you to plead guilty. Do you understand that?

ACC:

No or Yes, Sir.

SCM:

Do you have any questions?

ACC:

No or Yes, Sir.

SCM:

By your pleas of guilty you give up three very important rights. (You keep these rights with respect to any offense(s) to which you have pleaded not guilty.) The rights which you give up when you plead guilty are:

First, the right against self-incrimination. This means you give up the right to say nothing at all about (this) (these) offense(s) to which you have pleaded guilty. In a few minutes I will ask you questions about (this) (these) offense(s), and you will have to answer my questions for me to accept your pleas of guilty.

Second, the right to a trial of the facts by this court-martial. This means you give up the right to have me decide whether you are guilty based upon the evidence which would be presented.

Third, the right to be confronted by and to cross-examine any witnesses against you. This means you give up the right to have any witnesses against you appear, be sworn and testify, and to cross-examine them under oath.

Do you understand these rights?

ACC:

No or Yes, Sir.

SCM:

Do you understand that by pleading guilty you give up these rights?

ACC:

No or Yes, Sir.

SCM:

On your pleas of guilty alone you could be sentenced to the maximum sentence allowed.

[Note 9. Re-read the appropriate sentencing section above unless the summary court-martial is a rehearing or new or other trial, in which case see R.C.M. 810(d).]

SCM:

Do you have any questions about the sentence which could be imposed as a result of your pleas of guilty?

ACC:

No or Yes, Sir.

SCM:

Has anyone made any threat or tried in any other way to force you to plead guilty?

ACC:

No or Yes, Sir.

Pretrial Agreement

SCM:

Are you pleading guilty because of any promises or understandings between you and the convening authority or anyone else?

ACC:

No or Yes, Sir.

[Note 10. If the accused answers yes, the summary court-martial must inquire into the terms of such promises or understandings in accordance with Paragraph 7-21 of this Regulation. See also Note 27 of Appendix C, (SPCM Guide) and R.C.M. 910.]

SCM:

The following elements state what would have to be proved beyond a reasonable doubt before the court-martial could find you guilty if you had pleaded not guilty. As I read each of these elements to you, ask yourself whether each is true and whether you want to admit that each is true, and then be prepared to discuss each of these elements with me when I have finished.

The elements of the offense(s) which your pleas of guilty admit are

Article _____:

Article _____:

Article _____:

[Note 12. Read the elements of the offense(s) from the appropriate punitive article in the LCMJ Annotated..]

SCM:

Do you understand each of the elements of the offense(s)?

ACC:

No or Yes, Sir.

SCM:

Do you believe, and admit, that taken together these elements correctly describe what you did?

ACC:

No or Yes, Sir.

[Note 13. The summary court-martial should now question the accused about the circumstances of the offense(s) to which the accused has pleaded guilty. The accused will be placed under oath for this purpose. See oath below. The purpose of these questions is to develop the circumstances in the accused's own words, so that the summary court-martial may determine whether each element of the offense(s) is established.]

Oath to accused for guilty plea inquiry

SCM:

Do you (swear) (affirm) that the statements you are about to make shall be the truth, the whole truth, and nothing but the truth (so help you God)?

ACC:

No or Yes, Sir.

SCM:

Do you have any questions about the meaning and effect of your pleas of guilty?

ACC:

No or Yes, Sir.

SCM:

Do you believe that you understand the meaning and effect of your pleas of guilty?

ACC:

No or Yes, Sir.

[Note 14. Determination of Providence of Pleas of Guilty. Pleas of guilty may not be accepted unless the summary court-martial finds that they are made voluntarily and with understanding of their meaning and effect, and that the accused has knowingly, intelligently, and consciously waived the rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses. Pleas of guilty may be improvident when the accused makes statements at any time during the trial which indicate that there may be a defense to the offense(s), or which are otherwise inconsistent with an admission of guilt. If the accused makes such statements and persists in them after questioning, then the summary court-martial must reject the accused's guilty pleas and enter pleas of not guilty for the accused. Turn to the section entitled "Procedures-Not Guilty Pleas" and continue as indicated. If (the) (any of the) accused's pleas of guilty are found provident, the summary court-martial should announce findings as follows.]

Acceptance of guilty pleas

SCM:

I find that the pleas of guilty are made voluntarily and with understanding of their meaning and effect. I further specifically find that you have knowingly, intelligently, and consciously waived your rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses against you. Accordingly, I find the pleas are provident, and I accept them. However, you may ask to take back your guilty pleas at any time before the sentence is announced. If you have a sound reason for your request, I will grant it. Do you understand that?

ACC:

No or Yes, Sir.

[Note 15. If no pleas of not guilty remain, go to note 24. If the accused has changed pleas of guilty to not guilty, if the summary court-martial has entered pleas of not guilty to any charge(s) and specification(s), or if the accused has pleaded not guilty to any of the offenses or pleaded guilty to a lesser included offense, proceed as follows.]

Procedures – Not guilty pleas

Witnesses for the accused

SCM:

If there are witnesses you would like to call to testify for you, give me the name, rank, and organization or address of each, and the reason you think they should be here, and I will arrange to have them present if their testimony would be material. Do you want to call witnesses?

ACC:

No or Yes, Sir.

Presentation of Evidence

[Note 16. The summary court-martial should estimate the length of the case and arrange for the attendance of witnesses. The prosecution evidence should be presented before evidence for the defense.]

Calling witnesses

SCM:

I call as a witness _____.

Witness oath

SCM:

[To the witness, both standing] Raise your right hand.

Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth,(so help you God)? [Do not use the phrase, "so help you God," if the witness prefers to affirm.]

WIT:

No or Yes, Sir.

SCM:

Be seated. State your full name, rank organization, and armed force ([or if a civilian witness] full name, address, and occupation.)

[Note 17. The summary court-martial should question each witness concerning the alleged offense(s). After direct examination of each witness, the accused must be given an opportunity to cross-examine. If the accused declines to cross-examine the witness, the summary court-martial should ask any questions that it feels the accused should have asked. If cross-examination occurs, the summary court-martial may ask questions on redirect examination and the accused may ask further questions in recross-examination.]

[Note 18. After each witness has testified, instruct the witness as follows.]

SCM:

Do not discuss this case with anyone except the accused, counsel, or myself until after the trial is over. Should anyone else attempt to discuss this case with you, refuse to do so and report the attempt to me immediately. Do you understand that?

WITNESS:

YES or NO Sir

SCM:

[To the witness] You are excused.

[Note 19. Recalling witnesses. Witnesses may be recalled if necessary. A witness who is recalled is still under oath and should be so reminded.]

[Note 20. After all witnesses against the accused have been called and any other evidence has been presented, the summary court-martial will announce the following.]

SCM:

That completes the evidence against you. I will now consider the evidence in your favor.

[Note 21. Presentation of Defense Case. Witnesses for the accused should now be called to testify and other evidence should be presented. Before the defense case is terminated the summary court-martial should ask the accused if there are other matters the accused wants presented. If the accused has not testified, the summary court-martial should remind the accused of the right to testify or to remain silent.]

Closing argument

SCM:

I have now heard all of the evidence. You may make an argument on this evidence before I decide whether you are guilty or not guilty.

Deliberation and Findings

[Note 22. The court-martial should normally close for deliberations. If the summary court-martial decides to close, proceed as follows.]

SCM:

The court-martial is closed so that I may review the evidence. Wait outside the courtroom until I recall you.

[Note 23. The summary court-martial should review the evidence and applicable law. It must acquit the accused unless it is convinced beyond a reasonable doubt by the evidence it has received in court in the presence of the accused that each element of the alleged offense(s) has been proved beyond a reasonable doubt. See R.C.M. 918. It may not consider any facts which were not admitted into evidence, such as a confession or admission of the accused which was excluded because it was taken in violation of M.R.E.. 304.]

[Note 24. Announcing the findings. The summary court-martial should recall the accused, who will stand before the court-martial when findings are announced. All findings including any findings of guilty resulting from guilty pleas, should be announced at this time. The attached Findings form should be used and signed then read aloud when announcing findings.]

[Note 26. Procedure if total acquittal. If the accused has been found not guilty of all charges and specifications, adjourn the court-martial, excuse the accused, complete the record of trial, and return the charge sheet, personnel records, allied papers, and record of trial to the convening authority.]

Sentencing

[Note 27. Procedure if any findings of guilty. If the accused has been found guilty of any offense, proceed as follows.]

Presentence Procedure

SCM:

I will now receive information in order to decide on an appropriate sentence. Look at the information concerning you on the front page of the charge sheet. Is it correct?

ACC:

No or Yes, Sir.

[Note 28. If the accused alleges that any of the information is incorrect, the summary court-martial must determine whether it is correct and correct the charge sheet, if necessary.]

[Note 29. Evidence from the accused's personnel records, including evidence favorable to the accused, should now be received in accordance with R.C.M. 1001(b)(2). These records should be shown to the accused.]

SCM:

Do you know any reason why I should not consider these?

ACC:

No or Yes, Sir.

[Note 30. The summary court-martial shall resolve objections under R.C.M. 1002(b)(2) and the Military Rules of Evidence and then proceed as follows. See also R.C.M. 1001(b)(3), (4), and (5) concerning other evidence which may be introduced.]

Extenuation and mitigation

SCM:

In addition to the information already admitted which is favorable to you, and which I will consider, you may call witnesses who are reasonably available, you may present evidence, and you may make a statement. This information may be to explain the circumstances of the offense(s), including any reasons for committing the offense(s), and to lessen the punishment for the offense(s) regardless of the circumstances. You may show particular acts of good conduct or bravery, and evidence of your reputation in the service for efficiency, fidelity, obedience, temperance, courage, or any other trait desirable in a good Servicemember. You may call available witnesses or you may use letters, affidavits, certificates of military and civil officers, or other similar writings. If you introduce such matters, I may receive written evidence for the purpose of contradicting the matters you presented. If you want me to get some military records that you would otherwise be unable to obtain, give me a list of these documents. If you intend to introduce letters, affidavits, or other documents, but you do not have them, tell me so that I can help you get them. Do you understand that?

ACC:

No or Yes, Sir.

Rights of accused to testify, remain silent, and make an unsworn statement

SCM:

I informed you earlier of your right to testify under oath, to remain silent, and to make an unsworn statement about these matters.

SCM:

Do you understand these rights?

ACC:

No or Yes, Sir.

SCM:

Do you wish to call witnesses or introduce anything in writing?

ACC:

No or Yes, Sir.

[Note 31. If the accused wants the summary court-martial to obtain evidence, arrange to have the evidence produced as soon as practicable.]

[Note 32. The summary court-martial should now receive evidence favorable to the accused. If the accused does not produce evidence, the summary court-martial may do so if there are matters favorable to the accused which should be presented.]

SCM:

Do you wish to testify or make an unsworn statement?

ACC:

No or Yes, Sir.

[Note 33. Questions concerning pleas of guilty. If as a result of matters received on sentencing, including the accused's testimony or an unsworn statement, any matter is disclosed which is inconsistent with the pleas of guilty, the summary court-martial must immediately inform the accused and resolve the matter.]

Argument on sentence

SCM:

You may make an argument on an appropriate sentence. Do you wish to make an argument on an appropriate sentence?

ACC:

No or Yes, Sir.

[Note 34. Deliberations prior to announcing sentence. After receiving all matters relevant to sentencing, the summary court-martial should normally close for deliberations. If the summary court-martial decides to close, proceed as follows.]

Closing the court-martial

SCM:

This court-martial is closed for determination of the sentence. Wait outside the courtroom until I recall you.

[Note 35. Announcing the sentence. The summary court-martial should recall the accused, who will stand before the court-martial when the sentence is announced. The Attached Sentence form should be used and signed then read aloud when announcing sentence.]

Announcement of sentence

SCM:

Please rise.

[Note 36. If the sentence includes confinement, advise the accused as follows.]

SCM:

You have the right to request in writing that _____ [name of convening authority] defer your sentence to confinement. Deferment is not a form of clemency and is not the same as suspension of a sentence. It merely postpones the running of a sentence to confinement.

[Note 37. Whether or not the sentence includes confinement, advise the accused as follows.]

SCM:

You have the right to submit in writing a petition or statement to the convening authority. This statement may include any matters you feel the convening authority should consider, a request for clemency, or both. This statement must be submitted within 7 days, unless you request and convening authority approves an extension of up to 10 days. After the convening authority takes action, your case will be reviewed by a judge advocate for legal error. You may suggest, in writing, legal errors for the judge advocate to consider. If, after final action has been taken in your case, you believe that there has been a legal error, you may request review of your case by the State Judge Advocate of the Louisiana National Guard. Do you understand these rights?

ACC:

No or Yes, Sir.

Adjourning the court-martial

SCM:

This court-martial is adjourned.

[Note 38. Have the Paralegal complete all forms and then the SCM signs. The Paralegal will then ensure that the forms are forwarded appropriately.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

DEPARTMENTS OF THE ARMY AND AIR FORCE
JOINT FORCE HEADQUARTERS-LOUISIANA
OFFICE OF THE ADJUTANT GENERAL
CAMP BEAUREGARD
PINEVILLE, LOUISIANA 71360

JFHQ-SJA 4 March 2007

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Courts-Martial Convening Authority and Jurisdictional Alignment for Louisiana Army National Guard Forces

1. Purpose. To identify those Louisiana Army National Guard (LAARNG) units for which the unit Commander will serve as the Special Courts-Martial Convening Authority (SPCMCA) and the jurisdictional and administrative authority for those units. This memorandum will also identify those LAARNG units for which the unit Commander will serve as the Summary Courts-Martial Convening Authority (SCMCA) and the jurisdictional and administrative authority for those units. This action is intended to ensure each LAARNG Commander has the proper jurisdiction for command, control, and administration of justice and certain administrative actions. This Memorandum supersedes the Jurisdictional Alignment in LANG Reg 27-10 until that regulation is updated.

2. Authority. Articles 22, 23, and 24 Louisiana Code of Military Justice (LA RS 29:122, 29:123, and 29:124), and Rule of Courts-Martial 504 and LANG-Reg 27-10.

3. Jurisdictional Structure. In order to maintain good order and discipline within LAARNG units, it is necessary to align the units jurisdictionally as established in Appendix A - G. This jurisdictional alignment applies to administrative actions as well as actions under the LCMJ, both punitive and non-punitive. Units below Summary Court Martial level which are organic or which are not listed remain under the control of their organic battalion. Appendix A will be updated on a regular basis to reflect the current operational requirements of this Headquarters. The GCMCA for all of the units set forth in the attached appendices is the Governor of the State of Louisiana. The Special Courts-Martial Convening Authority (SPCMCA) jurisdiction for the commanders of the LAARNG units delineated in this memorandum is set forth as follows:

a. Commander, Recruiting Cmd will serve as SPCMCA for the units listed in Appendix A.

b. Commander, 199th LDR will serve as SPCMCA for the units listed in Appendix B.

c. Commander, 61st TC will serve as SPCMCA for the units listed in Appendix C.

d. Commander, 139th RSG will serve as SPCMCA for the units listed in Appendix D.

e. Commander, 204th TAOG will serve as SPCMCA for the units listed in Appendix E.

f. Commander, 225th EN Bde will serve as SPCMCA for the units listed in Appendix F.

"Inspired by the Past, Driven by the Future"

JFHQ-SJA
SUBJECT: Courts-Martial Convening Authority and Jurisdictional Alignment for Louisiana National Guard Forces

g. Commander, 256th IBCT will serve as SPCMCA for the units listed in Appendix G.

4. Explanation of Terms.

a. As used in this memorandum, the term military justice includes, but is not limited to: courts-martial, non-judicial punishment, administrative separations, memoranda of reprimand and admonition, and administrative reduction actions.

b. As used in the attached appendices, the acronym "SCMCA" refers to Summary Courts-Martial Convening Authority.

5. POC for this memorandum is COL Jules D. Edwards, III, State Judge Advocate.

Encl
as

BENNETT LANDRENEAU
MG, LANG
The Adjutant General

Distribution: A

Recruiting and Retention Division

SCM Authority	Unit	City
CDR, R&R	Recruiting And Retention Div	New Orleans
CDR, R&R	JFHQ-LA (-)	New Orleans
CDR, MEDCOM	Medical Command-LA (-)	New Orleans
CDR, R&R	Training Site	Pineville
CDR, R&R	241 MPAD	New Orleans
CDR, R&R	209 AG PERS HR PLT	New Orleans

199th Leadership Regiment

SCM Authority	Unit	City
CDR, 199TH LDR	HQ, 199TH LEADERSHIP REGIMENT (-)	Minden
CDR, 199TH LDR	DET 1, HQ, 199TH LDR (-)	Pineville

61st Troop Command

SCM Authority	Unit	City
CDR, 61ST TC	61ST TRP CMD	Carville
CDR, 61ST TC	62ND WMD	Carville

139th Regional Support Group (RSG)

SCM Authority	Unit	City
CDR, 139TH RSG	139 CS HHD, RSG	Pineville
CDR, 139TH RSG	3673 OD CO MAINT (-)	New Orleans
CDR, 139TH RSG	DET 1, 3673RD MNT CO	Pineville
CDR, 139TH RSG	000 SIG CO, EXP	Baton Rouge
CDR, 139TH RSG	DET 1, 000 SIG CO, EXP	Gray
CDR, 165TH CS	165TH CS HHC, CORPS	Bossier City
CDR, 165TH CS	156 AG BAND	Bossier City
CDR, 165TH CS	1083 TC CO (-)	Minden
CDR, 165TH CS	1084 TC CO MDM	Reserve
CDR, 165TH CS	DET 1 1084TH TC CO MDM	Slidell
CDR, 165TH CS	1086 TC CO MDM	Bunkie
CDR, 165TH CS	DET 1, 1086TH TC CO MD (PLS)	Vidalia
CDR, 165TH CS	DET 2, 1086TH TC CO MD (PLS)	Ville Platte
CDR, 165TH CS	1087 TC CO LT (-)	Jena
CDR, 165TH CS	DET 1, 1087TH TC CO LT	Jonesville
CDR, 773 MP BN	773 MP HHD BN	Pineville
CDR, 773 MP BN	239 MP CO CBT (-)	Carville
CDR, 773 MP BN	DET 1, 239TH MP CO	New Orleans

SCM Authority	Unit	City
CDR, 773 MP BN	2228 MP CO CBT (-)	Pineville
CDR, 773 MP BN	DET 1, 2228TH MP CO	Lake Charles
CDR, 773 MP BN	39 MP CO CBT (-)	Minden
CDR, 773 MP BN	DET 1, 39TH MP CO	Delhi
CDR, 415 MI BN	415 MI BN LIN (-)	Carville
CDR, 415 MI BN	HSC, 415 MI BN LIN (-)	Carville
CDR, 415 MI BN	CO A(-), 415 MI Bn	Carville
CDR, 415 MI BN	DET 1, CO A, 415TH MI BN	New Orleans
CDR, 415 MI BN	CO B, 415 MI BN	Carville
CDR, 415 MI BN	756TH MD ASMC	Carville

204thTAOG

SCM Authority	Unit	City
CDR, 204TH	204 AV TAOC (-)	Hammond
CDR, 204TH	453 AV	Pineville
CDR, 1-244	1 - 244 AV AIR ASLT (-)	Hammond
CDR, 1-244	HHC, 1 - 244 AV AIR ASLT (-)	Hammond
CDR, 1-244	CO A, 1 - 244 AV AIR ASLT (-)	Hammond
CDR, 1-244	CO B (-), 1 - 244 AV AIR ASLT (-)	Hammond
CDR, 1-244	DET 1, CO B, 1-244TH	Pineville
CDR, 1-244	CO D, 1 - 244 AV AIR ASLT (-)	Hammond
CDR, 1-244	CO E, 1 - 244 AV AIR ASLT (-)	Hammond
CDR, 204TH	812 MD CO AIR (-)	Pineville
CDR, 204TH	DET 2, CO B 248 ASB	Pineville
CDR, 204TH	DET 1, CO C, 1-114 S&S BN (RAID)	Pineville
CDR, 204TH	DET 38, OSA	Hammond

225th Engineer Brigade

SCM Authority	Unit	City
CDR, 225 EN	225 EN BDE	Pineville
CDR, 225 EN	831 EN TM, SV	Pineville
CDR, 205 EN BN	205 EN BN	Bogalusa
CDR, 205 EN BN	HHC 205 EN BN	Bogalusa
CDR, 205 EN BN	FOR SPT CO	Hammond
CDR, 205 EN BN	1021 EN CO, VE	Covington
CDR, 205 EN BN	DET 1, 1021 EN CO, VE	Independence
CDR, 205 EN BN	DET 2, 1021 EN CO, VE	Gonzales
CDR, 205 EN BN	843 EN CO, HO	Franklinton
CDR, 205 EN BN	DET 1, 843 EN CO, HO	Covington

SCM Authority	Unit	City
CDR, 205 EN BN	2225 EN MRBC (-)	Marrero
CDR, 205 EN BN	DET 1, 2225 EN MRBC	Slidell
CDR, 527 EN BN	527 EN BN	Ruston
CDR, 527 EN BN	HHC 527 EN BN	Ruston
CDR, 527 EN BN	FOR SPT CO	Ruston
CDR, 527 EN BN	844 EN CO, HO	Pineville
CDR, 527 EN BN	DET 1, 844 EN CO, HO	Ruston
CDR, 527 EN BN	DET 2, 844 EN CO, HO	West Monroe
CDR, 527 EN BN	1020 EN CO, VE	Marksville
CDR, 527 EN BN	DET 1, 1020 EN CO, VE	Pineville
CDR, 527 EN BN	1022 EN CO, VE	West Monroe
CDR, 527 EN BN	DET 1, 1022 EN CO, VE	Ruston
CDR, 527 EN BN	DET 2, 1022 EN CO, VE	Bossier City
CDR, 528 EN BN	528TH ENGR BN	Monroe
CDR, 528 EN BN	HSC 528 EN BN	Monroe
CDR, 528 EN BN	FOR SPT CO	Monroe
CDR, 528 EN BN	832 EN TM, ASPHALT	Monroe
CDR, 528 EN BN	830 EN TM, CONCRETE	Monroe

225th Engineer Brigade

SCM Authority	Unit	City
CDR, 528 EN BN	921 EN CO, HO	Winnsboro
CDR, 528 EN BN	DET 1, 921 EN CO, HO	Farmerville
CDR, 528 EN BN	DET 2, 921 EN CO, HO	Oak Grove
CDR, 528 EN BN	1023 EN CO, VE	Oak Grove
CDR, 528 EN BN	DET 1, 1023 EN CO, VE	Bastrop
CDR, 528 EN BN	DET 2, 1023 EN CO, VE	Clarks
CDR, 769 EN BN	769 EN BN CBT	Baton Rouge
CDR, 769 EN BN	HSC 769 EN BN	Baton Rouge
CDR, 769 EN BN	FOR SPT CO	Baton Rouge
CDR, 769 EN BN	926 EN CO, MOB AUG	Baker
CDR, 769 EN BN	927 EN CO, SAPPER	Denham Springs
CDR, 769 EN BN	928 EN CO, SAPPER	Napoleonville
CDR, 769 EN BN	922 EN CO, HO	Gonzales
CDR, 769 EN BN	DET 1, 922 EN CO, HO	Baton Rouge

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

§917. Request for Arrest Warrant Packet—Appendix

STATE OF LOUISIANA
Military Department
CHECKLIST FOR ISSUANCE OF ARREST WARRANT

1. _____ Request for Arrest Warrant. [Figure 5-3, LANG 27-10]
2. _____ Properly completed DD Form 458 Charge Sheet. [Figure 5-9 and 5-10, LANG 27-10]
3. _____ Properly completed Arrest Warrant.
4. _____ Written Order to Report.
5. _____ MACOM SJA Endorsement

NOTES

A. Warrants may only be issued to secure the presence of the accused. Arrest cannot be used as punishment.

B. Regarding AWOL's, warrants may only be issued if the soldier has been absent for five MUTA's over two consecutive drills. If a soldier is AWOL one drill but reports at the next drill, arrest is not needed to secure the presence of that soldier. Similarly, if the soldier is AWOL six consecutive drill weekends and reports to the seventh drill, the unit should read that soldier his DD Form 458 Charge Sheet and take the necessary action the commander deems appropriate under the LCMJ at that time. It cannot issue an arrest warrant after the soldier has reported, unless the soldier is again absent for five consecutive MUTA's over two drill weekends.

C. Arrest Warrants cannot authorize detention for more than eight (8) hours unless specifically approved by the State Judge Advocate upon a showing of just cause for such detention time.

D. Some common mistakes include such simple omissions as the arrestee's physical description and the use of inappropriate arrest warrant forms used for AWOL from Annual Training (which occasionally, depending on the circumstances permit much longer detention) instead of AWOL from drill.

WRITTEN DIRECT ORDER TO
Name and Rank of Arrestee

Upon release on personal recognizance by the law enforcement official, you are directed to report to *(Unit address and phone number)* on the first day following your release no later than 1600 hours. If you fail to report, you will be apprehended again for pretrial confinement.

BY ORDER OF *Commander's Name and Signature*

LANG-XXX *Date*

MEMORANDUM FOR Commander, 256 BCT, ATTN: Staff Judge Advocate

SUBJECT: Request for Arrest Warrant Authority Under the Louisiana Code of Military Justice

1. The undersigned requests authority to arrest the following soldier pursuant to the LCMJ:
   a. *Rank & Name of arrestee: PFC John C. Doe*
   b. *Unit address or arrestee: HHC, 256th Infantry, 1806 Surrey Street, Lafayette, LA 70508*
   c. *Offense(s) of arrestee: Article 86, LCMJ (AWOL)*
   d. *Civilian Employment of arrestee: Student, Part-time at Outback on weekends*
2. Justification/necessity for arrest: *Soldier has been consistently AWOL from drill and arrest is necessary to secure the soldier's presence. Soldier was AWOL for the following drill dates: 7-8 Nov 99, 1-2 Dec 99, 5-6 Jan 00, 8-9 Feb 00.*
3. The unit has attempted to contact the Soldier *three times by telephone at the number listed on the Unit's Alert Roster and twice by certified mail* but has been unsuccessful securing the presence of the soldier for disposition of the offenses charged.
4. In brief, the arrestee's prior service record is as follows:
   (a) *Is the Guardsman an OIF or OEF veteran?*
   (b) *Has the Guardsman experienced any extenuating circumstances or hardship recently or since the unsatisfactory participation?*
   (c) *What specific actions has the unit taken to address any concerns or issues that the Guardsman may be experiencing?*
   (d) *What type of performance has the Guardsman had during their military career? List both positive accomplishments and prior misconduct.*
5. Aggravating, extenuating or mitigating circumstances: *Arrestee thought he would lose his job if he went to drill on the drill weekends noted above.*
6. If there are any questions, please contact the undersigned at *Unit phone number.*
7. Encl *Requestee's Signature Block*
   1. DD Form 458 Charge Sheet
   2. Arrest Warrant
   3. Written Order to Report
   4. SJA Memorandum
   5. Arrest Warrant Checklist

Sample Chart Detailing All Recovery Attempts

Guardsman's Name	Unit	Justification	Status
PV1 Soldier, Sam E.	HSC, 528th EN Bn	PV1 Soldier state to CPT Spurlock that he had some medical documentation to fax to him. CPT Spurlock told the Solider that he needed to report to the Monroe armory NLT 1700 on 3 OCT06. The Soldier stated "I was trying not to hear him" and hung up the phone.	SJA prepared to recommend approval after receiving the Request for Warrant, along with the Soldier's home of record and the Company Commander's Name and Phone Number. 10 OCT 06.
SPC Guy, Good E.	HSC 528th EN Bn	CPT Spurlock explained to SPC Guy that he had been called back to duty and that the National Guard would take care of his medication condition and get him the care he need and also put him orders. CPT Spurlock told SPC Guy to go home and retrieve his gear and report back to the unit NLT 0700 on 7 OCT 06. SPC Guy failed to report in at the time instructed.	SJA Disapproves. SJA Required corrections to the affidavit. We should not issue a warrant unless the Soldier is already on orders. 10 OCT 06.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S.49:972.

Written comments may be address to Dirk Thibodeaux, Executive Counsel, Louisiana Military Department, 5445 Point Clair Road, Box 28, Carville, LA 70721, until 4:30 p.m. on September 10, 2009.

Bennett C. Landreneau, MG
Adjutant General

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE:

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed regulation provides regulatory guidance to assist units with the proper procedures to implement Military Justice within the state Military Forces, including but not limited to the Louisiana National Guard, the Louisiana State Guard and the organized militia. This is a procedural regulation that will not impact state or local governmental unit costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state and local governments will not be affected by the proposed regulation.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed regulation provides regulatory guidance to assist units with uniform procedures to implement Military Justice within the state Military Forces. This is a procedural regulation that will not have a direct financial impact on affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed regulation provides regulatory guidance to assist units with uniform procedures to implement Military Justice within the state Military Forces. This is a procedural regulation will not have a direct impact on competition or employment.

Bennett C. Landreneau, MG
Adjutant General
0908#032

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Board of River Port Pilot Commissioners

Editor's Note: This Notice of Intent, originally published in the May 20, 2009, issue of the *Louisiana Register*, is being republished to correct an error.

River Port Pilots (LAC 46:LXX.Chapters 31-36)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 34:991(B)(3), the Board of River Port Pilot Commissioners hereby gives notice of intent to promulgate Rules and to repeal and reenact its Rules. The proposed Rules restate existing Rules and will be reenacted for the purpose of codification. New Rules are in the public's interest and will promote public safety. The new regulations remove the requirement to obtain a First Class Pilot's License on the Mississippi River Gulf Outlet which has been decommissioned by the United States Government. The rules provide for a notice provision for the submission of apprentices and modify the deputy pilot system. These original rules were promulgated in October 20, 2003. The board has conducted several meetings to receive comments from interested parties and undertook some revisions.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXX. River Pilots
Subpart 4. Board of River Port Pilot Commissioners
Chapter 31. General Provisions
§3103. Definitions

A. The following terms shall have the following meaning as used in these rules.

Applicant—one who submits an application to become a river port pilot.

Apprentice—one who has been selected to become a river port pilot pending successful completion of the apprenticeship program.

Apprentice Candidate—one whose application has been certified by the board.

Board—the Board of River Port Pilot Commissioners as defined in R.S. 34:991.

Commission—the appointment by the governor authorizing one to perform the duties of a river port pilot.

Commissioner—a member of the Board of River Port Pilots Commissioners for the Port of New Orleans as appointed and serving in accordance with state law.

Conviction—having been found guilty by judgment or by plea and includes cases of deferred adjudication (no contest, adjudication withheld, etc.) or where the court requires a person to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of a trial court finding. Expunged convictions must be reported unless the expungement was based upon a showing that the court's earlier conviction was in error.

Deputy Pilot—a commissioned river port pilot who is piloting subject to restrictions as set forth in these regulations

Drug—all controlled dangerous substances as defined in R.S. 40:961(7).

Marine Incident—a personal injury, loss of life, discharge of pollution, collision and/or allision, wave wash or suction resulting in an injury or damage, or hard grounding in which the vessel is damaged or needs assistance to be re-floated.

Pilot—river port pilots as defined in R.S. 34:992 or any person performing duties pursuant to a River Port Pilot Commission.

Prescription Medication—medication which can only be distributed by the authorization of a licensed physician as defined in R.S. 40:961(30).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2068 (October 2003), amended LR 35:

§3105. Board of River Pilot Commissioners for the Port of New Orleans

A. The duties of the board are established pursuant to R.S. 34:991.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:

§3107. Application

A. Any person wishing to submit an application to become an apprentice candidate must submit a written request for an application to the board at its address. The board's current address is:

Board of River Port Pilot Commissioners
c/o Application Request
P. O Box 7325
Metairie, LA 70010

B. All applications to become an apprentice candidate must be in writing, must be signed by the applicant, and presented to the secretary of the board. All applications must be notarized and accompanied by satisfactory evidence of compliance of the board's requirements.

C. Annually, the board will publish a notice, in a publication meeting the criteria of an official journal for the state of Louisiana, that it will accept applications for the subsequent calendar year for selection into the River Port Pilot Apprenticeship Program.

D. The board will accept applications for selection into the River Port Pilot Apprenticeship Program from January 1st to October 31st of each year.

E. After October 31st, the board will review the applications, schedule physicals, have background checks run on the applicant and certify that the applicants meet the criteria set forth by the board. Upon request, the board may allow the applicant to submit to a physical before October 31st.

F. On or about January 1st the board will prepare a list of apprentice candidates eligible to be selected. The list shall remain in place until December 31st at which time the list will be withdrawn and a new list will be prepared in accordance with these regulations.

G. Any applicant who submits an application with false or misleading information or false, misleading, forged or altered supporting documents will have their application deemed void. The board, in its discretion, may prohibit the applicant from submitting an application in the future. Nothing in this paragraph will affect the enforcement of state and federal laws regarding the submission of a false information and documents to a state board.

H. When the pilots notify the board that there is a necessity for pilots, the board will submit to the pilots the list of eligible apprentice candidates as described in §3107.F, and pursuant to RS 34:993, the pilots will select the apprentice candidates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:

Chapter 32. Licensing, Qualifications, and Apprenticeship
§3201. General Qualifications

A. Applicant must be of good moral character. Evidence of a clear police record will be considered, but the board reserves the right to examine other sources of information as to the applicant's character.

B. Applicant is and has been a voter of the state of Louisiana continuously for at least two years before submitting an application to become an apprentice candidate.

C. Applicant must not have reached his fortieth birthday prior to the first day of balloting on apprentices by the pilots.

D. Applicant shall not have been convicted of a felony offense involving either drugs or the personal consumption of alcohol for 60 months prior to the date of application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3) and R.S. 34:993.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:

§3203. Licensing Qualifications

A. Each applicant must meet the below listed requirements.

1. Each applicant must hold a United States Coast Guard First Class Pilot License of Steam or Motor Vessel of any gross tons for the Mississippi River from Southport Mile 104.7 to the Head of Passes Mile 0.0 and for the Inner Harbor Navigation Canal (Industrial Canal) from the Mississippi River to Lake Pontchartrain. In the event the Inner Harbor Navigation Canal is closed and or navigation on the canal is severely restricted, the board in its discretion may waive the requirement of a First Class Pilot License on all or part of the Inner Harbor Navigation Canal.

2. Each applicant must meet one of the following requirements:

a. a United States Coast Guard Masters' License of Steam or Motor Vessels of not less than 1600 gross tons or any upgrade thereof upon Inland Waters, Rivers or Lakes; or

b a United States Coast Guard Second Mate's License (or any upgrade thereof) of Steam or Motor Vessels of any gross tons upon oceans;

3. Each applicant must have held one of the licenses described in §3203.A.1., A.2.a. or A.2.b. for a period of one year prior to the deadline for submitting an application (October 31st) to become an apprentice candidate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:

§3205. Education Qualifications

A. In addition to the requirements described herein, the Applicant must have a bachelor's degree or diploma granted by a college or university accredited by an accreditation agency or association recognized by the United States Department of Education.

B. Applicants shall document the aforementioned requirements by providing the board with a diploma or a transcript of the mandatory educational requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:

§3207. Physical Qualifications

A. The applicant, when requested, must be examined by a physician, clinic or group of physicians of the board's choosing to determine the applicant's physical condition. The examination report must reflect to the board's satisfaction that the applicant’s physical condition is satisfactory and commensurate with the work and responsibilities of the duties of a pilot, and will enable him to safely perform the duties of pilotage. The board shall have no responsibilities for the examinations or their results. The applicant submitting to such examinations will hold the board harmless from any responsibility for any injury or loss, including attorneys' fees and the costs of defense, incurred as a result of the examination or the reliance by the board or any others on the results of such examination.

B. The applicant, when requested, shall submit to an examination by a mental health professional or group composed of such mental health professionals of the board's choosing. The report of this examination must reflect, to the board's satisfaction, that the applicant’s mental condition and aptitude is satisfactory and commensurate with the work and responsibilities of the duties of a pilot, and will enable him to safely perform the duties of pilotage. The board shall have no responsibility for the examinations or their results. The applicant submitting to such examinations will hold the board harmless from any responsibility for any injury or loss, including attorneys' fees and the costs of defense, incurred as a result of the examination or the reliance by the board or any others on the results of such examination.

C. The applicants shall submit to drug screening in the same manner as pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:

§3209. Apprenticeship

A. The apprentice must serve a minimum of 12 months of apprenticeship in his proposed calling, handling deep draft vessel over the operating territory of the pilots under the tutelage of not less than 50 percent of the pilots. The apprentice must set forth in detail the names of the vessels handled, dates handled, draft, tonnage, between what points so moved, and the names of the supervising pilots. No apprentice shall be permitted to be examined for commissioning who has not fulfilled the requirements set forth by the board. The apprenticeship work must be certified by the board during the apprenticeship program. The board reserves the right to substitute work requirements, require satisfactory completion of additional trips, extended the apprenticeship, or terminate the apprenticeship, when deemed necessary.

B. The board shall examine the apprentices as to their knowledge of pilotage and their proficiency and capability to serve as pilots. These examinations shall be given in such manner and shall take such form as the board may, in its discretion from time to time, elect.

C. The board shall certify for the governor’s consideration those apprentices who satisfactorily complete all requirements established by state law and these rules and who complete and pass the examinations given by the board.

D. Should the apprentice fail the examination, the board, at its discretion, may terminate the apprenticeship, or may designate additional apprenticeship requirements to be satisfied by the apprentice before he may again petition the board for examination.

E. If an apprentice fails to successfully satisfy the requirements of the apprenticeship program within 24 months as determined by the board, the apprenticeship may be terminated at the board’s discretion.

F. The apprentice shall submit to drug screening in the same manner as pilots.

G. The apprentice shall report to the board any change in their physical or mental condition that in any way may affect their performance as an apprentice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:

§3211. Age Restrictions

A. A pilot shall be required to resign his pilot commission in the calendar year in which the pilot attains the age of 70.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:

Chapter 33. Deputy Pilots

§3301. Restricted Duties Guidelines

A. The deputy pilots shall adhere to the following guidelines and restrictions. The failure to strictly adhere to these guidelines may subject the deputy pilot to disciplinary action at the board's discretion. The guidelines are divided into three tiers.

1. Tier One shall commence immediately after the deputy pilot is commissioned. The deputy pilot shall pilot:
   a. vessels of 650 feet in length or less
   b. a minimum of 50 vessel
   c. a minimum of four (4) bridge hours per vessel movement
   d. for a period of not less than 120 calendar days.
2. Tier Two shall commence upon the completion of Tier One. The deputy pilot shall pilot:
   a. vessels of 700 feet in length or less
   b. a minimum of 50 vessel
   c. a minimum of four (4) bridge hours per vessel movement
   d. for a period of not less than 120 calendar days.
3. Tier Three shall commence immediately upon the completion of Tier Two. The deputy pilot shall pilot:
   a. vessels of 750 feet in length or less
   b. a minimum of 50 vessel
   c. a minimum of four (4) bridge hours per vessel movement
   d. for a period of not less than 120 calendar days.

B. During each tier, the deputy pilot must set forth a report providing the name of the vessel piloted, the date and time the vessel was piloted, the length, draft, tonnage of the vessel piloted, the route of the vessel piloted, and the start and end time for each vessel piloted.

C. A deputy pilot shall be prohibited from:

1. piloting passenger vessels regardless of draft, tonnage or length;
2. piloting tank vessels including OBO's (Oil/Bulk/Ore) in the oil trade;
3. standing watch at the Vessel Traffic Center;
4. yachts;
5. military vessels.

D. After a deputy pilot has completed each tier, the board shall evaluate the deputy pilot's ability and competence to handle the above classes of vessels. Upon such examination, the board shall determine whether, and if so, for what time period, the deputy pilot shall continue to be subject to any or all of the restrictions. The board reserves the right to substitute work requirements, require satisfactory completion of additional trips or extend the deputy pilot's restrictions when deemed necessary.

E. No persons are allowed on the bridge with the deputy pilot with the exception of the bridge team, U.S. Coast Guard representatives, government officials, the vessel's crew, or a commissioner or a designee of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:

Chapter 34. Drug and Alcohol Policy

§3401. Drug Use

A. A pilot shall be free of use of any drug as defined in §3103, excluding prescription medication as defined in §3103 so long as use of such prescription medication does not impair the physical competence of the pilot to discharge his duties.

B. The board shall designate a testing agency or agencies to perform scientific test or tests to screen for the presence of drugs. These drug tests shall be conducted at random, post incident, and for reasonable suspicion at the discretion of the board.

C. All pilots shall submit to reasonable scientific testing and screening for drugs when directed by the board.

D. The results of drug testing and screening shall be confidential and disclosed only to the board and the pilot tested, except that:

1. The board may report the results to the governor, the board of directors of the Crescent River Port Pilot Association, and the United States Coast Guard;
2. In the event that the board determines that a hearing is required, there shall be no requirement of confidentiality in connection with the hearing.

E Any pilot testing positive for drugs or any residual thereof shall be suspended from performing the duties of a pilot pending a hearing.

F. Any pilot who refuses to submit to reasonable scientific testing or screening for drugs, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results shall be suspended from performing the duties of a pilot pending a hearing. Such refusal shall be considered as a positive test.

G. Any pilot found to be in violation of this Section may be reprimanded, fined, evaluated, and/or treated for drug use and/or have his commission suspended or revoked.

H. Any pilot who is required to undergo evaluation and/or treatment shall do so at his own personal expense and responsibility; the physician, as well as the evaluation and treatment facility must be approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2071 (October 2003), amended LR 35:

§3403. Alcohol Use

A. No pilot shall consume any alcohol of any nature whatsoever within six hours before, or during, the performance of his pilotage duties.

B. No pilot shall perform his duties as a pilot if his blood alcohol content is 0.04 or greater.

C. Any pilot who believes he would be in violation of any of these rules if he were to perform his duties as a pilot is obligated to remove himself from duty. The pilot is the absolute insurer of his or her state of mind, physical abilities, and overall well being.

D. The board may request a pilot to submit himself to a blood alcohol test upon complaint or reasonable suspicion that a pilot is performing his duties as a pilot while under the influence of alcohol.

E. Any pilot who refuses to submit to reasonable scientific testing or screening for alcohol, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results shall be suspended from performing the duties of a pilot pending a hearing. Such refusal to cooperate will be considered as a positive test.

F. Any pilot found to be in violation of this Section may be reprimanded, fined, evaluated and/or treated for alcoholism and/or have his commission suspended or revoked.

G. Any pilot who is required to undergo evaluation and/or treatment shall do so at his own personal expense and responsibility; the physician, as well as the evaluation and treatment facility must be approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2071 (October 2003), amended LR 35:

Chapter 35. Continuing Education

§3501. Continuing Professional Education

A. Every pilot seeking to maintain a pilot's commission must attend 40 hours of professional education classes and programs every five year cycle as defined by the board. The next five year cycle commences on January 1, 2010.

B. In addition the pilot must attend a man model ship training program every five years.

C. The professional education classes and programs approved by the board include but are not limited to:

1. electronic ship simulation training;
2. small-scale ship simulation training;
3. VTS/VTIS simulator training;
4. bridge resource management training for pilots;
5. Pilot Portable Unit training;
6. any other course or program that the board deems appropriate

D. It shall be the responsibility of the pilot to attend the professional education classes and programs approved by the board.

E. It shall be the responsibility of the pilot to file with the board proof that the pilot has attended the required professional education classes and programs.

F. Any pilot who fails to attend the required professional education classes or programs may be reprimanded, fined, and/or suspended until the pilot complies with this Section.

G. The board, for good cause shown, may grant a waiver or extend the time for a pilot to complete the continuing professional education requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2072 (October 2003), amended LR 35:

Chapter 36. Investigation, Competence, Complaints and Criminal Convictions

§3601. Marine Incident Investigation

A. Any pilot piloting a vessel involved or allegedly involved in a marine incident shall as soon as practical notify the board of the incident by telephone, however, said notice must occur within four hours of the incident.

B. The pilot shall provide the board a written report on the form provided by the board within two days after the marine incident was first reported.

C. The pilot shall make himself available to the board and cooperate with the board during the board's investigation of the marine incident.

D. The pilot shall provide the board a detailed written statement of the marine incident if requested by the board. The report shall be provided to the board with 10 days of the board's request. The board, in its discretion, may grant an extension.

E. A pilot failing to comply with these regulations may be reprimanded, fined and/or suspended.

F. After its investigation of the marine incident, the board may render a findings and conclusions. The findings and conclusions is solely and exclusively the opinion of the board relative to the conduct of the pilot and is not intended to be introduced as evidence in legal proceeding. Pursuant to R.S. 34:1005 all communications between the pilot and the board are deemed confidential, and the findings and conclusions of the board shall not be deemed discoverable or relevant in any civil proceeding.

G. The board may, under the procedure herein set out, examine such cases of dereliction of duty of a pilot as come to their attention, and on the basis of such examination make recommendations to the governor relative to the pilot's commission. The pilot may elect to consent to such corrective or remedial steps as may be suggested by the board under the circumstances, waiving executive review. All violations of the regulations of any governmental agency by a pilot shall come within the purview of this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2072 (October 2003), amended LR 35:

§3603. Competence

A. Any pilot who has not performed his duties as a pilot for a period of 365 calendar days shall be required to report said absence to the board. Prior to returning to the duties and responsibilities of a pilot, the pilot must satisfy the return to duty requirements set forth by the board.

B. Any pilot or apprentice who for any reason becomes physically or mentally incompetent to perform the duties of a pilot is required to immediately notify the board of the his condition.

C. The pilot is the absolute insurer of his state of mind, physical abilities, and overall well being.

D. Any pilot who lacks the competency to perform the duties of a pilot shall be suspended from performing the duties of a pilot pending a hearing.

E. Any pilot found to be incompetent may be evaluated and/or have his commission suspended or revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2072 (October 2003), amended LR 35:

§3605. Complaints

A. Any person having cause to file a complaint against a pilot may file such complaint with the board.

B. The complaint may be sent to the board at its address.

Board of River Port Pilot Commissioners
P. O Box 7325
Metairie, LA 70010

C. The board shall investigate all complaints and take all appropriate action based on the nature of the complaint.

D. The board shall review all anonymous complaints and shall investigate and if necessary take appropriate action on complaints with merit in the board's discretion.

E. Any person wishing to make an anonymous compliant against a pilot may do so by calling the board at its telephone number or by forwarding an anonymous letter to the above address. The board's telephone number is (504) 218-7477.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2072 (October 2003), amended LR 35:

§3607. Criminal Convictions

A. Any pilot or apprentice convicted of the following must notify the board prior to returning to duty as a pilot:

1. a felony;
2. any offense in which the use of drugs or alcohol is involved.

B. The board shall conduct a hearing to review the competency of any pilot who has been convicted of any offense described in §3607.A, and the board, in its discretion, may find the pilot by virtue of the conviction incompetent to perform his pilot duties.

C. Any pilot or apprentice who fails to comply with these regulations may be reprimanded, fined, and/or suspended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2073 (October 2003), amended LR 35:

Family Impact Statement

The proposed Rules of the Board of River Port Pilot Commissioners should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on a 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. the family's earnings and budget;
5. the behavior and personal responsibility of children; or
6. the family's ability or that the local government to perform the function as contained in the proposed Rules.

All interested persons are invited to submit written comments on the proposed regulations. Such comments must be received no later June 18, 2009, at 4:30 p.m. and should be sent to Captain Jack Anderson, President, Board of River Port Pilot Commissioners, P.O. Box 7325, Metairie, LA 70010.

A public hearing will be held on June 18, 2009, at 2728 Athania Pkwy, Metairie, LA at 9:30 a.m. Persons wishing to speak at the hearing must submit a written comment. The proposed regulation is available for inspection at the Office of the State Register website: http://www.doa.louisiana.gov/osr/osr.htm.

Captain Jack Anderson
President

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: River Port Pilots

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Applicants to the apprentice program will be required to provide an annual physical to have their application approved. The prior rule required applicants to submit a physical only when a selection process was underway. The cost of the physical evaluation is estimated at $400.

Applicants will no longer be required to obtain a First Class Pilot's License for the Mississippi River Rule Outlet (MRGO). This license is issued by the United States Coast Guard. The elimination of this requirement will save the applicant approximately $100 and applicants will no longer be required to make 10-20 round trips over the MRGO to acquire the license.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Michael R. Delesdernier	H. Gordon Monk
General Counsel	Legislative Fiscal Officer
0908#034	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Direct Service Worker Registry Training Curriculum
(LAC 48:I.9215)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.9215 as authorized by R.S. 40:2179-2179.1. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with the directives of Act 306 of the 2005 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the establishment and maintenance of the Direct

Service Worker (DSW) registry and defined the qualifications and requirements for direct service workers (*Louisiana Register*, Volume 32, Number 11). The November 20, 2006 Rule was amended to further clarify the provisions governing the DSW registry (*Louisiana Register*, Volume 33, Number 1). The department promulgated an Emergency Rule to amend the provisions of the January 20, 2007 Rule governing the training curriculum for direct service workers to require that licensed providers and other state approved training entities that wish to conduct training for direct service workers, and do not have an approved training curriculum, must use the department-approved training curriculum (*Louisiana Register*, Volume 35, Number 3). This proposed Rule is being promulgated to continue the provisions of the March 1, 2009 Emergency Rule.

Title 48
PUBLIC HEALTH-GENERAL
Part I. General Administration
Subpart 3. Health Standards
Chapter 92. Direct Service Worker Registry
Subchapter B. Training and Competency Requirements
§9215. Training Curriculum

A. - B.3. ...

C. Curriculum Approval. Effective March 1, 2009, licensed providers and other state-approved training entities that wish to offer training for direct service workers, and do not have a training curriculum approved by the department, must use the training curriculum developed by Health Standards. Training curriculums approved by Health Standards prior to March 1, 2009 may continue to be used.

1. To obtain approval to use the Health Standards training curriculum, an entity (provider or school) must submit the following documentation to the Health Standards Section:

a. the name of the training coordinator and his/her qualifications; and

b. a list of any other instructors.

c. Repealed.

2. If a school is applying for approval, it must identify the place(s) used for classroom instruction and clinical experience.

3. If a provider or school that has an approved curriculum ceases to provide training and/or competency evaluations, it must notify the department within 10 days. Prior to resuming the training program and/or competency evaluations, the provider or school must reapply to the department for approval to resume the program.

4. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR 33:96 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, or autonomy as described in R.S. 49:972 by assuring that direct service workers have the training necessary to provide adequate health care services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 29, 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 the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Direct Service Worker Registry Training Curriculum

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 09-10. It is anticipated that $410 (SGF) will be expended in FY 09-10 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 federal revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to amend the provisions governing the training curriculum for direct service workers to require that licensed providers and other state approved training entities that wish to conduct training for direct service workers (approximately 25,000 statewide), and do not have an approved training curriculum, must use the department-approved training curriculum. 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.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jerry Phillips
Medicaid Director
0908#091

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Facility Need Review—Exception Criteria
for Bed Approval and Home and
Community-Based Service Providers
(LAC 48:I.12501-12505, 12513,
12523, 12527, 12533, and 12541)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.12501-12505, §12513, §12527, §12533 and adopts §12523 and §12541 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 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 amended the provisions governing the facility need review (FNR) process to establish an exemption from the 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 allow 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 subsequently promulgated an Emergency Rule to amend the October 11, 2008 Emergency Rule to further clarify these provisions (*Louisiana Register*, Volume 35, Number 1). The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the January 20, 2009 Emergency Rule to repromulgate these provisions in the appropriate place in the *Louisiana Administrative Code (Louisiana Register,* Volume 35, Number 3). The department amended the March 20, 2009 Emergency Rule governing the facility need review process to incorporate provisions that will allow nursing facilities 120 days to re-license and re-enroll Medicaid beds after placing the beds in alternate use status (*Louisiana Register,* Volume 35, Number 6).

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing also adopted provisions governing the inclusion of adult residential care providers in the FNR Program and reorganized Chapter 125 of Title 48 of the *Louisiana Administrative Code* (*Louisiana Register*, Volume 34, Number 12). The department promulgated an Emergency Rule to amend the December 20, 2008 Rule to adopt provisions governing the inclusion of licensed home and community-based service (HCBS) providers in the FNR Program (*Louisiana Register*, Volume 35, Numbers 4 and 5). The department amended the April 13, 2009 Emergency Rule to clarify provisions governing changes in the location of facilities and changes in ownership (*Louisiana Register,* Volume 35, Number 7). The department now proposes to continue the provisions of the June 20, 2009 and the July 20, 2009 Emergency Rules governing the facility need review process.

Title 48
PUBLIC HEALTH—GENERAL
Part 1. General Administration
Subpart 5. Health Planning
Chapter 125. Facility Need Review
Subchapter A. General Provisions
§12501. Definitions

A. Definitions. When used in this Chapter the following terms and phrases shall have the following meanings unless the context requires otherwise.

* * *

Home and Community Based Service (HCBS) Providers—those agencies, institutions, societies, corporations, facilities, person or persons, or any other group intending to provide or providing respite care services, personal care attendant (PCA) services, or supervised independent living (SIL) services, or any combination of services thereof, including respite providers, SIL providers, and PCA providers.

* * *

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), amended LR 28:2190 (October 2002), amended LR 30:1023 (May 2004), amended LR 32:845 (May 2006), LR 34:2611 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§12503. General Information

A. The Department of Health and Hospitals will conduct a facility need review (FNR)to determine if there is a need for additional facilities, beds or units to enroll to participate in the Title XIX Program for the following facility types:

1. nursing facilities;
2. skilled nursing facilities; and
3. intermediate care facilities for persons with developmental disabilities.
4. Repealed.

B. 42 CFR Part 442.12(d) allows the Medicaid agency to refuse to execute a provider agreement if adequate documentation showing good cause for such refusal has been compiled (i.e., when sufficient beds are available to serve the Title XIX population). The Facility Need Review Program will review applications for additional beds, units and/or facilities to determine whether good cause exists to deny participation in the Title XIX Program to prospective providers of those services subject to the FNR process.

C. The department will also conduct a FNR for the following provider types to determine if there is a need to license additional units, providers or facilities:

1. adult residential care providers or facilities; and
2. home and community-based service providers, as defined under this Chapter.

D. The department shall be responsible for reviewing proposals for facilities, beds, units and agencies submitted by health care providers seeking to be licensed or to participate in the Medicaid Program. The secretary or his designee shall issue a decision of approval or disapproval.

1. The duties of the department under this program include, but are not limited to:

a. determining the applicability of these provisions to all requests for approval to enroll facilities, beds, or units in the Medicaid Program or to license facilities, units, providers or agencies;

b. - d. …

E. No nursing facility, skilled nursing facility, or ICF-DD bed, nor provider units/beds shall be enrolled in the Title XIX Program unless the bed has been approved through the FNR Program. No adult residential care provider or home and community-based services provider may be licensed by the department unless the facility, unit or agency has been approved through the FNR Program.

1. - 4. Repealed.

F. Grandfather Provision. An approval shall be deemed to have been granted under this program without review for NFs, ICFs-DD and/or beds that meet one of the following descriptions:

1. all valid Section 1122 approved health care facilities/beds;

2. all valid approvals for health care facilities/beds issued under the Medicaid Capital Expenditure Review Program prior to the effective date of this program;

3. all valid approvals for health care facilities issued under the Facility Need Review Program; or

4. all nursing facility beds which were enrolled in Medicaid as of January 20, 1991.

G. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers and ICFs-DD that meet one of the following conditions:

1. HCBS providers which were licensed by January 31, 2009 or had a completed initial licensing application submitted to the department by June 30, 2008; or

2. existing licensed ICFs-DD that are converting to the proposed Residential Options Waiver.

H. Exemptions from the facility need review process shall be made for:

1. a nursing facility which needs to be replaced as a result of destruction by fire or a natural disaster, such as a hurricane; or

2. a nursing facility and/or facility building owned by a government agency which is replaced due to a potential health hazard.

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

HISTORICAL NOTE: Repealed and repromulgated 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), amended LR 28:2190 (October 2002), LR 30:1023 (May 2004), amended LR 32:845 (May 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), amended LR 35:

§12505. Application and Review Process

A. FNR applications shall be submitted to the Bureau of Health Services Financing, Health Standards Section, Facility Need Review Program. Application shall be submitted on the forms (on 8.5 inch by 11 inch paper) provided for that purpose, contain such information as the department may require, and be accompanied by a nonrefundable fee of $10 per bed or unit. The nonrefundable application fee for an HCBS provider shall be a flat fee of $150. An original and three copies of the application are required for submission.

1. - 3.e.i. …

ii. acknowledgement that failure to meet the time-frames established in this Chapter will result in automatic expiration of the FNR approval for the ARCP units.

B. - B.3.b. …

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21:812 (August 1995), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), amended LR 35:

Subchapter B. Determination of Bed, Unit, Facility or Agency Need

§12513. Alternate Use of Licensed Approved Title XIX Beds

A. - D. …

E. A nursing facility that has converted beds to alternate use may elect to remove the beds from alternate use and re-license and re-enroll the beds as nursing facility beds. The facility has 120 days from removal from alternate use to re-license and re-enroll the beds. Failure to re-license and re-enroll the beds within 120 days will result in the automatic expiration of FNR approval.

F. The nursing facility beds converted to alternate use shall be used solely for the purpose of providing health care services at a licensed and/or certified facility.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), LR 34:2617 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

§12523. Home and Community-Based Service Providers

A. No HCBS provider shall be licensed to operate unless the FNR Program has granted an approval for the issuance of an HCBS provider license. Once the FNR Program approval is granted, an HCBS provider is eligible to be licensed by the department, subject to meeting all of the requirements for licensure.

B. The service area for proposed or existing HCBS providers is the DHH region in which the provider is or will be licensed.

C. Determination of Need/Approval

1. The department will review the application to determine if there is a need for an additional HCBS provider in the geographic location for which the application is submitted.

2. The department shall grant FNR approval only if the FNR application, the data contained in the application, and other evidence effectively establishes the probability of serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed.

3. In reviewing the application, the department may consider, but is not limited to, evidence showing:

a. the number of other HCBS providers in the same geographic location and region servicing the same population; and

b. allegations involving issues of access to health care and services.

4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed. The department shall not grant any FNR approvals if the application fails to provide such data and evidence.

D. Applications for approvals of licensed providers submitted under these provisions are bound to the description in the application with regard to the type of services proposed as well as to the site and location as defined in the application. FNR approval of licensed providers shall expire if these aspects of the application are altered or changed.

E. FNR approvals for licensed providers are non-transferrable and are limited to the location and the name of the original licensee.

1. An HCBS provider undergoing a change of location in the same licensed region shall submit a written attestation of the change of location and the department shall re-issue the FNR approval with the name and new location. An HCBS provider undergoing a change of location outside of the licensed region shall submit a new FNR application and fee and undergo the FNR approval process.

2. An HCBS provider undergoing a change of ownership shall submit a new application to the department's FNR Program. FNR approval for the new owner shall be granted upon submission of the new application and proof of the change of ownership, which must show the seller's or transferor's intent to relinquish the FNR approval.

3. FNR Approval of a licensed provider shall automatically expire if the provider is moved or transferred to another party, entity or location without application to and approval by the FNR program.

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

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

Subchapter C. Revocation of Facility Need Review Approvals

§12527. General Provisions

A. - C. …

D. Except as provided in Subchapter E and Subchapter F of this Chapter, approval shall be revoked under the following circumstances:

D.1. - 2. …

E. Except as provided in Subchapter E and Subchapter F of this Chapter, beds may not be disenrolled except as provided under the alternate use policy and during the 120-day period to have beds relicensed or recertified. The approval for beds disenrolled will automatically expire except as otherwise indicated.

F. The facility need review approval for licensed nursing facilities or ICF/DDs located in an area(s) which have been affected by an executive order or proclamation of emergency or disaster due to Hurricanes Katrina and/or Rita, and which were operating at the time the executive order or proclamation was issued under R.S. 29:794, shall be revoked or terminated unless the nursing facility or ICF/DD re-licenses and re-enrolls its beds in the Medicaid Program within 120 days from January 1, 2010.

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), amended LR 28:2190 (October 2002), amended LR 30:1023 (May 2004), amended LR 32:845 (May 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing LR 34:2619 (December 2008), amended LR 35:

Subchapter F. Exception Criteria for Bed Approvals

§12533. General Provisions

A. The facility need review bed approvals for a licensed and Medicaid certified nursing facility or ICF/DD 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 for a nursing facility and one year for an ICF/DD, following the date of such executive order or proclamation, provided that the following conditions are met:

1. the nursing facility or ICF/DD 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:

a. the nursing facility or ICF/DD 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;

b. the nursing facility or ICF/DD intends to resume operation as a nursing facility or ICF/DD in the same service area;

i. if the ICF/DD was approved through an RFP, the ICF/DD must conform to the requirements of the RFP as defined by the department; and

c. 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.

2. the nursing facility or ICF/DD resumes operating as a nursing facility or ICF/DD in the same service area, within two years for a nursing facility and within one year for an ICF/DD, of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766; and

3. the nursing facility or ICF/DD continues to submit the required documentation and information to the department.

B. The provisions of this Section shall not apply to:

1. a nursing facility or ICF/DD which has voluntarily surrendered its facility need review bed approval; or

2. a nursing facility or ICF/DD which fails to resume operations as a nursing facility or ICF/DD in the same service area, within two years for a nursing facility and within one year for an ICF/DD, of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766.

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

C.1. – M. Repealed.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21:812 (August 1995), amended LR 34:2621 (December 2008), amended and repromulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Subchapter G. Administrative Appeals

§12541. General Provisions

A. Administrative appeal hearings shall be conducted pursuant to the Administrative Procedures Act.

B. An applicant may request an administrative hearing within 30 calendar days after receipt of the department's notice of denial of facility need review.

1. The request for an administrative hearing must be made in writing to the department's Bureau of Appeals.

2. The request must contain a statement setting forth the specific reason with which the applicant disagrees and the reasons for the disagreement.

3. Unless a timely and proper request is received by the Bureau of Appeals, the findings of the department shall be considered a final and binding administrative determination.

4. The request shall be considered timely if it is postmarked by the 30th calendar day after receipt of the department's notice of denial.

5. A fee of $500 must accompany a request for an appeal.

C. When an administrative hearing is scheduled, the Bureau of Appeals shall notify the applicant in writing.

1. The notice shall be mailed no later than 15 calendar days before the scheduled date of the administrative hearing and shall contain the:

a. date of the hearing;

b. time of the hearing; and

c. place of the hearing.

D. The administrative hearing shall be conducted by an administrative law judge from the Bureau of Appeals according to the following procedures.

1. An audio recording of the hearing shall be made.

2. A copy of the recording may be prepared and reproduced at the request of a party to the hearing, provided he bears the cost of the copy of the recording.

3. Testimony at the hearing shall be taken only under oath, affirmation or penalty of perjury.

4. Each party shall have the right to:

a. call and examine parties and witnesses;

b. introduce exhibits;

c. question opposing witnesses and parties on any matter relevant to the issue, even though the matter was not covered in the direct examination;

d. impeach any witness, regardless of which party first called him to testify; and

e. rebut the evidence against him/her.

5. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of such evidence improper over objection in civil or criminal actions.

a. Documentary evidence may be received in the form of copies or excerpts.

b. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

c. The rules of privilege recognized by law shall be given effect.

6. The administrative law judge may question any party or witness and may admit any relevant and material evidence.

7. A party has the burden of proving whatever facts he/she must establish to sustain his/her position.

8. An applicant who has been denied through the facility need review process shall present his case first and has the burden to show by a preponderance of the evidence that facility need review approval should have been granted by the department pursuant to the provisions of this rules.

9. After an applicant denied facility need review has presented his evidence, the department will then have the opportunity to present its case and to refute and rebut the testimony and evidence presented by the applicant.

E. Any party may appear, and be heard, at any appeals proceeding through an attorney or a designated representative. The representative shall have a written authorization to appear on behalf of the applicant.

1. A person appearing in a representative capacity shall file a written notice of appearance on behalf of a provider identifying:

a. his/her name;

b. address;

c. telephone number; and

d. the party being represented.

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

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

§12543. Preliminary Conferences

A. Although not specifically required, the Bureau of Appeals may schedule a preliminary conference. The purposes of the preliminary conference include, but are not limited to:

1. clarification, formulations and simplifications of issues;

2. resolution of controversial matters;

3. exchange of documents and information;

4. stipulations of fact to avoid unnecessary introduction of witnesses;

5. other matters which may aid disposition of the issues; and

6. scheduling a hearing date that is convenient to all parties.

B. When the Bureau of Appeals schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear on a specific date and at a specific time and place.

C. When the preliminary conference resolves all or some of the matters in controversy, a summary of the findings agreed to at the conference shall be provided by the administrative law judge. When the preliminary conference does not resolve all of the matters in controversy, an administrative hearing shall be scheduled on those matters still in controversy.

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

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

§12545. Responsibilities of the Administrative Law Judge

A. The administrative law judge shall have the power to:

1. administer oaths and affirmations;
2. regulate the course of the hearings;
3. set the time and place for continued hearings;
4. fix the time for filing briefs and other documents; and
5. direct the parties to appear and confer to consider simplification of the issues.

B. At the conclusion of the administrative hearing, the administrative law judge shall:

1. take the matter under advisement; and
2. prepare a written proposed decision which will contain:
   a. findings of fact;
   b. a determination of the issues presented;
   c. a citation of applicable policy and regulations; and
   d. an order.

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

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

§12547. Witnesses and Subpoenas

A. Each party shall arrange for the presence of their witnesses at the administrative hearing.

B. A subpoena to compel the attendance of a witness shall be issued by the administrative law judge upon written request by a party or on his own motion.

C. The party is required to notify the administrative law judge in writing at least 10 days in advance of the hearing of those witnesses whom he wishes to be subpoenaed.

D. No subpoena shall be issued until the party (other than the department) who wishes to subpoena a witness first deposits with the hearing officer a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671.

E. The department may request issuance of subpoenas without depositing said sum of money. The witness fee may be waived if the person is an employee of the department.

F. An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda or other records, or to permit inspection of such, shall be made in writing to the administrative law judge. The written application shall:

1. give the name and address of the person or entity upon whom the subpoena is to be served.
2. precisely describe the material that is desired to be produced;
3. state the materiality thereof to the issued involved in the proceedings; and
4. include a statement that, to the best of applicant's knowledge, the witness has such items in his possession or under his control.

G. Any party or witness may file a motion to quash, which shall be scheduled by the administrative law judge for a contradictory hearing.

H. When any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, correspondence, memoranda or other records, or to give testimony as required, any party may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt pursuant to the Administrative Procedures Act.

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

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

§12549. Continuances or Further Hearings

A. The Bureau of Appeals shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Bureau of Appeals upon good cause shown.

1. If the hearing is not commenced within 180 days from the docketing of the appeal, the decision of the department will be considered upheld.

B. Where the administrative law judge, at his/her discretion, determines that additional evidence is necessary for the proper determination of the case, he/she may:

1. continue the hearing to a later date and order the party(s) to produce additional evidence; or
2. close the hearing and hold the record open in order to permit the introduction of additional documentary evidence.
3. any evidence submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

C. Written notice of the time and place of a continued or further hearing shall be given. When a continuance of further hearing is ordered during an administrative hearing, oral notice of the time and place of the continued hearing may be give to each party present.

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

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

§12551. Proposed and Final Decisions

A. The written proposed decision shall be provided to the secretary of the department or his designee. The secretary or his designee may:

1. adopt the proposed decision;
2. reject it based upon the record; or
3. remand the proposed decision to the administrative law judge to take additional evidence.
   a. If the proposed decision is remanded, the administrative law judge shall submit a new proposed decision to the secretary or his designee.

B. The decision of the secretary shall be final and binding upon adoption, subject only to judicial review by the courts. A copy of the decision shall be mailed to the applicant at his last known address or to his authorized representative.

C. Judicial review of the decision of the hearing officer shall be in accordance with the provisions of R.S. 49:964.

D. Motions for Rehearing, Reopening or Reconsideration.

1. A decision or order shall be subject to a motion for rehearing, reopening, or reconsideration by the agency, within 10 days from the date of its entry. Such motion may be made to either the administrative law judge, the director of the Bureau of Appeals, the secretary or the undersecretary, and a copy shall be filed into the administrative record.
2. The grounds for such motion shall be either that:

a. The decision or order is clearly contrary to the law and the evidence;

b. The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

c. There is a showing that issues no previously considered ought to be examined in order to properly dispose of the matter; or

d. There is other good ground for further consideration of the issues and the evidence in the public interest

3. Such motion shall be ruled upon within 15 days from the date of filing such motion. If the motion for rehearing, reopening or reconsideration is granted, the ALJ shall take further action to rehear, reopen or reconsider the matter.

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

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

§12553. Failure to Appear at Administrative Hearings

A. If an applicant fails to appear at an administrative hearing, a decision shall be issued by the Bureau of Appeals dismissing the appeal. A copy of the decision shall be mailed to each party or his representative at his last known address.

B. Any dismissal may be rescinded upon order of the Bureau of Appeals if the applicant:

1. makes written application within 10 calendar days after the mailing of the dismissal notice; and

2. provides evidence of good cause for his/her failure to appear at the hearing.

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

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, 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, and by assuring that home and community-based services are rendered by appropriately regulated and licensed providers.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 29, 2008, 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 the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Facility Need Review—Exception Criteria for Bed Approval and Home and Community-Based Service Providers

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 09-10. It is anticipated that $1,968 ($1,968 SGF) will be expended in FY 09-10 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 June 20, 2009 and July 20, 2009 emergency rules, establishes provisions allowing a Medicaid certified nursing facility or intermediate care facility for persons with developmental disabilities (ICF-DD) to protect its facility need review bed approvals for a period of time due to a declared disaster or other emergency situation. This Rule also adopts provisions to include licensed home and community-based service (HCBS) providers in the Facility Need Review (FNR) Program. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for nursing facilities, intermediate care facilities for persons with developmental disabilities or HCBS providers in FY 09-10, FY 10-11 and FY 11-12.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jerry Phillips	Robert E. Hosse
Medicaid Director	Staff Director
0908#090	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing and
Office of Aging and Adult Services

Home and Community-Based Services Waivers
Adult Residential Care (LAC 50:XXI.Chapters 301-309)

The Department of Health and Hospitals, Bureau of Health Services Financing, and the Office of Aging and Adult Services proposes to adopt LAC 50:XXI.Chapters 301-309 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, Bureau of Health Services Financing currently provides reimbursement for health care services rendered to groups of individuals

who meet the level of care requirements for institutional care but remain in a community setting. Such programs are known as home and community-based services (HCBS) waiver programs. The department currently administers five HCBS waiver programs: the Adult Day Health Care Waiver, the Children's Choice Waiver, the Elderly and Disabled Adults Waiver, the New Opportunities Waiver, and the Supports Waiver.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services proposes to adopt provisions to establish a new waiver program called the Adult Residential Care (ARC) Waiver. This waiver will provide a coordinated array of supportive personal care services to the elderly and persons with disabilities who meet nursing facility criteria but who can safely remain in the community with adequate supports and services. ARC Waiver participants will have more flexibility and choice in their living arrangements and services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services Waivers
Subpart 15. Adult Residential Care
Chapter 301. General Provisions
§30101. Introduction

A. These standards for participation specify the requirements of the Adult Residential Care (ARC) Waiver Program. The program is funded as a waiver service under the provisions of Title XIX of the Social Security Act and is administrated by the Department of Health and Hospitals (DHH).

B. Waiver services are provided under the provisions of the approved waiver agreement between the Centers for Medicare and Medicaid Services (CMS) and the Louisiana Medicaid Program.

C. Any provider of services under the ARC Waiver shall abide by and adhere to any federal or state laws, rules or any policy, procedures, or manuals issued by the department. Failure to do so may result in sanctions.

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

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

§30103. Target Population

A. The target population for the Adult Residential Care (ARC) Waiver shall be individuals who are:

1. 65 years of age or older or 21 or over with an adult onset disability (onset at age 21 or over);
2. meet the criteria for admission to a nursing facility; and
3. meet Medicaid financial eligibility.

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

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

§30105. Request for Services Registry

A. The department is responsible for the Request for Services Registry, hereafter referred to as "the registry", for the Adult Residential Care Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number maintained by the department.

B. Individuals who desire placement on the registry shall be screened to determine whether they meet the requirements for nursing facility level of care. Only individuals who meet these criteria will be added to the registry.

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

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

§30107. Programmatic Allocation of Waiver Opportunities

A. The ARC waiver shall be implemented in DHH Regions to be selected by the department based on provider interest. The department will allocate waiver capacity within the designated regions. Unused capacity will be reallocated to DHH regions that need additional capacity. If waiver capacity is exhausted in all DHH Regions, the central ARC Waiver registry procedure will be maintained.

B. When funding is appropriated for a new ARC Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available and that the individual will be evaluated for a possible ARC Waiver opportunity assignment. An ARC Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified eligible for Medicaid and the ARC Waiver.

C. ARC Waiver opportunities will be offered based on the date of first request for services with priority offered to individuals who are in a nursing facility, but could return to the community if ARC Waiver services are provided. Priority will also be offered to individuals currently enrolled in another Office of Aging and Adult Services (OAAS)-administered Medicaid waiver whose service needs no longer align with their current waiver program. Support coordinators will develop complementary, but not duplicative, transition plans to ensure seamless and efficient movement into the ARC Waiver from another program. OAAS shall reserve five to ten waiver opportunities for Adult Protective Services/Elderly Protective Services cases for individuals who are substantiated as victims of abuse, neglect, exploitation and extortion and are in need of the ARC Waiver.

D. The remaining waiver opportunities, if any, are offered on a first-come, first-serve basis to individuals who qualify for a nursing facility level of care.

E. If the 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.

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

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

§30109. Waiver Costs Limit

A. In order to assure the cost effectiveness of the ARC Waiver, each participant shall have access to ARC waiver services unless the ARC waiver costs exceed 150 percent of nursing facility costs for six or more months. Efforts will be

made to understand cost drivers and to preserve waiver participation before disenrollment.

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

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

Chapter 303. Services

§30301. Covered Services

A. The following services are available to participants in the ARC Waiver. All services must be provided in accordance with the participant's approved comprehensive plan of care (CPOC). Reimbursement shall not be made for ARC Waiver services provided prior to the department's approval of the CPOC.

1. Support Coordination. Support coordination services assist individuals in gaining access to necessary waiver and State Plan services, as well as needed social, educational and other services, regardless of the funding source for these services. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the participant's approved CPOC.

a. All ARC Waiver participants must receive support coordination services.

b. The support coordinator shall complete a CPOC which contains the type and number of services, including waiver and all other services, necessary to maintain the waiver participant safely in the community.

c. The support coordinator shall complete the initial and annual assessment designated by the department.

d. Comprehensive plans of care and initial and annual assessments must be completed and submitted timely in accordance with DHH policy and procedures.

2. Intensive Support Coordination. Intensive support coordination services assist individuals who are currently residing in nursing facilities to transition into an ARC placement or support individuals who have been admitted into inpatient hospitals in gaining access to necessary waiver and State Plan services, as well as needed social, educational and other services, regardless of the funding source for these services or to ensure that they transition back into the community, if possible.

a. Support coordinators will not receive reimbursement for intensive support coordination before prior authorization is given. Support coordinators will initiate and oversee the process for assessment and reassessment, as well as be responsible for ongoing monitoring of the provision of services included in the recipient's approved CPOC.

b. Service Limitations. Provision of nursing facility transition intensive support coordination is limited up to six months as approved by the department. All other intensive support coordination is limited up to 45 days.

3. Adult Residential Care Services. Adult residential care services is a coordinated array of supportive personal care services, availability of 24-hour supervision and assistance, both scheduled and unscheduled assistance, age and ability appropriate activities, and health related services designed to accommodate individual resident's changing needs and preference, to maximize the resident's dignity, autonomy, privacy and independence, and to encourage family and community involvement.

a. These services shall include, but are not limited to:

i. meals;
ii. laundry;
iii. social activities;
iv. assistance with transportation;
v. direct care services
vii. health care services
viii. 24-hour supervision and care; and
xi. intermittent nursing care.

b. It is the responsibility of the ARC facility to arrange for or provide transportation to recreational and social activities as well as medical appointments. ARC providers must receive prior authorization from OAAS before delivering ARC services.

c. ARC residents shall have private rooms.

i. Single occupancy must be assured by ARC providers.

ii. Sharing of units by individuals who are unrelated is permitted, however requests must be originated by the resident. Support coordinators must authorize sharing of residential units and document that the request was originated by the resident prior to units being shared.

4. Community Transition Benefit. Individuals transitioning into ARC residential settings may be faced with many one-time expenses. The community transition benefit provides assistance with one-time costs associated with establishing a residence. Prior authorization will be required for all community transition benefit expenditures.

a. The community transition benefit may only be used to purchase needed items that the waiver participant does not already own or that the ARC provider is not required by law or rule to provide.

b. Expenses of security deposits, utility set up fees (e.g., telephone, electric, heating, water) shall be allowable in ARC facilities utilizing specific types of federal funding.

c. Items not considered essential include recreational items such as televisions, cable TV, DVD players, stereos, etc.

d. The community transition benefit is capped at $3,000 during a participant's tenure in the waiver. The benefit may be accessed up to a maximum of three times over the course of their participation in the waiver.

B. ARC Waiver participants may not participate in comparable Medicaid long-term care services including, but not limited to, Medicaid-financed home health care and long term personal care 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:

§30303. Comprehensive Plan of Care

A. The comprehensive plan of care (CPOC) is a written agreement that specifies the long-range goals, short-term objectives, specific action steps or services, assignment of responsibility, and time frames for completion or review.

B. Reimbursement shall not be made for ARC Waiver services provided prior to the department's approval of the CPOC. All services and related support coordinator and ARC billing must align with the CPOC.

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

1. services that meet the needs and objectives and the health, safety and welfare of the individual; and

2. waiver services based on the assessment necessary to maintain the participant safely in the community.

D. Staff or contracted registered nurses (RN) with support coordination agencies will review all Minimum Data Set-Home Care (MDS-HC) assessments and related plans prior to submission to the department for prior authorization.

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

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

Chapter 305. Admission and Discharge Criteria

§30501. Admission Criteria

A. Admission to the ARC Waiver Program shall be determined in accordance with the following criteria:

1. initial and continued Medicaid financial eligibility;

2. initial and continued eligibility for a nursing facility level of care;

3. justification, as documented in the approved CPOC, that ARC Waiver services are appropriate and cost-effective; and

4. assurance that the health and welfare of the individual can be maintained in the community with the provisions of the ARC Waiver services.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria above will result in denial of admission to the ARC waiver.

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

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

§30503. Admission Denial or Discharge Criteria

A. Admission shall be denied or the participant shall be discharged from the ARC waiver program if any one of the following conditions is determined:

1. the individual does not meet the criteria for Medicaid financial eligibility;

2. the individual does not meet the criteria for a nursing facility level of care;

3. the participant is incarcerated or placed under the jurisdiction of penal authorities or courts;

4. the participant has a change of residence to another state;

5. the participant fails to comply with lease/admission agreement;

6. the health, safety and welfare of the individual cannot be assured through the provision of ARC services within the individual's cost effectiveness, including, but not limited to:

a. the individual refusing waiver services delivered in accordance with his or her CPOC; or

b. the individual not agreeing to enter into or comply with negotiated risk agreements as determined by an assessment performed by the support coordinator and conditions incorporated into the CPOC and ARC provider service plan;

7. the individual fails to cooperate in the eligibility determination process or in the performance of the CPOC;

8. failure on behalf of the participant to maintain a safe and legal home environment;

9. it is not cost effective to serve the individual in the ARC Waiver;

10. the participant develops a permanent or long-term medical condition or needs a medical treatment, permanently or for an extended period, that is not appropriate for the ARC program; or

11. continuity of services is interrupted as a result of the participant not receiving ARC Waiver services, exclusive of support coordination, during the period of 30 consecutive days.

B. A resident may not be discharged if a participant has paid room and board/rent and leaves the facility for any reason during the time they are enrolled in the waiver.

C. The ARC Waiver will not make service ("bed-hold") payments to an ARC provider while a participant is not in residence.

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

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

Chapter 307. Provider Participation

§30701. ARC Provider Responsibilities

A. Each ARC provider must meet adult residential care provider licensure and certification standards set forth by the Louisiana Department of Health and Hospitals, Bureau of Health Services Financing, Health Standards Section. ARC providers must be in good standing with licensure.

B. All enrolled adult residential care facilities and nursing facilities that are converting units/beds to ARC units must demonstrate commitment to resident-centered/culture change principles. Resident centered or culture change organizations are those that are considered to have:

1. close relationships existing between residents, family members, staff, and community;

2. residents direct their own care and living choices (e.g., daily schedules, food choices, other decisions);

3. personnel organized around the needs and desires of clients rather than by departments;

4. management that allows collaborative and group decision making;

5. processes/measures that are used for continuous quality improvement; and

6. a living environment that is designed to be a home rather than an institution.

C. All ARC providers must have OAAS approved negotiated risk agreement procedures and negotiated risk agreement templates before they are enrolled as waiver providers. If, during the assessment or the development of the CPOC or service plan, there is a need for a negotiated risk agreement as a condition of residency, the agreement elements shall be incorporated into the CPOC. Support coordinators shall review any subsequent negotiated risk agreements and incorporate risk agreement elements in the plan of care as necessary.

D. ARC providers are required to set aside operating funds to account for shortfalls that arise due to various causes.

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

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

§30703. Support Coordination Agency Responsibilities

A. The support coordination agency must meet case management licensing standards set forth by the Louisiana Department of Health and Hospitals, Health Standards Section and must enter into a provider enrollment agreement as specified by the department.

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

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

§30705. Reporting Requirements

A. Support coordinators and direct service providers, including ARC providers, are obligated to report changes to the department that could affect the waiver participant's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. Support coordinators and direct service providers, including ARC providers, are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the participant and completing an incident report. Incident reports shall be submitted to the department in accordance with the specified requirements. Categories of critical incidents include but are not limited to:

1. abuse;
2. neglect
3. misappropriation of property; and
4. extortion.

C. Support coordinators will speak with ARC participants at least monthly and will meet face-to-face with ARC providers and recipients at least quarterly to review and update (as needed) the ARC Service Plan. Such required contact shall be documented in the support coordinator's records and in the appropriate electronic reporting systems.

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

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

§30707. Recordkeeping

A. An ARC facility's employee records must contain the verification of the hours worked by individual employees which may be sign-in sheets or time cards, but shall indicate the specific time the employee clocked in and out for all employees, even those persons employed on a contractual or consultant basis.

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

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

Chapter 309. Reimbursement

§30901. General Provisions

A. ARC Services. Louisiana Medicaid participating providers that are licensed and certified to provide ARC services to Medicaid eligible individuals will be reimbursed for these services on a per diem basis as described in this Chapter. Specific rates will be paid based on assessment acuity levels established on RUG-III grouped into three or more tiers.

B. Payments to ARC facilities for the waiver services will be based on the MDS-HC Resource Use Group-III/Home Care (RUG-III/HC) algorithm, which classifies individuals based on their intensity of resource need. The RUG-III/HC system has been derived from the RUG-III payment system now used by Louisiana Medicaid to reimburse nursing facilities and will support the integration of a common payment methodology into a new service setting.

C. Medicaid is prohibited from making "bed-hold" payments when a resident enters a facility.

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

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

§30903. Provider Reimbursement

A. The rate paid for ARC services shall be based on a percentage of the July 1 statewide average nursing facility case-mix rate after removing the provider fee component and the patient liability amount.

B. Support coordination services shall be reimbursed at a flat fee for each approved unit of service.

C. Personal Emergency Response Systems shall be reimbursed at a $30.00 initial installation fee and a $27.00 monthly maintenance fee.

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

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

§30905. Room and Board

A. Participants shall pay their room and board expenses directly to the ARC provider. The provider may only assess a maximum room and board charge for all Medicaid participants equal to the amount of Supplemental Security Income (SSI) minus the amount that DHH OAAS designates for personal needs allowance (PNA) sufficient for community living.

1. All ARC providers are required to execute an admission agreement/lease with residents and are prohibited from modifying the room and board without providing at least 30 days prior written notice to the resident.

2. If monthly room and board is paid to the facility by the resident, that resident may not be involuntarily discharged by the facility.

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

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

§30907. Cost Reporting

A. Adult Residential Care providers shall be required to file annual cost reports for evaluation by the department. Cost reports shall be filed as follows:

1. The cost report schedules will be provided by the department and must be submitted annually. The due date for filing annual cost reports is the last day of the fifth month following the facility's fiscal year end.

a. There shall be no automatic extension of the due date for the filing of cost reports. If a provider experiences unavoidable difficulties in preparing its cost report by the prescribed due date, one 30-day extension may be permitted, upon approval by the department.

b. A request for extension must be submitted to the department in writing prior to the prescribed due date of the cost report. Habitual requests for extensions will be considered in the extension evaluation by the department. The request must explain in detail why the extension is necessary. Extensions beyond 30 days may be approved for situations beyond the facility's control. An extension will not be granted when the provider agreement is terminated or a change in ownership occurs.

B. For failure to file a cost report by the prescribed due date, a penalty of five percent of the total monthly payment for each month of non-compliance may be levied. The penalty may be a progressive penalty of five percent for each succeeding month of non-compliance.

C. The cost report must be prepared in accordance with instructions provided by the department using the definition of allowable and non-allowable cost contained in the most current version of the Medicare Provider Reimbursement Manual, 15-I as of the end of the cost report period.

D. Separate cost reports must be submitted by central/home offices when costs of the central/home office are reported in the facility's cost report.

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

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

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 effect on family functioning, stability, or autonomy as described in R.S. 49:972 as it will allow for more flexibility and utilization of services by ARC Waiver participants.

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 29, 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: Home and Community-Based Services Waivers Adult Residential Care

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 $238,553 for FY 09-10, $1,221,992 for FY 10-11, and $1,258,651 for FY 11-12. It is anticipated that $1,886 ($943 SGF and $943 FED) will be expended in FY 09-10 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the current Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (80.01%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match for the eligibility period (through December 2010), state general fund match could be reduced.

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 $951,975 for FY 09-10, $4,891,024 for FY 10-11, and $5,037,755 for FY 11-12. It is anticipated that $943 will be expended in FY 09-10 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the current Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (80.01%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match for the eligibility period (through December 2010), state general fund match could be reduced.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to adopt provisions to establish a new waiver program called the Adult Residential Care (ARC) Waiver. It is anticipated that implementation of this proposed rule will increase expenditures in the Medicaid Program by approximately $1,188,642 for FY 09-10, $6,113,016 for FY 10-11 and $6,296,406 for FY 11-12.

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
0908#092

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing
and
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, Bureau of Health Services Financing and the Office of Aging and Adult Services proposes to amend LAC 50:XXI.8101, 8105, 8301, 8303, 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 proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions 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). To assure compliance with federal requirements regarding the cost-effectiveness of the Elderly and Disabled Adults (EDA) Waiver Program, the department promulgated an Emergency Rule 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 (*Louisiana Register,* Volume 35, Number 1). The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions of the February 1, 2009 Emergency Rule to further clarify the provisions governing the development of the waiver recipient's annual services budget (*Louisiana Register,* Volume 35, Number 3). The department promulgated an Emergency Rule to amend the provisions of the March 20, 2009 Emergency Rule to further clarify the Resource Utilization Group (RUG) categories and subcategories utilized in the resource assessment process and the provisions governing the comprehensive plan of care (*Louisiana Register,* Volume 35, Number 6). This proposed Rule is being promulgated to continue the provisions of the June 20, 2009 Emergency Rule.

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 are:

1. 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), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, 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 and would require institutional placement to prevent further abuse and neglect without the availability of EDA Waiver services;

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, one hundred and fifty 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), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, 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; or

c. 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. burn treatment;

f. radiation treatment;

g. IV medications; or

h. fever and one or more of the following conditions:

i. dehydration diagnosis;

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. dehydration;

b. any stasis ulcer:

i. a stasis ulcer is a breakdown of the skin caused by fluid build-up in the skin from poor circulation;

c. end-stage/terminal illness;

d. chemotherapy;

e. blood transfusion;

f. skin problem;

g. cerebral palsy diagnosis;

h. urinary tract infection;

i. hemiplegia diagnosis:

i. hemiplegia is total or partial inability to move, experienced on one side of the body, caused by brain disease or injury;

j. dialysis treatment;

k. diagnosis of pneumonia;

l. one or more of the seven criteria in Special Care (with low ADL need); or

m. one or more of the three criteria in Extensive Services (with low ADL need).

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. 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 is eligible for a set annual services budget associated with that level.

1. If the applicant/recipient disagrees with his/her annual services budget, the applicant/recipient or his/her personal representative may request a fair hearing to appeal the decision.

2. The applicant/recipient may only seek an increase in the annual services budget amount upon showing that:

a. the budget allocation methodology was incorrectly applied and the correct application of the methodology would result in an increase in the annual services budget amount; or

b. he/she needs an increase in the annual services budget to avoid entering into a nursing facility.

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, Bureau of Health Services Financing and the 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 paid to provide services to 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:

§8303. Comprehensive Plan of Care

A. The applicant and support 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. the cost of services 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:

Chapter 87. Waiver Cost Effectiveness

§8701. Waiver Costs Limit

A. Effective February 1, 2009, the annual service 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 service 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, 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 EDA Waiver recipients receive accurate identification and evaluation of their support needs in order to remain safely in their homes and communities.

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 29, 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: Home and Community-Based Services Waivers Elderly and Disabled Adults

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 estimated savings to the state of $460,416 for FY 09-10, $474,989 for FY 10-11 and $489,239 for FY 11-12. It is anticipated that $1,476 ($738 SGF and $738 FED) will be expended in FY 09-10 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the current Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (80.01%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match for the eligibility period (through December 2010), state general fund match could be reduced.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately $1,845,033 for FY 09-10, $1,901,144 for FY 10-11 and $1,958,178 for FY 11-12. It is anticipated that $738 will be expended in FY 09-10 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the current Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (80.01%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match for the eligibility period (through December 2010), state general fund match could be reduced.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule is being promulgated to continue the provisions of the June 20, 2009 emergency rule which amended the provisions governing Elderly and Disabled Adults (EDA) Waiver services to assure compliance with federal requirements regarding cost-effectiveness of the EDA Waiver Program (approximately 4,046 recipients). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately $2,306,925 for FY 09-10, $2,376,133 for FY 10-11 and $2,447,417 for FY 11-12.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will have no effect on competition and employment.

Jerry Phillips
Medicaid Director
0908#093

Robert E. Hosse
Staff Director
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Medicaid Eligibility—Youth Aging Out of Foster Care
(LAC 50:III.2307)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:III.2307 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 Foster Care Independence Act of 1999, Public Law 106-109, established provisions which allow states to offer programs designed to better assist adolescents with the transition from foster care to self-sufficiency once they reach age 18. Section 477 of the Act, referred to as the John H. Chafee Foster Care Independence Program or "Chafee Option," established a new eligibility group to provide health care benefits to former foster care recipients between the ages of 18 and 21.

Act 352 of the 2008 Regular Session of the Louisiana Legislature authorized the Department of Health and Hospitals to adopt provisions pursuant to the Chafee Option which provide regular Medicaid coverage or an alternative benefits package to independent youth aging out of foster care. In compliance with Act 352, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to establish a new Medicaid eligibility group to provide Medicaid coverage to youth between the ages of 18 and 21 who are transitioning out of foster care (*Louisiana Register,* Volume 35, Number 2). This proposed Rule is being promulgated to continue the provisions of the March 1, 2009 Emergency Rule.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part III. Eligibility
Subpart 3. Eligibility Groups and Factors
Chapter 23. Eligibility Groups and Medicaid Programs
§2307. Youth Aging Out of Foster Care

A. Pursuant to Section 477 of the Foster Care Independence Act of 1999 (Public Law 106-169) and Act 352 of the 2008 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals hereby implements a Medicaid eligibility group, effective March 1, 2009, to provide health care coverage to youth who are transitioning out of foster care to self-sufficiency upon reaching age 18. This eligibility group will be called Youth Aging Out of Foster Care.

B. Eligibility Requirements. Youth who are aging out of foster care on or after March 1, 2009 and meet all of the following requirements may receive Medicaid health care coverage under this new eligibility group.

1. The youth must be from age 18 up to age 21.
2. The youth must have been in foster care and in state custody, either in Louisiana or another state, upon obtaining age 18.
3. The youth must live in Louisiana.

C. Income, resources and insurance status are not considered when determining eligibility.

D. Individuals determined eligible in this group shall receive coverage of medically necessary health care services provided under the Medicaid State Plan.

1. The assistance unit shall consist of the youth only.

E. Eligibility for the program will continue until the youth reaches age 21 unless the youth:

1. moves out of state;
2. requests closure of the case;
3. is incarcerated; or
4. dies.

F. Application Process. No application is required for this eligibility group. Closure of a foster care case due to the youth reaching age 18 establishes eligibility.

G. Certification Period. The certification period shall begin the month the youth reaches age 18 and will end on the last day of the month in which the youth reaches age 21.

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

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

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 that youth who are aging out of the foster care system will maintain their access to health care.

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 29, 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: Medicaid Eligibility Youth Aging Out of Foster Care

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 $143,478 for FY 09-10, $324,250 for FY 10-11, and $505,227 for FY 11-12. It is anticipated that $410 ($205 SGF and $205 FED) will be expended in FY 09-10 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the current Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (80.01%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match for the eligibility period (through December 2010), state general fund match could be reduced.

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 $573,657 for FY 09-10, $1,297,811 for FY 10-11, and $2,022,171 for FY 11-12. It is anticipated that $205 will be expended in FY 09-10 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the current Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (80.01%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match for the eligibility period (through December 2010), state general fund match could be reduced.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule, which continues the provisions of the March 1, 2009 emergency rule, proposes to adopt provisions to provide Medicaid coverage to youth between the ages of 18 and 21 who are transitioning out of foster care (approximately 1,014 eligibles). It is anticipated that implementation of this proposed rule will increase expenditures in the Medicaid Program by approximately $716,725 for FY 09-10, $1,622,061 for FY 10-11 and $2,527,398 for FY 11-12.

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
0908#094

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services

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

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services proposes to amend 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 proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

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 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 promulgated an Emergency Rule 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 (*Louisiana Register*, Volume 35, Number 1). The department amended the provisions of the March 1, 2009 Emergency Rule to incorporate provisions governing an allocation of weekly service hours in the LT-PCS Program (*Louisiana Register*, Volume 35, Number 3). The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule to amend the provisions of the March 20, 2009 Emergency Rule to further clarify the Resource Utilization Group (RUG) categories and subcategories utilized in the resource assessment process *(Louisiana Register*, Volume 35, Number 6). This proposed Rule is being promulgated to continue the provisions of the June 20, 2009 Emergency Rule.

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/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).

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; or
c. 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. burn treatment;
f. radiation treatment;
g. IV medications; or
h. fever and one or more of the following conditions:
i. dehydration diagnosis;
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. dehydration;
b. any stasis ulcer;
i. a stasis ulcer is a breakdown of the skin caused by fluid build-up in the skin from poor circulation;
c. end-stage/terminal illness;
d. chemotherapy;
e. blood transfusion;
f. skin problem;
g. cerebral palsy diagnosis;
h. urinary tract infection;
i. hemiplegia diagnosis:

i. hemiplegia is a total or partial inability to move, experienced on one side of the body, caused by brain disease or injury;

j. dialysis treatment;

k. diagnosis of pneumonia;

l. one or more of the seven criteria in Special Care (with low ADL need); or

m. one or more of the three criteria in Extensive Services (with low ADL need).

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. Based on the RUG III/HC score, the applicant/recipient is assigned to a level of support category and is eligible for a set allocation of weekly service hours associated with that level.

1. If the applicant/recipient disagrees with his/her allocation of weekly service hours, the applicant/recipient or his/her personal representative may request a fair hearing to appeal the decision.

2. The applicant/recipient may only obtain additional hours upon showing that:

a. the allocation methodology was incorrectly applied and the correct application of the methodology would result in additional hours; or

b. he/she needs additional hours to avoid entering into a nursing facility.

E. 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), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:

§12909. Standards for Participation

A. - B.11. …

12. maintain an office in each region in which it proposes to provide services.

12.a.-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.

D. OAAS or its designee is charged with the responsibility of setting the standards, monitoring the outcomes and applying administrative sanctions for failures by service providers to meet the minimum standards for participation.

1. Failure to meet the minimum standards shall result in a range of required corrective actions including, but not limited to:

a. removal from the Freedom of Choice listing;

b. a citation of deficient practice;

c. a request for corrective action plan; and/or

d. administrative sanctions.

2. Continued failure to meet the minimum standards shall result in the loss of referral of new LT-PCS recipients and/or continued enrollment as an LT-PCS 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 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), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, 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), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, 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 recipients of long term personal care services receive accurate identification and evaluation of their support needs in order to remain safely in their homes and communities.

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

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

responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 29, 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: Personal Care Services—Long Term

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 estimated savings to the state of $291,371 for FY 09-10, $300,534 for FY 10-11 and $309,551 for FY 11-12. It is anticipated that $820 ($410 SGF and $410 FED) will be expended in FY 09-10 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the current Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (80.01%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match for the eligibility period (through December 2010), state general fund match could be reduced.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately $1,167,446 for FY 09-10, $1,202,892 for FY 10-11 and $1,238,978 for FY 11-12. It is anticipated that $410 will be expended in FY 09-10 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the current Federal Medical Assistance Percentage (FMAP) as allowed in the American Recovery and Reinvestment Act of 2009 (80.01%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match for the eligibility period (through December 2010), state general fund match could be reduced.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule is being promulgated to continue the provisions of the June 20, 2009 emergency rule which amended the provisions governing the Long-Term Personal Care Services (LT-PCS) Program to implement cost control mechanisms to ensure that the program is more cost-effective (approximately 10,847 recipients). It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately $1,459,637 for FY 09-10, $1,503,426 for FY 10-11 and $1,548,529 for FY 11-12.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will have no effect on competition and employment.

Jerry Phillips	Robert E. Hosse
Medicaid Director	Staff Director
0908#095	Legislative Fiscal Officer

NOTICE OF INTENT

Department of Insurance
Office of the Commissioner

Regulation 98—Annual Financial Reporting
(LAC 37:XIII.Chapter 137)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Insurance gives notice that it intends to promulgate Regulation 98 pursuant to R.S. 22:671 et seq., more particularly described as the "Audited Financial Reports Law".

Proposed Regulation 98 is needed to make certain changes, clarify the current language and to implement these annual financial reporting requirements which will improve the surveillance of the financial condition of insurers by the Department of Insurance and will further the National Association of Insurance Commissioners' (NAIC) unified effort toward reciprocity among the states.

Title 37
INSURANCE
Part XIII. Regulations
Chapter 137. Regulation 98—Annual Financial Reporting

§13701. Authority

A. Regulation 98 is promulgated by the Commissioner of Insurance (commissioner) of the Louisiana Department of Insurance (department) pursuant to authority granted under the Louisiana Insurance Code Title 22, R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq. more particularly R.S. 22:675.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13703. Purpose and Scope

A. The purpose of Regulation 98 is to improve the surveillance of the financial condition of insurers by the department by requiring:

1. an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants;

2. the communication of internal control related matters noted in an audit; and

3. a management's report of internal control over financial reporting.

B. Every insurer as defined by §13705 shall be subject to Regulation 98. Insurers having direct premiums written in this state of less than $1,000,000 in any calendar year and fewer than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from Regulation 98 for that calendar year unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities. Insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of $1,000,000 or more will not be exempt.

C. Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for the filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from §13707-§13725 of Regulation 98 if:

1. A copy of the audited financial report, communication of internal control related matters noted in an audit, and the accountant's letter of qualifications that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in §13707, §13721 and §13723 of Regulation 98 respectively. Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada.

2. A copy of any notification of adverse financial condition report filed with another state is filed with the commissioner within the time specified in §13719 of Regulation 98.

D. Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in the state of Louisiana provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

E. Regulation 98 shall not prohibit, preclude or in any way limit the commissioner of insurance from ordering or conducting or performing examinations of insurers under the rules and regulations of the Department of Insurance, and the practices and procedures of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13705. Definitions

A. The terms and definitions contained herein are intended to provide definitional guidance as the terms are used within Regulation 98.

Accountant or *Independent Certified Public Accountant*—an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, the term(s) means a Canadian-chartered or British-chartered accountant.

Affiliate of, or person *Affiliated* with a specific person—a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Audit Committee—a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or Group of insurers and audits of financial statements of the insurer or Group of insurers. The Audit Committee of any entity that controls a Group of insurers may be deemed to be the Audit Committee for one or more of these controlled insurers solely for the purposes of Regulation 98 at the election of the controlling person. Refer to §13727.A.5 for exercising this election. If an Audit Committee is not designated by the insurer, the insurer's entire board of directors shall constitute the Audit Committee.

Audited Financial Report—includes those items specified in §13709 of Regulation 98.

Commissioner—Commissioner of Insurance of the state of Louisiana unless otherwise indicated.

Department—Louisiana Department of Insurance unless otherwise indicated.

Indemnification—an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

Independent Board Member—as defined or described in §13727.A.3.

Insurer—a licensed insurer as defined in R.S. 22:46(10) or an authorized insurer as defined in R.S. 22:46(3).

Group of Insurers—those licensed insurers included in the reporting requirements Insurance Holding Company System Regulatory Act, R.S. 22:691 et seq., or a set of insurers as identified by management for the purpose of assessing the effectiveness of internal control over financial reporting.

Internal Control over Financial Reporting—a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in §13709.B.2 through §13709.B.7 of Regulation 98 and includes those policies and procedures that:

a. pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

b. provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in §13709.B.2 through §13709.B.7 of Regulation 98 and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

c. provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in §13709.B.2 through §13709.B.7 of Regulation 98.

NAIC—National Association of Insurance Commissioners.

SEC—the United States Securities and Exchange Commission.

Section 404—Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

Section 404 Report—management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described or defined in §13705 of Regulation 98.

SOX Compliant Entity—an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

a. the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934);

b. the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and

c. the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13707. General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointments

A. All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an Audited financial report earlier than June 1 upon giving 90 days advance notice to the insurer.

B. Extensions of the June 1 filing date may be granted by the commissioner for 30 day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than 10 days prior to the due date and must contain sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

C. If an extension is granted in accordance with the provisions in Subsection B of this Section, a similar extension of 30 days is granted to the filing of management's report of internal control over financial reporting.

D. Every insurer required to file an annual audited financial report pursuant to Regulation 98 shall designate a group of individuals as constituting its audit committee, as defined in §13705 of Regulation 98. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of Regulation 98 at the election of the controlling person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13709. Contents of Annual Audited Financial Report

A. The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance of the state of domicile.

B. The annual audited financial report shall include the following:

1. report of independent certified public accountant;
2. balance sheet reporting admitted assets, liabilities, capital and surplus;
3. statement of operations;
4. statement of cash flow;
5. statement of changes in capital and surplus;
6. notes to financial statements.

These notes shall be those required by the appropriate National Association of Insurance Commissioners (NAIC) *Annual Statement Instructions* and the NAIC *Accounting Practices and Procedures Manual*. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to R.S. 22:571 and 22:252 with a written description of the nature of these differences.

C. The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13711. Designation of Independent Certified Public Accountant

A. Each insurer required by Regulation 98 to file an annual audited financial report must within 60 days after becoming subject to the requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in Regulation 98. Insurers not retaining an independent certified public accountant on the effective date of Regulation 98 shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

B. The insurer shall obtain a letter from the accountant and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the regulations of the insurance department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance department,

specifying such exceptions as he or she may believe appropriate.

C. If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within 10 business days of the above notification stating whether in the 24 months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure as well as which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this Section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction.

D. Disagreements contemplated by this Section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also request in writing that the former accountant furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13713. Qualifications of Independent Certified Public Accountant

A. The commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

1. is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

2. has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as *indemnification*, with respect to the audit of the insurer.

B. Except as otherwise provided in Regulation 98, the commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the State Board of Certified Public Accountants of Louisiana and the Society of Louisiana Certified Public Accountants, or similar code.

C. A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under R.S. 22:2001 et seq., the mediation or arbitration provisions shall operate at the option of the statutory successor.

D.1. The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than five consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least 30 days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

a. number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

b. premium volume of the insurer; or

c. number of jurisdictions in which the insurer transacts business.

2. The insurer shall file, with its annual statement filing, the approval for relief from §13713.D.1 with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

E. The commissioner shall neither recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by, a natural person who:

1. has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;

2. has been found to have violated the insurance laws of this state with respect to any previous reports submitted under Regulation 98; or

3. has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of Regulation 98.

F. The commissioner of insurance, as provided in accordance with the requirements of the Administrative Procedure Act, R.S. 49:950 et seq., may hold a hearing, if requested by the insurer, to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to Regulation 98 and require the insurer to replace the accountant with another accountant whose relationship with the insurer is qualified within the meaning of Regulation 98.

G.1. The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

a. bookkeeping or other services related to the accounting records or financial statements of the insurer;

b. financial information systems and design and implementation;

c. appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

d. actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and input used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification (opinion) on an insurer's reserves if the following conditions have been met:

i. neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

ii. the insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility; and

iii. the accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

e. internal audit outsourcing services;

f. management functions or human resources;

g. broker or dealer, investment adviser, or investment banking services;

h. legal services or expert services unrelated to the audit; or

i. any other services that the commissioner determines, by regulation, are impermissible.

2. In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.

H. Insurers having direct written and assumed premiums of less than $100,000,000 in any calendar year may request an exemption from §13713.G.1. The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with Regulation 98 would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

I. A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in §13713.G.1 or that do not conflict with §13713.G.2, only if the activity is approved in advance by the audit committee in accordance with §13713.J.

J. All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity or:

1. the aggregate amount of all such non-audit services provided to the insurer constitutes not more than 5 percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

2. the services were not recognized by the insurer at the time of the engagement to be non-audit services; and

3. the services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

K. The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by §13713.J. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

L.1. The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. Paragraph L.1 shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

2. The insurer shall file, with its annual statement filing, the approval for relief from §13713.L.1 with the states that it is licensed in or doing business in and with the NAIC. If the non-domestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13715. Consolidated or Combined Audits

A. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

1. amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;

2. amounts for each insurer subject to this Section shall be stated separately;

3. noninsurance operations may be shown on the worksheet on a combined or individual basis;

4. explanations of consolidating and eliminating entries shall be included; and

5. a reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13717. Scope of Audit and Report of Independent Certified Public Accountant

A. Financial statements furnished pursuant to §13709 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, *Consideration of Internal Control in a Financial Statement Audit*, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to §13731, the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, *Defining Professional Requirements in Statements on Auditing Standards* or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the *Financial Condition Examiners Handbook* promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13719. Notification of Adverse Financial Condition

A. The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the Louisiana Insurance Code as of that date. An insurer that has received a report pursuant to this paragraph shall forward a copy of the report to the commissioner within five business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five business day period, the independent certified public accountant shall furnish the commissioner a copy of its report within the next five business days.

B. No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with §13719.A.

C. If the accountant, subsequent to the date of the audited financial report filed pursuant to Regulation 98, becomes aware of facts that might have affected his or her report, the commissioner reiterates herein the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13721. Communication of Internal Control Related Matters Noted in an Audit

A. In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within 60 days after the filing of the annual audited financial report and shall contain a description of any unremediated material weakness as the term material weakness is defined by Statement on Auditing Standard 112, *Communication of Internal Control Related Matters Identified in an Audit*, or its replacement, including subsequent statements on auditing standards that may be issued requiring communications of internal control related matters identified in an audit to the audit committee or others charged with governance as of December 31 immediately preceding so as to coincide with the audited financial report discussed in §13707.A in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

B. The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13723. Accountant's Letter of Qualifications

A. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

1. that the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the State Board of Certified Public Accountants of Louisiana and the Society of Louisiana Certified Public Accountants, or similar code;

2. the background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within Regulation 98 shall be construed as prohibiting the accountant from utilizing such

staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;

3. that the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with Regulation 98 and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;

4. that the accountant consents to the requirements of §13725 of Regulation 98 and that the accountant consents and agrees to make available for review by the commissioner , or the commissioner's designee or appointed agent, the workpapers, as defined in §13725;

5. a representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA; and

6. a representation that the accountant is in compliance with the requirements of §13713 of Regulation 98.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13725. Definition, Availability and Maintenance of Independent Certified Public Accountants Workpapers

A. Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Accordingly, workpapers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.

B. Every insurer required to file an audited financial report pursuant to Regulation 98, shall require the accountant to make available for review by department of insurance examiners, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department of insurance or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the department of insurance has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

C. In the conduct of the aforementioned periodic review by department of insurance examiners, it shall be agreed that photocopies or electronic copies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the department.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13727. Requirements for Audit Committees

A. This Section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

1. The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant including resolution of disagreements between management and the accountant regarding financial reporting for the purpose of preparing or issuing the audited financial report or related work pursuant to Regulation 98. Each accountant shall report directly to the audit committee.

2. Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to §13727.A.5 and as defined by §13705.

3. In order to be considered independent for purposes of this Section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise non-independent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

4. If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the department, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to no longer be independent.

5. To exercise the election of the controlling person to designate the audit committee for purposes of Regulation 98, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

6. The audit committee shall require the accountant that performs any audit for an insurer required by Regulation 98 to timely report to the audit committee in accordance with the requirements of SAS 114, *Communication with Audit Committees*, or its replacement as well as subsequent statements on auditing standards that may be issued requiring communications to audit committees or others charged with governance including:

a. all significant accounting policies and material permitted practices;

b. all material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

c. other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

7. If an insurer is a member of an insurance holding company system, the reports required by §13727.A.6 may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

8. The proportion of independent audit committee members shall meet or exceed the following criteria.

Prior Calendar Year Direct Written and Assumed Premiums		
$0 - $300,000,000	Over $300,000,000 -$500,000,000	Over $500,000,000
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a Risk Based Capital (RBC) action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than $500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

9. An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and the Federal Flood Program, of less than $500,000,000 may make application to the commissioner for a waiver from the §13727 requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from §13727 with the states that it is licensed in or doing business in and with the NAIC. If the non-domestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13729. Conduct of Insurer in Connection with the Preparation of Required Reports and Documents

A. No director or officer of an insurer shall, directly or indirectly:

1. make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under Regulation 98; or

2. omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under Regulation 98.

B. No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to Regulation 98 if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

C. For purposes of Subsection B of this Section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include but are not limited to actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

1. to issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards;

2. to not perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

3. to not withdraw an issued report; or

4. to not communicate matters to an insurer's audit committee.

D. If the commissioner believes that the company or any other person has not materially complied with Regulation 98 or any request, order and/or directive promulgated hereunder, after notice and opportunity to be heard, the commissioner may impose sanctions, including cease and desist orders, the levy of a civil fine as authorized by law, the suspension or revocation of Insurer' Certificate of Authority and the referral by the commissioner of this matter to the proper law enforcement and prosecutorial agencies pursuant to R.S. 22:11 et seq.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13731. Management's Report of Internal Control over Financial Reporting

A. Every insurer required to file an audited financial report pursuant to Regulation 98 that has annual direct written and assumed premiums of $500,000,000 or more, excluding premiums reinsured with the Federal Crop Insurance Corporation and the Federal Flood Program, shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in §13705. The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit described under §13721

management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

B. Notwithstanding the premium threshold in Subsection A of this Section, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any RBC level event, or is deemed to be in hazardous financial condition.

C. An insurer or a group of insurers that are directly subject to Section 404; part of a holding company system whose parent is directly subject to Section 404; not directly subject to Section 404 but is a SOX Compliant Entity; or a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity may file its or its parent's Section 404 report and an addendum in satisfaction of this §13731 requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements those items included in Section §13709.B.2 through §13709.B.7 of Regulation 98 were included in the scope of the Section 404 Report.

D. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements those items included in §13709.B.2 through §13709.B.7 of Regulation 98 excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file a §13731 report, or the Section 404 Report and a §13731 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

E. Management's Report of Internal Control over Financial Reporting shall include:

1. a statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

2. a statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

3. a statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

4. a statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

5. disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

6. a statement regarding the inherent limitations of internal control systems; and

7. signatures of the chief executive officer and the chief financial officer or equivalent position/title.

F. Management shall document and make available upon financial condition examination the basis upon which its assertions, required in Subsection E of this Section, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

1. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

2. Management's report on internal control over financial reporting, required by Subsection A of this Section, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the department.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13733. Exemptions and Effective Dates

A. Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of Regulation 98 if the commissioner finds, upon review of the application, that compliance with Regulation 98 would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within 10 days from a denial of an insurer's written request for an exemption from Regulation 98, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the regulations of the department pertaining to Division of Administrative Law hearing procedures.

B. Domestic insurers retaining a certified public accountant on the effective date of Regulation 98 who qualify as independent shall comply with Regulation 98 for the year ending December 31, 2010 and each year thereafter unless the commissioner permits otherwise.

C. All domestic insurers shall retain a certified public accountant on the effective date of Regulation 98 who qualifies as independent unless the commissioner permits otherwise. All requests for an exemption from the requirement shall be made in writing to the department, and the commissioner shall have the authority to grant an exemption pursuant to R.S. 22:674.

D. Foreign insurers shall comply with Regulation 98 for the year ending December 31, 2010 and each year thereafter, unless the commissioner permits otherwise.

E. The requirements of §13713.D shall be in effect for audits of the year beginning January 1, 2010 and thereafter.

F. The requirements of §13727 are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members as opposed to a supermajority because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded but not earlier than January 1, 2010 to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

G. The requirements of §13731 and other modified sections, except for §13727 previously covered, are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded but not earlier than December 31, 2010 to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13735. Canadian and British Companies

A. In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

B. For such insurers, the letter required in §13711.B shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to §13707 and shall affirm that the opinion expressed is in conformity with those requirements.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13737. Severability Provision

A. If any Section or portion of a Section of Regulation 98 or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

§13739. Effective Date

A. Regulation 98 shall become effective upon promulgation in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:

Family Impact Statement

The proposed Annual Financial Reporting Regulation 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 Regulation.

Persons interested in obtaining copies of Regulation 98 or in making comments relative to the proposed regulation may do so at the public hearing to be held on September 28, 2009 at 10 a.m. in the Poydras Hearing Room of the Poydras Building, Louisiana Department of Insurance, 1702 North Third Street, Baton Rouge, LA or by submitting written comments on the proposed Regulation 98 to Arlene D. Knighten by 4:30 p.m. on September 28, 2009 at 1702 North Third Street, Baton Rouge, LA or P.O. Box 94214 Baton Rouge, LA 70804-9214. Comments may also be submitted by email to aknighten@ldi.state.la.us.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Regulation 98
Annual Financial Reporting

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Louisiana Department of Insurance (DOI) does not anticipate any implementation costs (savings) as a result of the proposed administrative rules. These changes are needed to improve the surveillance of the financial condition of insurers by the DOI by requiring: 1.) An annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants; 2.) The communication of Internal Control Related Matters Noted in an Audit; 3.) A Management's Report of Internal Control over Financial Reporting. The proposed administrative rule is projected to impact approximately 3 to 4 insurers, as insurers having direct premiums written of less than $1.0 million in any calendar year and fewer than 1,000 policyholders of direct written policies nationwide are exempt. The DOI does not anticipate any implementation costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Proposed Regulation 98 will have no impact on state or local governmental revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The adoption of Regulation 98 should not have any cost and/or economic benefits to directly affected persons or non-governmental groups. The regulation sets forth certain changes, clarifies the current language and implements annual financial reporting requirements which will improve the surveillance of the financial condition of insurers by the Department of Insurance and will further the National Association of Insurance Commissioners' (NAIC) unified effort toward reciprocity among the states. Regulation 98 merely requires the submission of information insurers likely have to the DOI. Thus, there is anticipated to be no impact upon non-governmental groups (insurers with more than $1.0 million of written premium).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of proposed Regulation 98 should have no significant impact upon competition and employment in the state.

Shirley D. Bowler	H. Gordon Monk
Deputy Commissioner	Legislative Fiscal Officer
0908#098	Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance
Office of the Commissioner

Viatical Settlements
(LAC 37:XIII.Chapter 39)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of Insurance for the Louisiana Department of Insurance hereby gives Notice of Intent to repeal in its entirety the current Regulation 58 entitled "Viatical Settlements" as originally promulgated in the October 20, 1996 *Louisiana Register*, Volume 22, Number 10, page 989, et seq., and simultaneously enact a replacement Regulation 58 bearing the same name. The purpose of replacement Regulation 58 is to set forth certain requirements related to viatical settlements including but not limited to licensure of life and/or annuity insurance producers and to simplify the filing of annual reports required under Title 22, the Louisiana Insurance Code.

Title 37
INSURANCE
Part XIII. Regulations
Chapter 39. Regulation 58—Viatical Settlements

§3901. Purpose

A. The purpose of Regulation 58 is to set forth certain requirements related to viatical settlements including but not limited to licensure of life and/or annuity insurance producers and the filing of the annual report required under Title 22, the Louisiana Insurance Code, specifically R.S. 22:1795.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

§3903. Authority

A. Regulation 58 is issued pursuant to the authority vested in the Commissioner of Insurance of the state of Louisiana under R.S. 22:3, and R.S. 22:1804.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

§3905. Life and/or Annuity Producers Acting as Brokers

A. A life insurance producer licensed in Louisiana who wishes to operate as a viatical settlement broker shall notify the Commissioner of Insurance, in writing, of their intent to act as a viatical settlement broker prior to acting as a broker. The notice shall include:

1. the full name and life insurance producer number of the entity which will be acting as a viatical settlement broker;

2. if a corporation, partnership, limited liability company or other non-natural person the full name and individual license number of each person in the entity which will be acting as a viatical settlement broker on behalf of the entity;

3. the notice shall be signed by the licensed producer, if a natural person or, if a corporation, partnership, limited liability or other non-natural person, an authorized officer or other such representative of the entity.

B. Pursuant to R.S. 22:1792.A(1) any person licensed as a life and/or annuity producer acting as viatical settlement broker shall be subject to all provisions of this Part applicable to a licensed viatical settlement broker until such time as that producer has notified the department, in writing, of their intent to no longer act as a viatical settlement broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

§3907. Annual Reports

A. Regulation 58 shall be applicable to all annual reports filed with the department after the effective date of Regulation 58.

B. The following entities are required to file an annual report:

1. viatical settlement providers;

2. viatical settlement brokers and all licensed insurance producers acting as viatical settlement brokers pursuant to R.S. 22:1792 A.(1); and

3. viatical settlement investment agents.

C. An annual report shall be filed regardless of whether there were any transactions to report from the previous year.

D. Annual reports shall be filed on or before March 1 of each year for the period of January 1 to December 31 of the previous calendar year.

1. Only transactions involving Louisiana viators shall be reported.

2. All annual reports shall be on forms provided by the commissioner.

E. Each annual report shall be certified as true and correct and shall be sworn before a notary public either by the licensee if a natural person, or if the licensee is a corporation, partnership, limited liability or other non-natural person by two authorized officers or other such representatives of the entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

§3909. Viatical Settlement Provider Annual Report

A. The Viatical Settlement Provider Annual Report shall include the following information for each policy viaticated in the reporting year.

1. The date the viatical contract was entered into which shall be the date on which the viator and the viatical settlement provider agreed to the final terms of the contract.

2. The full legal name of each person who acted as a viatical settlement broker in the transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

§3911. Viatical Settlement Broker Annual Report

A. The viatical settlement broker annual report shall include the following information for each transaction in which the licensee acted as a viatical settlement broker.

1. The date the viatical contract was entered into which shall be the date on which the viator and the viatical settlement provider agreed to the final terms of the contract.

2. The full, legal name of the viatical settlement provider(s) that purchased the policy.

3. The full legal name(s) of each person who acted as a viatical settlement broker in the transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

§3913. Viatical Settlement Investment Agent Annual Report

A. The viatical settlement investment agent annual report shall include the following information:

1. the full name of all viatical settlement providers for which funding was sought;

2. the total amount of funding secured for each viatical settlement provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

§3915. Notice of Regulatory Action

A. Any licensee under this part (including a licensed life insurance producer acting as a viatical settlement broker) shall notify the commissioner of any regulatory action against the entity in any state within 60 days of the final disposition of such regulatory action.

B. *Regulatory Action*—shall include any fines, revocations, and suspensions imposed by a state or federal agency. Regulatory actions shall also include any consent agreements, stipulations, or other such agreements with any state or federal agency initiated as a result of allegations of wrong-doing or regulatory or legal infractions regardless of whether or not any wrongdoing was admitted by the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

§3917. Minimum Financial Requirements

A. Any viatical settlement provider licensed under this part shall be at the time of initial licensure and at all times thereafter be a solvent entity. Failure to maintain the required financial solvency shall be grounds for any appropriate action by the commissioner including, but not limited to, the immediate issuance of a cease and desist order and/or a summary suspension, or the revocation of the applicable license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

§3919. Notification of Change of Information

A. Every viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall notify the commissioner, in writing, of any changes to the information submitted in association with the application. This notification shall be made within 60 days following the effective date of the change. Every such notification must contain the appropriate documents as indicated below.

1. For an amendment to the articles of incorporation or other organizational documents, the notice must include a copy of the amended articles certified as true and correct by the proper domiciliary state official.

2. For a change in the officers, directors, or natural persons owning 10 percent or more (directly or indirectly), partners, members, designated employees or other individuals responsible for the conduct of affairs of the applicant, the notice shall contain a completed biographical affidavit for each and every new individual named to such a position. The biographical affidavit shall be on a form approved by the commissioner.

3. For a change in ownership of 10 percent or more (directly or indirectly) where the new owner is not a natural person, the notice shall contain a detailed description of the corporate organizational/ownership structure of the entity, its parent company and all affiliates. This description should include an organizational chart showing the ownership percentages for any persons owning 10 percent or more of all affiliated entities up to and including the ultimate controlling person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:

Family Impact Statement

1. Describe the effect of the proposed Rule on the stability of the family. The proposed Rule should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed Rule on the authority and rights of parents regarding the education and supervision of their children. The proposed Rule should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed Rule on the functioning of the family. The proposed Rule should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed Rule on family earnings and budget. The proposed Rule should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed Rule on the behavior and personal responsibility of children. The proposed Rule should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed Rule on the ability of the family or a local government to perform the function as contained in the Rule. The proposed Rule should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

On Friday, September 25, 2009, beginning at 9 a.m., the Department of Insurance will hold a public hearing in the Poydras Building's Plaza Hearing Room located at 1702 N. Third Street, Baton Rouge, LA, 70804 to allow for public commentary concerning the proposed repeal of current Regulation 58 and the enactment of the proposed Regulation 58 as set forth below.

Persons interested in obtaining copies of replacement Regulation 58 or in making comments relative to proposed replacement Regulation 58 may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Written comments will be accepted through the close of business at 4:30 p.m. on Friday, September 25, 2009.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Viatical Settlements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Louisiana Department of Insurance does not anticipate any implementation costs for proposed administrative rule changes to Regulation 58.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed administrative rule changes to Regulation 58 will have no impact on state or local governmental revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed administrative rule changes to Regulation 58 remove the seven hours of continuing education required of viatical settlement brokers (non-governmental group), which could provide an economic benefit. However, the benefit to the viatical settlement brokers will likely not be material as the seven-hour requirement was instituted in October 2008. This administrative rule change merely removes the seven hours of continuing education requirement.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rule changes to Regulation 58 should have no adverse impact upon competition and employment in the state.

Shirley D. Bowler
Deputy Commissioner
0908#099

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources
Office of Conservation

Fees (LAC 43:XIX.701, 703, and 707)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, the Office of Conservation proposes to amend LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The proposed action will adopt Statewide Order No. 29-R-09/10 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation Fee Schedule for the collection of Application, Production, and Regulatory Fees, and will replace the existing Statewide Order No. 29-R-08/09.

Title 43
NATURAL RESOURCES
Part XIX. Office of Conservation—General Operations
Subpart 2. Statewide Order No. 29-R
Chapter 7. Fees
§701. Definitions

* * *

Application for Permit to Drill (Minerals)—an application to drill in search of minerals (six-months or one-year), as authorized by R.S. 30:28.

* * *

BOE—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 11.0.

Capable Gas—natural and casing head gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue, as of December 31, 2008.

Capable Oil—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue, as of December 31, 2008.

* * *

Production Well—any well which has been permitted by and is subject to the jurisdiction of the Office of Conservation, excluding wells in the permitted and drilling in progress status, Class II injection wells, liquid storage cavity wells, commercial salt water disposal wells, Class V injection wells, wells which have been plugged and abandoned, wells which have reverted to landowner for use as a fresh water well (Statewide Order No. 29-B, LAC 43:XIX.137.G, or successor regulations), multiply completed wells reverted to a single completion, and stripper oil wells or incapable oil wells or incapable gas wells certified by the Severance Tax Section of the Department of Revenue, as of December 31, 2008.

Regulatory Fee—an amount payable annually to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class II wells, Class III wells, storage wells, Type A facilities, and Type B facilities in an amount not to exceed $875,000 for Fiscal Year 2000-2001 and thereafter. No fee shall be imposed on a Class II well of an operator who is also an operator of a stripper crude oil well or incapable gas well certified pursuant to R.S. 47.633 by the Severance Tax Section of the Department of Revenue as of December 31, 2008 located in the same field as such Class II well. Operators of Record, excluding operators of wells and including, but not limited to, operators of gasoline/cycling plants, refineries, oil/gas transporters, and/or certain other activities subject to the jurisdiction of the Office of Conservation are required to pay an annual registration fee of $105. Such payment is due within the time frame prescribed by the Office of Conservation.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:2087 (November 2006), LR 33:2461 (November 2007), LR 34:2404 (November 2008), LR 35:

§703. Fee Schedule for Fiscal Year 2009-2010

A. …

Application Fees	Amount
* * *	* * *
Application for Permit to Drill—Minerals: 0'-3,000' (1 year)	$252
Application for Permit to Drill—Minerals: 3,001'-10,000' (1 year)	$ 1,262
Application for Permit to Drill—Minerals: 10,001'+ (1 year)	$2,528
* * *	* * *

B. Regulatory Fees

1. Operators of each permitted Type A Facility are required to pay an annual Regulatory Fee of $7,326 per facility.

2. Operators of each permitted Type B Facility are required to pay an annual Regulatory Fee of $3,663 per facility.

3. Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay $745 per well.

4. Operators of record of permitted Class III and Storage wells are required to pay $745 per well.

C. Class I Well Fees. Operators of permitted Class I wells are required to pay $11,428 per well.

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers

Tier	Annual Production (Barrel Oil Equivalent)	Fee ($ per Well)
Tier 1	0	17
Tier 2	1 - 5,000	91
Tier 3	5,001 - 15,000	264
Tier 4	15,001 - 30,000	436
Tier 5	30,001 - 60,000	693
Tier 6	60,001 - 110,000	959
Tier 7	110,001 - 9,999,999	1,185

E. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2462 (November 2007), LR 34:2404 (November 2008), LR 35:

§707. Severability and Effective Date

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-09/10 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This Order (Statewide Order No. 29-R-09/10) supersedes Statewide Order No. 29-R-08/09 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2462 (November 2007), LR 34:2406 (November 2008), LR 35:

Family Impact Statement

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed Rule on family as defined therein.

1. The proposed Rule will have no effect on the stability of the family.

2. The proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule will have no effect on the functioning of the family.

4. The proposed Rule will have no effect on family earnings and family budget.

5. The proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The proposed Rule will have no effect on the ability of the family or local government to perform any function as contained in the proposed Rules.

Comments and views regarding the proposed fees will be accepted until 4:30 p.m., Friday, October 2, 2009. Comments should be directed, in writing, to Todd Keating, Director, Engineering Division, Office of Conservation, P.O.

Box 94275, Capitol Station, Ninth Floor, Baton Rouge, LA 70804-9275 (Re: Docket No. 09-917 Proposed Statewide Order No. 29-R-09/10).

A public hearing will be held at 9 a.m., Tuesday, September 29, 2009, in the LaBelle Hearing Room, located on the First Floor, LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Fees

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs (savings) to state or local governmental units resulting from this action.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Proposed Statewide Order No. 29-R-09/10 establishes the Louisiana Office of Conservation Fee Schedule for the collection of application, production, and regulatory fees by the Office of Conservation and will replace the existing Statewide Order No. 29-R-08/09 and will retain the maximum revenue caps authorized in R.S. 30:1 et seq. Consistent with Act 126 of the 2009 Regular Session, the Proposed Rule will add a one year drilling permit application fee to the existing fee schedule for all Application Fees. R.S. 30:21, R.S. 30:560, and R.S. 30:706 provide that the Commissioner of Conservation shall periodically and/or annually review the fees collected, and the Office of Conservation has established a practice of annually evaluating all applicable fees. The Production Tier Fee in the FY 09/10 Fee Schedule has been increased an average 11.18% overall due to the decreased number of participating wells. The Regulatory Fees for Class I Injection Wells have been increased an average 8.57% due to the decrease in the number of wells; and, the Regulatory Fees for Class II and III Injection Wells, and Type A and B Commercial Facilities have increased by approximately 6.99% due to the decreased number of wells and facilities. The Office of Conservation will collect approximately $7,195,111 in revenue for these fees in FY 09/10.

Additionally, the passage of Act Nos. 222 and 223 of the 2004 Regular Legislative Session, authorizes the Office of Conservation to determine by rule annually, in accordance with the Administrative Procedure Act, the pipeline safety inspection fees charged for the approximately 45,665 miles of state regulated jurisdictional gas distribution and gas transmission pipelines (R.S. 30:560) and approximately 4,862 miles of state jurisdictional hazardous liquids pipelines (R.S. 30:706). The Office of Conservation is authorized to collect a "fee not to exceed $22.40 per mile, or a minimum of $400, whichever is greater" for these state jurisdictional gas and hazardous liquids pipelines. The proposed FY09/10 fee will remain at the maximum fee authorized by statute. These fees are used as the matching funding for the Pipeline Safety Program's Federal Grants. The Office of Conservation is projected to collect approximately $1,143,548 for the pipeline safety inspection fees in FY 09/10.

No local governmental units will be impacted by this action.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will replace the existing Office of Conservation Fee Schedule. The proposed Statewide Order No. 29-R-09/10 will retain the existing revenue caps for fees assessed to industries under the jurisdiction of the Office of Conservation, as authorized by R.S. 30:21 et seq., R.S. 30:560, and R.S. 30:706, and is expected to reach approximately $8,338,659 for FY 09/10.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The passage of Statewide Order No. 29-R-09/10 will have no effect on competition and employment.

Gary P. Ross	Robert E. Hosse
Assistant Commissioner	Staff Director
0908#102	Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources
Office of Conservation

Pit Closure and Onsite Disposal of E and P Waste
(LAC 43:XIX.311 and 313)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and Title 30 of the Louisiana Revised Statutes of 1950 (R.S. 30:4 et seq.), the Louisiana Office of Conservation hereby gives notice of its intent to amend LAC 43:XIX, Subpart 1 (Statewide Order No. 29-B), Chapter 3 (Pollution Control—Onsite Storage, Treatment and Disposal of Exploration and Production Waste (E&P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations).

The recent development of the Haynesville Shale in North Louisiana is made possible through the use of multi-stage hydraulic fracture stimulation technology. This technology requires the use of large quantities of fluids which are primarily composed of freshwater taken from either surface water reservoirs or groundwater aquifers. The intense development of the Haynesville Shale has placed additional strain on the already limited freshwater aquifer resources of the region.

The intent of the amendment is to conserve these freshwater aquifer resources by allowing the limited use of Exploration and Production Waste as a substitute for the fluids required to perform fracture stimulation operations on the Haynesville Shale. The proposed amendment uses sound waste minimization principles along with conservative waste management requirements to promote groundwater resource management and conservation while protecting public health and the environment.

Title 43
NATURAL RESOURCES
Part XIX. Office of Conservation—General Operations
Subpart 1. Statewide Order No. 29-B
Chapter 3. Pollution Control—Onsite Storage, Treatment and Disposal of Exploration and Production Waste (E and P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations)

§311. Pit Closure

A. Pits must be closed properly to assure protection of soil, surface water, groundwater aquifers and USDW's.

Operators may close pits utilizing onsite land treatment, burial, solidification, onsite land development, or other techniques approved by the Office of Conservation only if done so in compliance with §313 and §315. Otherwise, all E&P Waste must be manifested according to §511 and transported offsite to a permitted commercial facility unless temporarily used in hydraulic fracture stimulation operations conducted on the Haynesville Shale Zone in accordance with the requirements of LAC 43:XIX:313.J.

B. - F.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2803 (December 2000), amended LR 33:1658 (August 2007), LR 35.

§313. Pit Closure Techniques and Onsite Disposal of E and P Waste

A. Reserve pit fluids, as well as drilling muds, cuttings, etc., from holding tanks, may be disposed of onsite provided the technical criteria of §313.C, D, E, F, or G below are met, as applicable. All E and P Waste must be either disposed of on-site, temporarily used in hydraulic fracture stimulation operations conducted on the Haynesville Shale Zone in accordance with the requirements of LAC 43:XIX.313.J or transported to an approved commercial facility or transfer station in accordance with the requirements of LAC 43:XIX.Chapter 5 or under the direction of the commissioner.

B. - H.3. …

I. Offsite Disposal of E and P Waste

1. Except for produced water, drilling, workover, completion, and stimulation fluids, and rainwater which may be transported by an oil and gas operator to a community well or an operators permitted Class II disposal well, ~~or~~ discharged to surface waters where authorized, or otherwise authorized in LAC 43:XIX.313.J, exploration and production waste shall not be moved offsite for storage, treatment, or disposal unless transported to an approved commercial facility or transfer station in accordance with the requirements of LAC 43:XIX.Chapter 5 or under the direction of the commissioner.

2. - 3. …

J. Temporary Use of E and P Waste (Produced Water, Rainwater, Drilling, Workover, Completion and Stimulation Fluids) for Hydraulic Fracture Stimulation of the Haynesville Shale Zone

1. Produced water, rainwater, drilling, workover, completion and stimulation fluids generated at a wellsite (originating wellsite) that are classified as E and P Waste may be transported offsite for use in hydraulic fracture stimulation operations of the Haynesville Shale Zone at another wellsite (receiving wellsite) provided that the following conditions are met.

a. The originating wellsite and the receiving wellsite must have the same operator of record.

b. All residual waste generated in the treatment or processing of E and P Waste prior to its use in hydraulic fracture stimulation operations must be properly disposed of in accordance with the following.

i. All residual waste generated as a result of treatment or processing conducted at the originating wellsite must be either disposed of onsite at the originating wellsite in accordance with all the requirements of LAC 43:XIX.311 and 313, except and not including Subsection 313.J, or offsite in accordance with the requirements of LAC 43:XIX.Chapter 5.

ii. All residual waste generated as a result of treatment or processing conducted at the receiving wellsite must be disposed of offsite in accordance with the requirements of LAC 43:XIX.Chapter 5.

c. At the conclusion of hydraulic fracture stimulation operations involving the temporary use of E and P Waste, all E and P Waste associated with the hydraulic fracture stimulation operation must be either disposed of onsite in accordance with all the requirements of LAC 43:XIX.311 and 313, except and not including Subsection 313.J, or disposed of offsite in accordance with the requirements of LAC 43:XIX.Chapter 5.

d. The types and volumes of E and P Waste generated for temporary use along with the well name and well serial number of the receiving wellsite must be reported on Form ENG-16 (Oilfield Waste Disposition) for the originating well and/or other appropriate forms specified by the commissioner depending on the waste types involved.

e. An affidavit of no objection must be provided by the surface owner of the property on which the receiving wellsite is located. The affidavit must be in a format acceptable to the commissioner and attached to Form ENG-16 (Oilfield Waste Disposition) for the originating well and/or other appropriate forms specified by the commissioner depending on the waste types involved.

f. E and P Waste intended for temporary use must be stored at the receiving wellsite in an above ground storage tank or a lined production pit which conforms to the liner requirements and operational provisions of LAC 43:XIX.307.A.

2. The Commissioner of Conservation, the Secretary of the Department of Natural Resources, and the state of Louisiana shall be held harmless from and indemnified for any and all liabilities arising from temporary use of E and P Waste pursuant to this subsection, and the operator of record and the surface owner shall execute agreements as the commissioner requires for this purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2804 (December 2000), amended LR 33:1659 (August 2007), LR 35:

Family Impact Statement

In accordance R.S. 49:972, the following statements are submitted after consideration of the impact of the proposed Rule amendment at LAC 43:XIX.311 and 313, Pit Closure and Pit Closure Techniques and Onsite Disposal of E and P Waste on family as defined therein.

1. The proposed Rule amendment will have no effect on the stability of the family.

2. The proposed Rule amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule amendment will have no effect on the functioning of the family.

4. The proposed Rule amendment will have no effect on family earnings and family budget.

5. The proposed Rule amendment will have no effect on the behavior and personal responsibility of children.

6. Family or local government is not required to perform any function contained in the proposed Rule amendment.

A public hearing will be held on Tuesday, September 29, 2009 at 9 a.m. in the LaSalle Building, LaBelle Hearing Room, 617 N. Third Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. If accommodations are required under the Americans with Disabilities Act, please advise the Office of Conservation, Engineering Division at P.O. Box 94275, Baton Rouge, LA 70804-9275 in writing within 10 working days of the hearing date. Two hours of free parking are allowed in the Welcome Center parking garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference "Proposed Amendment of LAC 43:XIX.311 and 313". Such comments must be received no later than Friday, September 11, 2009, at 4:30 p.m., and should be sent to Mr. Chris Sandoz, Office of Conservation, Engineering Division, P.O. Box 94275, Baton Rouge, LA 70804-9275; hand delivered to 617 North Third Street, Ninth Floor, Baton Rouge, LA 70802; by email to chris.sandoz@la.gov; or by fax to (225) 342-2584.

This proposed regulation is available on the Internet at http://dnr.louisiana.gov/cons/conserv.ssi and is available for inspection at the following DNR office locations from 8 a.m. until 4:30 p.m.: 617 N. Third Street, Ninth Floor, Baton Rouge, LA 70802; Brandywine III, Suite 220, 825 Kaliste Saloom Road, Lafayette, LA 70508; State Office Building, Suite 668, 1525 Fairfield Avenue, Shreveport, LA 71101; 122 St. John Street, Room 228, Monroe, LA 71201.

James H. Welsh
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Pit Closure and Onsite Disposal of E and P Waste

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs or savings to State or Local government units anticipated due to the proposed rule amendments.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections of state or local government units anticipated due to the proposed rule amendments.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The primary group impacted by these rule changes will be Exploration and Production (E and P) companies. There are no anticipated cost increases associated with the proposed amendment and all required documentation will be provided on existing paperwork.

The amendment may result in substantial cost savings for certain E and P companies with high levels of activity in the Haynesville Shale Area. Fresh water costs are estimated at $0.25 per barrel and manufactured brine costs are estimated at $11.00 per barrel. A typical multi-stage fracture stimulation requires between 108,000 to 126,000 barrels of fresh water and 36,000 to 42,000 barrels of manufactured brine which equates to potential cost savings of between $423,000.00 and $493,500.00 per stimulation. E and P waste disposal costs are estimated at $2.00 per barrel, resulting in additional potential cost savings of $288,000.00 and $336,000.00 per stimulation. These savings are offset only by the cost of treating and transporting the E&P waste which is estimated at $2.50 per barrel or between $360,000.00 to $420,000.00 per stimulation. Total potential cost savings are estimated to be between $351,000.00 and $409,500.00 per stimulation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Gary P. Ross	Robert E. Hosse
Assistant Commissioner	Staff Director
0908#103	Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Liquefied Petroleum Gas Commission

Insurance Requirements (LAC 55:IX:107)

The Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, in accordance with R.S. 40:1846 and with the Administrative Procedure Act., R.S. 49:950 et seq., hereby amends LAC 55:IX:107, Requirements. This text has been amended to allow other forms of proof of insurance to Liquefied Petroleum Gas Commission as was ordered by full vote of the Liquefied Petroleum Gas Commission on June 17, 2009.

Title 55
PUBLIC SAFETY
Part IX. Liquefied Petroleum Gas
Chapter 1. General Requirements
§107. Requirements

A. - A.2. …

3. Must have on file in the office of the director, proof of insurance, on a commission proprietary certificate of insurance, or one substantially equivalent, issued by a Louisiana licensed agent, in the minimum sum of $1,000,000, in the classes of insurance as required by the commission. This certificate of insurance must show kinds and amount in force. This certificate of insurance will meet the proof of insurance as required by the commission. Said certificate shall be considered evidence of liability insurance coverage; said certificate must bear the clause that in the event the insurance company intends to cancel, the insurance company will attempt to notify the director of the Liquefied Petroleum Gas Commission 10 days prior to the date of cancellation. A binder of insurance coverage, within date, will be acceptable as proof of insurance until the policy is issued and a certificate of insurance can be issued. The $1,000,000 requirement shall be effective on the first proof of insurance required after November 1, 2003. The

commission will provide the proprietary certificate of insurance form on its public web site for downloading or will provide copies of the proprietary certificate of insurance form via facsimile or via U.S. mail upon request.

A.3.a.-A.15. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 1:315 (July 1975), LR 4:86 (March 1978), LR 7:633 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 15:854 (October 1989), LR 16:1063 (December 1990), LR 20:1400 (December 1994), LR 24:461 (March 1998), LR 24:2311 (December 1998), LR 25:1262 (July 1999), LR 25:2410 (December 1999), LR 26:1487 (July 2000), LR 27:2256 (December 2001), LR 28:2553 (December 2002), LR 29:2509 (November 2003), LR 31:2567 (October 2005), LR 33:1140 (June 2007), effective July 1, 2007, LR 35:

Persons having comments or inquiries regarding these proposed Rules may contact John W. Alario, Director, Liquefied Petroleum Gas Commission by writing to P.O. Box 66209, Baton Rouge, LA 70896-6209, by calling (225) 925-4895, or by sending a facsimile to (225) 925-4898. These comments and inquiries should be received by 4:00 p.m. on Monday, September 21, 2009. A public hearing on these Rules is tentatively scheduled for Wednesday, September 23, 2009, at 2:00 p.m. in Conference Room B at the Office of Louisiana State Police Headquarters at 7919 Independence Blvd, Baton Rouge, LA 70806. Any person wishing to attend the public hearing should call to confirm the time and the location of the hearing. No hearing will be held if the requisite number of comments are not received before the due date above.

Family Impact Statement

1. The effect of these Rules on the stability of the family. These Rules should not have any affect on the stability of the family.
2. The effect of these Rules on the authority and rights of parents regarding the education and supervision of their children. These Rules should not have any affect on the authority and rights of parents regarding the education and supervision of their children.
3. The effect of these Rules on the functioning of the family. These Rules should not have any affect on the functioning of the family.
4. The effect of these Rules on family earnings and family budget. These Rules should not have any affect on family earnings and family budget.
5. The effect of these Rules on the behavior and personal responsibility of children. These rules should not have any affect on the behavior and personal responsibility of children.
6. The effect of these Rules on the ability of the family or local government to perform the function as contained in the proposed Rules. These Rules should not have any affect on the ability of the family or local government to perform the function as contained in the proposed Rules.

Jill P. Boudreaux
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Insurance Requirements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed administrative rule changes will have no significant implementation costs to state or local governmental units. This rule change amends those requirements to allow for substantially equivalent forms issued by a Louisiana licensed agent to be accepted in lieu of a commission propriety certificate of insurance form as ordered by a full vote of the Liquefied Petroleum Gas Commission on July 17, 2009.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed administrative rule changes will have no effect on revenue collections of state or local governmental units

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes will have no significant impact on revenue collections of state or local governmental units. This rule change deletes the required proprietary certificate form be submitted to the Liquefied Petroleum Gas Commission.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Jill P. Boudreaux	H. Gordon Monk
Undersecretary	Legislative Fiscal Officer
0908#112	Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Uniform Construction Code Council

Temporary Exemption to Certification Requirement
(LAC 55:VI.903)

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730.22(C) and (D) and R.S. 40:1730.34(B) relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Council hereby proposes to amend Chapter 9 to extend the time period within which building code enforcement officers must satisfy the certification requirements.

Title 55
Public Safety
Part VI. Uniform Construction Code
Chapter 9. Temporary Exemption to Certification Requirement
§903. Employment Prior to January 1, 2007

A. Certificates of Registration may be issued without certification by a recognized code organization or testing agency to building code enforcement officers already employed in code enforcement on January 1, 2007, only for the position and locality held at the time of registration. This registration is valid for three years for building officials and

six months for building inspectors and plans reviewers. Additionally, inspectors and plan reviewers who were employed by an authority having jurisdiction before July 1, 2006, and remain employed by that authority having jurisdiction, an additional 30 month provisional certificate or registration may be granted provided the individual can demonstrate an annual minimum of three continuing education units for a core discipline as required in §703. Thereafter, anyone renewing this Certificate of Registration shall satisfy the certification requirement(s) as set forth in §703.

B. The building code enforcement officers designated in Paragraph A above shall have until January 1, 2012, to satisfy the certification requirements as set forth in §703 of this Part. Officials availing themselves of this provision shall obtain the required continuing education units and have attempted at least one International Code Council certification exam by January 1, 2010. Failure to do either shall result in the revocation of that official's provisional certificate of registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D)

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Code Council, LR 33:293 (February 2007), amended LR 35:

Family Impact Statement

1. The effect of this Rule on the stability of the family. This Rule should not have any effect on the stability of the family.

2. The effect of this Rule on the authority and rights of parents regarding the education and supervision of their children. This Rule should not have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of this Rule on the functioning of the family. This Rule should not have any effect on the functioning of the family.

4. The effect of this Rule on family earnings and family budget. This Rule should not have any effect on family earnings and family budget.

5. The effect of this Rule on the behavior and personal responsibility of children. This Rule should not have any effect on the behavior and personal responsibility of children.

6. The effect of this Rule on the ability of the family or local government to perform the function as contained in the proposed Rule. This Rule should not have any effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments to Paul Schexnayder, P.O. Box 66614, Baton Rouge, LA 70896. Written comments will be accepted through September 15, 2009.

Jill Boudreaux
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Temporary Exemption to Certification Requirement

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes are not anticipated to result in additional state or local government costs or savings. These rule changes simply extend the time period of the provisional certification for certain building officials in accordance with Act 325 of the 2009 Regular legislative session.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is anticipated to be no impact on revenue collections as a result of these rules.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The adoption of these code provisions will have an indeterminate beneficial impact on the affected building officials who are operating with a provisional certification. The proposed rule will allow these officials to continue to function in their current positions, but will require them to actively pursue certification as the proposed administrative rules move the deadline from January 2010 to January 2012.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change should not significantly affect competition or employment.

Jill Boudreaux
Undersecretary
0908#107

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services
Office of Community Services

Kinship Guardianship Subsidy Program
(LAC 67:V.Chapter 41)

In accordance with the provision of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services (DSS), Office of Community Services (OCS), intends to adopt the rule, LAC 67:V, Subpart 5, Foster Care, Chapter 41, Kinship Guardianship Subsidy Program.

Title 67
SOCIAL SERVICES
Part V. Community Services
Subpart 5. Foster Care
Chapter 41. Kinship Guardianship Subsidy Program
§4101. Subsidizing Kinship/Guardianship Arrangements for Children in Foster Care

A. Overview of Program Purpose

1. The Subsidized Kinship/Guardianship Program enables the Department of Social Services (DSS) to make payments to certified relative and fictive kin caregivers on behalf of a child who otherwise might not be able to achieve

permanency outside of agency custody because of special needs or other circumstances. Subsidy payments shall be limited to a child(ren) for whom kinship guardianship is indicated due to other more permanent options such as reunification with the parents, immediate unsubsidized custody to a relative or other caregiver, or adoption being determined unfeasible for the child. The kinship guardianship subsidy applies only to a child(ren) for whom the DSS holds legal custody prior to the kinship placement, when the kinship placement provider is a certified foster caregiver according to the certification standards of the State, and, the child(ren) has remained in the kinship placement for at least 6 consecutive months. The granting of a subsidy shall not affect the legal status of the child nor the rights and responsibilities of the kinship/guardianship caregivers.

2. The prospective kinship/guardianship family must meet basic foster care certification eligibility requirements in all respects except for the ability to assume complete financial responsibility for the child's care.

B. Types of Subsidy Payments. The child may be subsidized for the following services up to age 18.

1. Maintenance. The maintenance subsidy includes basic living expenses such as board, room, clothing, spending money, and ordinary medical costs. The maintenance supplement may be ongoing, but must be renewed on a yearly basis. The amount of payment shall not exceed 80 percent of the state's regular foster care board rate based on the monthly flat rate payments for the corresponding age group. Changes in the maintenance subsidy rate may occur once a year and the adjustment is made at the time of change in the child's age group. The monthly maintenance shall not be based on specialized foster care arrangements such as subsidized foster care, alternate family care, or therapeutic foster care, but rather on the regular foster care board rate.

2. Special Board Rate. Foster parents entering into a kinship/guardianship agreement for a foster child for whom a special board rate was received may request up to a maximum 80 percent of the special board rate amount of $300. This is only provided if the care and needs of the child in the kinship/guardianship arrangement warrant this same special board rate. Therefore, under the Kinship/Guardianship Subsidy Program, the special board component for these caregivers shall not exceed $240. The continued need for the special board rate shall be reviewed at the time of the annual review.

3. Special Services

a. The special services subsidy is time limited and in some cases may be a one time payment. It is the special assistance given to handle an anticipated expense when no other family or community resource is available. If needed, it can be offered in addition to the maintenance and special board rate subsidy. The special services subsidy must be established as a part of the initial kinship/guardianship subsidy agreement, and may not be provided or renegotiated based on any circumstances which develop or issues identified after that point. Special services subsidies include the following types of needs:

i. Special medical costs deemed medically necessary for the daily functioning of the child for any condition existing prior to the date of the initial judgment establishing guardianship with the kinship caregiver and not covered by Medicaid or other insurance.

ii. Ongoing therapeutic treatment costs to complete current therapy and future treatment costs on a time limited basis up to 18 years of age, as agency resources allow, related to the abuse/neglect received by the child and impacting the child's capacity to function effectively as part of the child's educational, family or social environment. This does not include the cost of residential care or psychiatric hospitalization.

iii. Legal and court costs to the family up to $2000 for establishing the kinship/guardianship arrangement.

b. Medicaid Eligibility: The child remains eligible for Medicaid coverage up to 18 years of age when entering a Kinship/Guardianship arrangement from foster care. This coverage will be eligible utilizing Title IV-E federal benefits if the child was Title IV-E eligible at the time of the subsidy arrangement.

c. Chaffee Foster Care Independence Program and Education Training Voucher Eligibility: The child is eligible for participation in the Chaffee Foster Care Independence Program and for Education Training Vouchers if the child enters a Kinship/Guardianship arrangement from foster care after reaching 16 years of age.

C. Exploration of Kinship/Guardianship Resources

1. Before a child is determined by the Office of Community Services (OCS) as eligible for a kinship/guardianship subsidy, it must be determined that the child can not be reunited with the parents, it must be determined that there are no relative resources available to accept custody of the child without subsidy payment, and, that resources for adoptive placement must be explored by the child's worker. If the kinship family with whom the child is placed refuses to adopt the child or is unable to be certified as an adoptive family, the agency has to demonstrate the benefits of maintaining the child in the placement in a kinship/guardianship arrangement as opposed to pursuing stranger adoption for long term permanency. It is also necessary for the child's worker to discuss plans for a guardianship arrangement with the child and document the outcome of that discussion with the child, including agreement with that plan by any child 14 years of age up to 18 years of age. Lack of agreement by any child 14 years of age up to 18 years of age should be an ongoing topic of counseling regarding the benefits of the arrangement between the worker and the child, until a permanency option is achieved for the child or until the child attains 18 years of age.

2. Whenever an eligible child is with a certified kinship caregiver in another state, the family shall be eligible for a kinship/guardianship subsidy under the same conditions as Louisiana residents.

D. Eligibility Criteria

1. The OCS, Kinship/Guardianship Subsidy Program, will determine the appropriateness of subsidy benefits, the type of subsidy, and, the level of the subsidy. An agreement form between the OCS and the prospective kinship/guardianship parents, with clearly delineated terms, must be signed prior to the granting of the final decree for guardianship. This agreement will be reviewed on an annual basis thereafter by the OCS to insure ongoing eligibility.

2. A family is considered eligible for participation in the Kinship/Guardianship Subsidy Program if they are related to the child or family of the child through blood or marriage or if there exists a fictive kin relationship, which is defined as a relationship with those individuals connected to an individual child or the family of that child through bonds of affection, concern, obligation, and/or responsibility, and are considered by an individual child or family to hold the same level of relationship with an individual child or family as those individuals related by blood or marriage.

E. Effects of Deaths of Guardians on Kinship/Guardianship Subsidy. Where a kinship/guardianship subsidy agreement is in effect and the guardians both die prior to the child reaching the age of majority, the subsidy agreement will end. The child may remain in the care of a duly designated tutor/guardian as established by the family prior to their death, without further involvement of the agency. If the duly designated tutor/guardian requires financial assistance to maintain the care of the child it will be necessary for those individuals to become certified as foster parents prior to entering into a Kinship/Guardianship subsidy agreement with the agency. During the process of becoming certified as foster parents the family may retain care responsibility of the child without the child returning to the custody of the state. However, there can be no financial support of the child by the state until such family has been certified and the Kinship/Guardianship subsidy agreement established.

AUTHORITY NOTE: Promulgated in accordance with P.L. 110-351.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 35:

§4103. Nonrecurring Expenses in Kinship/Guardianship Arrangements

A. The OCS sets forth criteria for reimbursement of nonrecurring expenses associated with establishing Kinship/Guardianship arrangements for children in foster care.

1. The amount of the payment made for nonrecurring expenses associated with establishing Kinship/Guardianship arrangements for children in foster care shall be determined through agreement between the guardian(s) and the OCS. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

2. The agreement for nonrecurring expenses must be signed prior to the final decree granting guardianship.

3. There must be no income eligibility requirement for guardian(s) in determining whether payments for nonrecurring expenses associated with establishing Kinship/Guardianship arrangements for children in foster care shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

4. The maximum rate of reimbursement for nonrecurring expenses has been set at $2,000 per Kinship/Guardianship arrangement.

5. In cases where siblings are placed and Kinship/Guardianship arrangements established, whether separately or as a unit, each child is treated as an individual with separate reimbursement for nonrecurring expenses up to the maximum amount allowable for each child.

6. Reimbursement is limited to costs incurred by or on behalf of guardian(s) not otherwise reimbursed from other sources. Payments for nonrecurring expenses shall be made directly by the OCS.

7. When the Kinship/Guardianship arrangement for the child involves interstate placement, the state that enters into the Kinship/Guardianship subsidy agreement will be responsible for paying the nonrecurring expenses for the arrangement for the child.

8. The term *nonrecurring expenses in relation to Kinship/Guardianship arrangements* means reasonable and necessary legal fees, court costs, attorney fees and other expenses which are directly related to the legal establishment of the Kinship/Guardianship arrangement for a child in foster care, which are not incurred in violation of state or federal law, and which have not been reimbursed from other sources or other funds. Other expenses which are directly related to the legal establishment of the Kinship/Guardianship arrangement for a child in foster care means the costs of the arrangement incurred by or on behalf of the guardians and for which guardians carry the ultimate liability for payment. Such costs may include but are not limited to travel costs for the child and/or guardians to be present for the legal proceedings to establish the Kinship/Guardianship arrangement.

AUTHORITY NOTE: Promulgated in accordance with P.L. 110-351.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 35:

Family Impact Statement

1. The effect on the stability of the family. Establishing the Kinship Guardianship Subsidy program will provide necessary financial resources to relative or fictive kin caregivers to support and stabilize the placement of children to whom they are connected and willing to provide care and supervision. Many times families are unable to accept custody of a child to whom they are connected solely due to the additional financial burden on the family. This will also provide children greater permanency than remaining in foster care as the agency and court will no longer be involved in the custody and supervision of the child and family, relinquishing full parental control to the relative or fictive kin caregiver through adulthood.

2. The effect on the authority and rights of parents regarding education and supervision of their children. The family providing care to the child will have an established legal right to all educational and supervisory authority and rights to the child's care. The biological parents may petition the court through civil proceedings to return the children to their care and supervision at any point they wish as they will retain parental rights to the child.

3. The effect on the functioning of the family. The family providing care to the child will have the same parental controls, responsibilities, and rights for the child as long as the Kinship/Guardianship arrangement remains in effect as they would have for their own children, without interference from the agency or court.

4. The effect on family earnings and family budget. The financial support of the Kinship Guardianship Subsidy will enable the family to provide necessary care and supervision to the child without financial burden on the family budget.

5. The effect on the behavior and personal responsibility of children. Establishment of the permanent Kinship/Guardianship relationship will allow children to be permanent members of the caregiver family, thus stabilizing the role and position of the child in the family. This should support more positive behavioral interaction and personal responsibility by the child.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. The family will already have been the child's caregiver for at least 6 months prior to establishing the Kinship/Guardianship arrangement. Thus establishing the legal arrangement will only serve to support an already existing relationship by removing the agency and the court from the family dynamic.

A public hearing will be held on September 29, 2009 at 10:00 a.m. at the Department of Social Services, Iberville Building 627 N. Fourth Street, Baton Rouge, in Room 1-125, to receive comments on the proposed Kinship Guardianship Subsidy Program. Written comments should be sent to Kaaren Hebert, Assistant Secretary, Office of Community Services, and P. O. Box 3318, Baton Rouge, LA 70821, and must be received no later than the close of business on September 30, 2009.

Kristy H. Nichols
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Kinship Guardianship Subsidy Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The Department of Social Services, Office of Community Services, proposes to adopt as a rule LAC 67: V, Subpart 5, Foster Care, Chapter 41 to establish the Kinship Guardianship Subsidy Program. This program allows children, after 6 months of foster care placement with a relative, to be placed legally in a guardianship relationship with the relative. Relatives who meet basic foster care certification eligibility requirements will receive subsidy payments from the State to support the ongoing care of the child. The child may be subsidized for services up to age 18. Based on the number of children currently in the foster care program, the agency anticipates that 86 children will participate in this program. Subsidy payments will be provided for board, which is inclusive of basic living expenses such as room, clothing, spending money, and ordinary medical costs. In addition, foster parents entering into a kinship/guardianship agreement may be eligible to receive a special one-time payment of up to $2,000 for legal and court costs associated with establishing the agreement. The guardian may also receive a special subsidy to cover special medical costs not covered by Medicaid or other insurance or for therapeutic treatment costs to complete current therapy.

The estimated costs associated with this new program include the cost of publishing rulemaking $328 ($164 SGF; $164 Federal); the cost for board payments $513,792 ($128,448 SGF; $385,344 Federal); the cost for one-time legal expenses to establish guardianship $172,000 (SGF); and the cost of the special subsidy for medical and therapeutic services which cannot be estimated at this time because the agency cannot determine how many children will be eligible to receive this subsidy. The only new costs associated with this program include the special subsidies for legal and medical expenses; however a net increase in cost is indeterminable because all costs cannot be calculated. The agency will use existing funds currently appropriated in the foster care program to cover all program expenditures.

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 agency will not receive additional federal funding to implement this program.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The 86 participants of this program will benefit economically by receiving a kinship subsidy to provide for the ongoing needs of the child.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule should have no impact on competition and employment.

Kaaren Hebert
Assistant Secretary
0908#104

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of Transportation and Development
Office of Public Works

Statewide Flood Control Program
(LAC 56:III.Chapter 3)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to amend Chapter 3 of Part III of Title 56 entitled "Statewide Flood Control Program", in accordance with the provisions of R.S. 38:91, et seq. The existing Subchapters B and C are repealed in their entirety and new Subchapters B and C are inserted in lieu thereof.

Title 56
PUBLIC WORKS
Part III. Flood Control and Water Management
Chapter 3. Statewide Flood Control Program
Subchapter A. Procedures for Implementing Statewide Flood Control Program

§301. Sequence

A. This Section describes the sequence of events involved in implementing the Statewide Flood Control Program. The sequence begins and ends each year during the regular session of the legislature. Specific procedures are described briefly in this Section and are presented more fully in the pre-application, application, and evaluation of proposed projects and distribution of funds sections of this document.

1. Pre-Application and Resolution (April 1-May 1). Sponsoring authorities are to complete the pre-application, and must submit their completed pre-applications and resolutions to OPW not later than 4 p.m. on May 1. Pre-applications received after May 1 will not be eligible for the program in the current year. Pre-applications must include documentation of the flooding problem in order to be considered.

2. Evaluation Committee Review of Pre-Applications (May 1-June 1)

a. Pre-applications will be reviewed and screened by the Evaluation Committee. The reasons for the review are to determine whether there is documented evidence of flood damages; whether the sponsoring authority is requesting OPW assistance in preparing the full application; whether the proposed solution (if such a solution has been developed at this time) is eligible for funding under this program; and whether the sponsoring authority is willing to assume responsibility for its share of the cost, including new rights-of-way, operation and maintenance costs, and other obligations.

b. All pre-applications that are determined to be ineligible by the Evaluation Committee will be returned with appropriate comments by June 1 or as soon as possible. All eligible pre-applications will remain on file until a formal application is submitted or for a period of four subsequent funding years. The pre-application evaluation criteria for OPW assistance are described in the Pre-Application Section.

c. Pre-applications that have been determined to be eligible and that may move on to the application stage include:

i. pre-applications submitted by sponsoring authorities with a population of more than 50,000;

ii. pre-applications from sponsoring authorities to receive assistance from OPW in the application stage;

iii. pre-applications from sponsoring authorities eligible for assistance from OPW in the application stage that cannot be handled by OPW in time for the current funding year that chose to prepare their own applications.

d. Pre-applications in the third group may be processed in the application stage by OPW in time for the next year's funding. Applications on which OPW initiates work will receive increased priority for assistance in application preparation in the following funding years. The sponsoring authorities need not wait for OPW assistance. However, they may prepare and submit their own applications.

e. At the end of the pre-application review period, applicants will be notified of the status of their pre-applications. The sponsoring authorities seeking OPW assistance in preparing an application will be informed by letter whether they:

i. will receive OPW assistance in time for the current funding cycle; or

ii. will not receive assistance at this time and must compete for assistance again the following year.

f. Authorities completing their own applications may automatically move into the application stage unless the proposed solution is not eligible as a project under the program. If the proposed solution is not consistent with the program's objectives, the Evaluation Committee may suggest alternative solutions which must be addressed in order for the application to be eligible.

3. Application Preparation (June 1-October 1)

a. Applications may be submitted anytime between June 1 and October 1, but must be received by OPW no later than 4 p.m. October 1, in order to be considered for funding during the upcoming legislative session. Applications received after this deadline will not be eligible for the current year's program. Applications for which pre-applications were received and approved from the previous year(s) may also be accepted during this period, provided all other procedures and deadlines have been met and four years have not elapsed since the pre-application submittal.

b. On request, OPW will prepare applications for eligible sponsoring authorities to the extent possible. All applications must adhere to the methodologies described in the instructions contained in the SWFC Procedures Manual.

4. Evaluation Committee Review of Applications (October 1-April 1)

a. During this six month period, the Evaluation Committee will review and evaluate all completed applications in order to make recommendations to the Joint Legislative Committee on Transportation, Highways, and Public Works for funding. Applications will be divided into urban and rural categories. Applications for projects in the nine major urban areas comprise the urban category, as shown in the Figure 1, and compete against all other urban projects for funding. All other applications will be grouped by funding district as shown in Figure 2. Rural projects are subdivided into two categories, rural-developed and rural-undeveloped. Rural-undeveloped projects compete only against other rural-undeveloped projects in the same funding district and likewise for rural-developed projects. Proposed projects will be evaluated and ranked based on criteria established by the Evaluation Committee.

Figure 1. Statewide Flood Control Program Nine Urban Areas Funding Group

Figure 2. Statewide Flood Control Program Five Funding Districts for Rural Projects

b. Projects recommended to the Joint Legislative Committee will include a mix of those occurring in rural-undeveloped and rural-developed areas within each funding district as well as those for urban areas of the state. The method for allocating funding percentages within each district and the method for allocating total program funds to the various districts are presented in Subchapter D, Evaluation of Proposed Projects and Distribution of Funds.

5. Public Hearings (February-March). As part of the application evaluation process, the Joint Legislative Committee will hold public hearings in locations convenient to each funding district. The purpose of the hearings will be to receive comments from the public on the preliminary recommendations of the Evaluation Committee. After the hearings, the Evaluation Committee will incorporate public comments into its evaluation, complete the project evaluations, complete the project evaluations, and submit a priority ordered list of projects to the Joint Legislative Committee.

6. Legislative Process (March-Regular Session). From the list of projects recommended by the Evaluation Committee, the Joint Legislative Committee will recommend to the legislature a construction program to be funded during the regular session. Projects recommended by the Evaluation Committee but not funded will remain active and will automatically be included in the recommended projects for the next year and receive additional points in the evaluation scoring procedure. Applications for projects that are not recommended will be returned to the sponsoring authorities with reasons for rejection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:91 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:561 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:

Subchapter B. Pre-Application Evaluation Procedures

§303. Pre-Application Review and Evaluation Procedure

A. The Evaluation Committee will be responsible for the review and evaluation of pre-applications. The reasons for reviewing and evaluating the pre-applications are to determine the following:

1. whether there is documented evidence of flood damages;
2. whether the sponsoring authority is requesting OPW assistance in preparing the full application;
3. whether the proposed solution (if one has been developed) appears to be eligible for funding under this program;
4. whether the sponsoring authority is willing to assume responsibility for its share of the cost.

B. If the applicant fails to adequately document that flood damages have occurred, the Evaluation Committee will not evaluate the pre-application and will notify the sponsoring authority accordingly. Because of time and manpower constraints, OPW will not be able to provide immediate assistance to all sponsoring authorities requesting assistance in the application stage.

C. Consideration will be given to the following:

1. time elapsed since the initial request was made;
2. local support;
3. existence of applicable surveying and engineering information within the OPW files, and the degree to which this information can be used;and
4. severity of flooding problems documented.

D. Points will be awarded to sponsoring authorities seeking OPW assistance in preparing applications for the above items in the following manner.

1. Time Elapsed—Add 1.0 point for each year up to four years since the initial request was made.
2. Local Support—Add up to 1.0 point for letters from the entire respective legislative delegation on file.
3. Existence of Information—Add 1.0 point if vertical control has been established over the project area; 1.0 more point if no additional cross sections need to be taken; and add 1.0 more point if engineering calculations and the design are complete.
4. Severity of Problem—Add the appropriate number of points based on the following document information.

Value	Occurrence	Points
0.1 point for each building damages 0.1 point for each 300 acres flooded 0.1 point for each landowner affected 2.0 points for loss of life	x	Number of occurrences in past 10 Years =

NOTE: Priorities will be established for each funding district effective June 1 of each year. The Office of Public Works will identify pre-applications for which it will try to complete applications during June 1 through October 1 application preparation period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:91 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:562 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:

§305. Instructions for Preparing Attachments

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:564 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), repealed LR 35:

§307. Application

AUTHORITY NOTE: promulgated in accordance with R.S. 38:90 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:565 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), repealed LR 35:

§309. Format for Application

AUTHORITY NOTE: promulgated in accordance with R.S. 38:90 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:565 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), repealed LR 35:

§311. General Instructions for Completing Application

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:565 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), repealed LR 35:

§313. Pertinent Information for Completing Application

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:571 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), repealed LR 35:

Subchapter C. Evaluation of Proposed Projects and Distribution of Funds

§315. Project Evaluation Procedure

A. The Evaluation Committee will compile a priority ranked list for the projects in rural-developed and rural-undeveloped areas within each district and projects within urban areas each funding year. For evaluation purposes, the project classifications concern the characteristics of the benefitted area, not the design criteria or the contributing drainage area. The three project classifications are urban, rural-undeveloped and rural-developed. The urban category includes projects located in Shreveport, Bossier City, Monroe, Alexandria, Lake Charles, Lafayette, Baton Rouge, and its contiguous urbanized areas, New Orleans, and the urbanized portions of Jefferson Parish as shown in Figure 1 above. Rural-undeveloped projects are those located in areas with a structure density of 128 or less structures per square mile while rural-developed projects are located in areas with more than 128 structures per square mile. The evaluation will be based on a combination of rating procedures described hereinafter.

B. The priority ranking of each project will be based on the sum of the scores of Parts A and B of the Application Evaluation Forms. Using the combined scores, the Evaluation Committee will produce a program priority list. The priority list will be forwarded to the Joint Legislative Committee on Transportation, Highways and Public Works.

C. Procedure for Application Evaluation Form—Part A

1. The Evaluation Committee will review each application and score it according to the following categories and maximum points.

a. Documentation of Flood Problem—20 maximum points

b. Local Support - —5 maximum points

c. Technical Feasibility—45 maximum points

d. Prevention of Loss of Life and Improved Public Safety—5 maximum points

e. Environmental Effects and Impact on Development—15 maximum points

f. Projects Recommended but not Funded—10 maximum points

2. The following guidelines will be used by the Evaluation Committee to rate applications to the Statewide Flood Control Program. This scoring procedure pertains to projects which meet the legislative intent of the program. Projects which are engineeringly unsound, cause unreasonable flooding in other areas, cause unacceptable or unmitigable environmental damages or otherwise do not meet the objectives of the program will not be scored.

a. Documentation of Flood Problem (20 point maximum). This category takes into consideration the adequacy of documentation which demonstrates the existence and severity of flood damages.

b. Local Support (5 point maximum). This category takes into consideration the following:

i. letters of support on file from the respective legislative delegation;

ii. no letters of objection from public officials, neighboring authorities, citizens groups, etc;

iii. multiple sponsorship.

c. Technical Feasibility (45 point maximum). This category takes into consideration the following:

i. completeness of project design;

ii. due consideration of alternatives (structural and nonstructural);

iii. compatibility of the project to other federal, state, and local projects;

iv. impact on flooding in areas upstream, downstream, and adjacent to the benefitted area.

d. Prevention of Loss of Life (5 point maximum). This category takes into consideration the following:

i. historical losses of life that may have been prevented by the project;

ii. the degree of success of the project at maintaining access to vital services (e.g., hospitals) and protection of evacuation routes.

e. Environmental Effects and Impact on Development (15 point maximum). This category takes into consideration the following:

i. no letters of objection from public agencies;

ii. no impact on special historical, archeological, geological features, or environmentally sensitive areas;

iii. not in a wetlands area;

iv. effectiveness of the project in relation to encroachment into flood prone area (i.e., 100-year flood plain).

f. Projects Recommended But Not Funded (10 point maximum). Add points for each year (up to a four year maximum) that the proposed project has been on the list of recommended projects but has not received funding.

D. Procedure for Application Evaluation Form—Part B

1. Ratings are computed on the basis of potential damage reductions associated with the design flood and do not include efforts to annualize benefits and costs. The same formula is to be used for rural-developed, rural-undeveloped projects, and urban projects, and appears below.

$$\text{Part B Score} = \frac{\text{Total Damages*}}{\text{Total Construction Cost}} \times \frac{90}{90 - (\text{PLM } 10)}$$

where PLM = percent local match

*Total damages are any damages from the design storm which will be prevented by the flood control project including: agricultural crop and land damages; agricultural building damages; damages to residential, commercial, public, and other buildings; damages to roads; damages to buildings; and damages to industries.

2. In the Part B scoring process, projects, projects are separated into their appropriate categories (i.e., rural-undeveloped, rural-developed, and urban).

E. Example of Evaluations. The Evaluation Committee will calculate the scores from Parts A and B to derive the total score for each project. The priority ranking will be determined by adding the total scores from Parts A and B for each project. In the following example hypothetical information is used to compare three projects.

1. Part A. The three projects are first scored using the Application Evaluation Form—Part A. Results for the three projects are summarized in the following table. Projects are given both a raw score and a final score. The project with the highest raw score is awarded 100 points and competing projects are awarded points based on the ratio of their raw scores to the raw score of the highest scored project multiplied by 100.

2. Part B

a. The following tables demonstrate the Part B evaluation procedure for the same three projects (assumed to be in the rural-developed category). The benefits data presented in the first table would be taken from the applications.

b. The damage reductions and cost data for each category shown in the following table are used to compute the raw scores shown in the table for Part B scoring. The Part B scores will then be used to obtain a final score.

Tabulation of Project Points Credited for Part A				
		Project Points Credited		
Category	Maximum Points	Flat River	Danville	Sunnydale
Documentation of Flood Problem	20	12	17	13
Local Support	5	4	5	4
Technical Feasibility	45	36	40	27
Prevention of Loss of Life and Improved Public Safety	5	3	3	2
Environmental Effects and Impact on Development	15	1	3	2

Tabulation of Project Points Credited for Part A				
		Project Points Credited		
Category	Maximum Points	Flat River	Danville	Sunnydale
Projects Recommended but not Funded	10	2.5	0	0
RAW SCORE	100	58.5	68	48
FINAL SCORE*		86	100	71
*The project with the highest raw score receives 100 points. The other projects receive a percentage of 100 based on their raw score relative to the project with the highest raw score.				

Tabulation of Costs And Benefits			
	Project Damage Reduction (Dollars)		
Category	Flat River	Danville	Sunnydale
Agricultural Acres	118,746	600,000	40,000
Residences	4,797,000	1,000,000	350,000
C and I Buildings	_	50,000	1,100,000
Other Buildings	_	100,000	700,000
Farm Structures	_	200,000	100,000
TOTAL DAMAGE REDUCTION	4,915,746	1,950,000	2,290,000
CONSTRUCTION COST	1,300,000	550,000	700,000

Part B Scoring			
Scoring Category	Flat River	Danville	Sunnydale
Raw Score			
Total Damages__ = Construction Cost	$4,915,746 / $1,300,000	$1,950,000 / $ 550,000	$2,290,000 / $ 700,000
or	3.78	3.55	3.27
Additional Funding Adjustment =			
90 / 90 - (PLM 10)	90 / 90(40 - 10)	90 / 90 (10 - 10)	90 / 90 - (10 - 1.0)
or	1.50	1.00	1.00
Adjusted Score = Raw Score x Additional Funding Adjustment	5.67	3.55	3.27
*In this case Flat River contributed greater than the minimum local match and therefore receives a higher score.			

3. Priority Score

a. The point totals parts A and B are multiplied in the following table to establish scores for the priority ranking of projects to be recommended for funding.

Final Priority Scores			
	Project		
Form	Flat River	Danville	Sunnydale
Part A	86	100	71
Part B	5.67	3.55	3.27
Total	488	355	232
Rank	1	2	3

b. If these three applications were in the same district and they were all in the rural developed category (as previously stated), the Evaluation Committee would recommend them for funding in the following order:

i. Flat River;

ii. Danville; and

iii. Sunnydale.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:91 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:574 (May 1985), repromulgated by the Department of

Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:.

§317. Project Application Review and Public Hearings

A. The Flood Control Project Evaluation Committee will review applications between October 1 and the following April 1. During the review period, public hearings will be conducted in locations convenient to each Statewide Flood Control Program funding district by the Joint Legislative Committee on Transportation, Highways, and Public Works to solicit comments on the projects being considered for funding.

B. During this time, the Evaluation Committee will also receive from the Joint Legislative Committee on Transportation, Highways, and Public Works a projected funding level for the construction program of the coming year.

C. Based on the information gathered at the public hearings and the application evaluations, the Evaluation Committee will submit a list of recommended projects to the Joint Legislative Committee, on the basis of the distribution of funds described below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:91 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:577 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:

§319. Distribution of Funds

A. The distribution of program funds is based on a two-tiered system including:

1.a. the nine major urban areas in Louisiana as shown in Figure 1 (§301); and

b. the five funding districts shown in Figure 2 (§303);

2. 45 percent of total program funds is allocated to project areas within the nine designated urban areas. Projects within urban area must compete for funding with projects from all urban areas. However, no more than 20 percent of the total amount of funds available to finance projects in Louisiana's urban areas may be allocated to any signal urban area. The urban areas included are Shreveport, Bossier City, Monroe, Alexandria, Lake Charles, Lafayette, New Orleans, Baton Rouge and its contiguous urbanized area, and the urbanized portion of Jefferson Parish. The boundaries of the city limits and urbanized areas are consistent with the U.S. Census Bureau's urban designation;

3. 55 percent of total program funds is allocated to rural projects in the five funding districts. There are two categories of rural projects for funding distribution, rural-undeveloped and rural-developed. The formula for distributing funds among the five districts is as follows:

District's Percent of Available Funding =
[0.50 x (District's Percent of State's total Area)] +
[0.50 x (District's Percent of State's Total Flood Plain Area)]

4. The following table presents the funding allocation percentage for each of the five districts.

Table 1
Funding Allocations for Rural Projects by Funding District

Funding District	Percent of State Total		
	Land Area	Floodplain	Funding Allocation
Northwest	28.3	17.9	23.1
Northeast	18.4	14.9	16.7
Southwest	17.4	13.6	15.5
Southeast	19.3	25.9	22.6
South Central	16.6	27.7	22.1
State Total	100.0	100.0	100.0

B. An important feature of the program is the separation of funds into rural-undeveloped and rural-developed categories within each funding district. The Evaluation Committee determines which category will be used for a project during the application review. The method for making the determination is based on structure density in the benefitted area. Benefitted areas with structure densities of more than 128 structures per square mile which are not one of the nine designated urban areas are considered rural-developed. Benefitted areas with structure densities of 128 or less structures per square mile are considered rural-undeveloped.

C.1. District funds are divided between the two rural categories. The separation of funds is based on the amount of agricultural land and developed land (excluding the nine urban areas) within each district in relation to the amount within the entire state. The formulas for making the primary separation between rural-developed and rural-undeveloped areas are:

Percent of District Funds Designated Rural-Undeveloped =
(District's Percent of Total State Agricultural Area) -
[(District's Percent of Total State Agricultural Area) +
(District's Percent of Total State Developed Area)] and
Percent of District Funds Designated Rural-Developed =
(District's Percent of Total State Developed Area) ÷
[(District's Percent of Total State Agricultural Area) +
(District's Percent of Total State Developed Area)]

2. The two formulas account for 100 percent of the district funding total in all cases. The recommended funding ratios for the two rural categories are presented in Table 5 of this Section.

D. The Evaluation Committee will make its recommendations for projects within the limitations of the funding projections for the coming year and in accordance with the distributions presented in Tables 1 and 2 of this Chapter. Table 3 of this Chapter presents the funding distribution for a hypothetical $50 million construction program allocation.

Table 2
Recommended Percentage Distribution of Funds, by Rural Category for Funding Districts

Funding District	Percentage of District Funds	
	Rural-Undeveloped	Rural-Developed
Northwest	52	48
Northeast	73	27
Southwest	55	45
Southeast	29	71
South Central	42	58

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:91 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:577 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:

§321. Redistribution Procedure

A. In the event that there are an insufficient number of approved projects in a funding district for a particular category (e.g., rural-undeveloped), then those funds would be allocated to fund projects in the other rural category (in this example, rural-developed) within the same district. If there are insufficient approved projects in both rural categories for a particular district to utilize the funding allocation in a particular year, then the excess funds shall be allocated to fund rural projects in the other funding districts which have been approved but not funded.

B. All excess funds shall be redistributed to other districts on a pro rata basis based on each funding district's percentage of rural project funds (Table 4 of this Chapter). The first priority will be to use unrequested rural-undeveloped project funds to fund approved rural-undeveloped projects in other districts. In the event that funds are still remaining, rural-undeveloped funds may then be used to fund rural-developed projects in other funding districts. Similar, unrequested rural-developed project funds shall be redistributed to other districts after satisfying all approved rural-developed projects and before becoming available to fund approved rural-undeveloped projects in other districts.

C. If funds allocated to the five funding districts are remaining after all approved rural projects have been funded, any remaining funds may then be used to fund approved but unfunded projects in urban areas. Similarly, any funds remaining after all approved urban projects have been funded may then be used to finance rural projects in the funding districts and shall be allocated in the same fashion as any funds initially allocated to these districts.

D. It is the intention of this program that redistributed funds be sufficient to complete a project. If funds available for redistribution are insufficient to complete a project, such funds shall then be carried forward to supplement the funding base for the next year's program.

E. In the event that funds become available due to the expiration of the four-year period allowed sponsoring authorities to generate local matching funds, those funds previously set aside will be redistributed in the same manner as described above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:91 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:578 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:

§323. Legislative Process

A. The Joint Legislative Committee on Transportation, Highways and Public Works will submit to the legislature a construction program. As specified by Act 351 of 1982, the legislature may delete any project that it believes was not selected in accordance with the guidelines of the Act. The legislature may not make any additions or substitutions to the construction program.

B. Projects recommended by the Evaluation Committee but not funded by the legislature will remain on the Evaluation Committee's recommendation list for a period of up to four years. These projects must compete with all other remaining projects from previous funding years (up to four years) and new projects in subsequent funding years. However, projects recommended but not funded will be awarded 3.3 points (10 points maximum) for each year since the first filing of the project application.

Table 3
Example of Distribution of Funds for Hypothetical $50 Million Construction Program

			Targeted Funding Range ($ Million)	
District	Total ($ Million)	District Total ($ Million)	Rural-Undeveloped	Rural-Developed
Urban Areas	22.50	--	--	--
Funding Districts	27.50	--	--	--
Northwest		6.35	3.30	3.05
Northeast		4.60	3.34	1.26
Southwest		4.25	2.34	1.91
Southeast		6.20	1.80	4.40
South Central		6.10	2.56	3.54
Total	50.00	27.50	13.34	14.16

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:91 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:578 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:

§325. Construction and Operation

A. Each sponsoring authority designated as a recipient of program funds must enter into an agreement with the Department of Transportation and Development, Office of Public Works, prior to the initiation of construction of a project and awarding of funds. This agreement stipulates what must be followed during all construction phases of the project, operation and maintenance, as well as the sponsoring authorities' obligations under R.S. 38:91. Policies and procedures that must be adhered to are detailed in the *Statewide Flood Control Program Procedural Manual for Funded Projects* made available to all sponsoring authorities designated to receive program funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:91 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:579 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:

Family Impact Statement

The proposed adoption of this Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically:

1. the implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family;

2. the implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children;

3. the implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family;

4. the implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget;

5. the implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children;

6. the implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent. Such comments should be submitted to Sherryl J. Tucker, DOTD Legal Section, P.O. Box 94245, Baton Rouge, LA 70804, Telephone (225) 237-1359.

William D. Ankner, Ph.D.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Statewide Flood Control Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There should be no costs or savings to the state or local governmental units as a result of the implementation of this rule change. It is being promulgated for the purpose of reflecting recent technical changes in Departmental policies that have occurred since the inception of the program, as well as to add clarification to certain regulations.

The adjusted figures in the charts contained in the proposed rule reflect changes in the percentages of state and local matching funds for flood control projects. These changes were made pursuant to Act 999 of 1999.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue collections of state or local governmental units as a result of this rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no costs associated with this rule change. The rule is being amended to reflect current Departmental policies. It also modifies the current administrative rule by removing text which is not appropriate for administrative rule, but rather will be contained in a more flexible manual for the use of the sponsoring authorities. By removing these sections, the Department will be allowed the flexibility to adjust such information as necessary, such as addresses and telephone numbers for departmental contacts, forms and unit damage values, and therefore the Department will be better able to assist the sponsoring authorities in submitting the pre-application and application. The more pre-applications and applications that the local sponsors (local governments) submit successfully the first time, the sooner projects can begin, thereby reducing flood damages. This will likely result in an economic benefit for local citizens, however the amount of such benefit cannot be quantified at this time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule change should have no impact on competition or employment.

William D. Ankner, Ph.D.
Secretary
0908#035

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of the Treasury
Board of Trustees of the Louisiana State Employees' Retirement System

DROP Disbursements (LAC 58:I.2713)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") proposes to amend LAC 58:I.2713, regarding mandatory DROP distributions to reflect the annual nature of that process. This Rule change complies with and is enabled by R.S. 11:515.

Title 58
RETIREMENT
Part I. Louisiana State Employees' Retirement System
Chapter 27. DROP Program
Subchapter C. Withdrawal
§2713. Time for Disbursement

A. - B. …

C. When a retiree reaches age 70 1/2, mandatory annual distributions shall begin in accordance with IRS regulations. The amount of the distributions will be recalculated annually. The mandatory distribution is based on the retiree's age and DROP account balance using the table above.

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 25:2466 (December 1999), LR 29:1121 (July 2003), LR 30:2079 (September 2004), LR 32:1070 (June 2006), LR 35:

Family Impact Statement

The proposed Rule change amends LAC 58:I.2713. This Rule change should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;

2. the authority and rights of parents regarding the education and supervision of their children;

3. the functioning of the family;

4. family earnings and family budget;

5. the behavior and personal responsibility of children;

6. the ability of the family or a local government to perform the function as contained in the proposed Rules.

No preamble for these Rules has been prepared. Interested persons may submit written comments on the proposed changes until 4:30 p.m., September 25, 2009, to Steve Stark,

Board of Trustees for the Louisiana State Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804.

Cindy Rougeou
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: DROP Disbursements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No implementation costs to state or local governmental units are anticipated to result from the implementation of this rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effect on revenue collections of state or local governmental units is anticipated to result from the implementation of this rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Persons over the age of 70 1/2 would be affected as they are the persons required by IRC Section 401(A)(9) to receive minimum mandatory distributions from DROP. LASERS expects no associated costs or economic benefits to result from the proposed rule amendments because the change makes the rule more precisely reflect the actual practice of annual disbursements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment in the public or private sectors is anticipated to result from the proposed rule change.

Cindy Rougeou
Executive Director
0908#108

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of the Treasury
Board of Trustees of the Louisiana
State Employees' Retirement System

Public Safety Services Secondary Component
(LAC 58:I.3901)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") proposes to repeal LAC 58:I.3901, regarding retirement eligibility for members of the Public Safety Services Secondary Component. The repeal is proposed because the eligibility found in this Rule is also present in statutory law, rendering the Rule redundant. This Rule change complies with and is enabled by R.S. 11:515.

Title 58
RETIREMENT
Part I. Louisiana State Employees' Retirement System
Chapter 39. Public Safety Services Secondary Component
§3901. Additional Retirement Eligibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 29:2859 (December 2003), repealed LR 35:

Family Impact Statement

This rule change should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed rules.

No preamble for these rules has been prepared. Interested persons may submit written comments on the proposed changes until 4:30 p.m., September 25, 2009, to Steve Stark, Board of Trustees for the Louisiana State Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804.

Cindy Rougeou
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Public Safety Services Secondary Component

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No implementation costs to state or local governmental units are anticipated to result from the implementation of this rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effect on revenue collections of state or local governmental units is anticipated to result from the implementation of this rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Members of the Public Safety Secondary Component of LASERS would be affected; however, because the same retirement eligibility (10 years of service at age 60) still exists in statute (R.S. 11:602(B)) LASERS expects no associated costs or economic benefits to result from the proposed rule amendment.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment in the public or private sectors is anticipated to result from the proposed rule change.

Cindy Rougeou
Executive Director
0908#110

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of the Treasury
Board of Trustees of the Louisiana
State Employees' Retirement System

Voluntary Deductions from Retiree Benefits Payroll
(LAC 58:I.Chapter 11)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") proposes to amend LAC 58:I.1101-1119, regarding Voluntary Deductions from Retiree Benefits Payroll. The amendments are proposed to help LASERS continue compliance with federal legislation (the Pension Protection Act of 2006) and as part of a general updating of Chapter 11 of the system's rules. This Rule change complies with and is enabled by R.S. 11:515.

Title 58
RETIREMENT
Part I. Louisiana State Employees' Retirement System
Chapter 11. Voluntary Deductions from Retiree Benefits Payroll

§1103. Vendor Requirements

A. Authority for payroll deductions shall be governed by this Chapter. General insurance deduction vendors shall meet the following requirements.

1. Foreign companies shall:

a. have a current rating in A.M. Best of B+ or better, unless:

i. notwithstanding any other law, rule, or regulation to the contrary, and if they are in good standing with the Department of Insurance, and subject to the other applicable provisions of this Section, a foreign company which has participated in the Office of State Uniform Payroll deduction system for a period of at least ten years and has a rating in A.M. Best of B, may continue to market and sell insurance policies through payroll deduction until the beginning of the next open enrollment period following the four-year anniversary date from the date of the issuance of the B rating by A.M. Best, provided they have maintained a rating of B or better for the entire four-year period. Thereafter, in the event that the foreign insurer has maintained a rating of B by A.M. Best and that rating is increased from B to a B+ or better and they meet the other applicable requirements of this Section and other applicable rules and regulations, they may resume marketing and selling insurance through the payroll deduction system; or

ii. notwithstanding any other law, rule, or regulation to the contrary, if a foreign company has been participating in the Office of State Uniform Payroll deduction system for a period of at least ten years, and they have a rating in A.M. Best of B, they may maintain and administer indefinitely those policies purchased through payroll deduction as long as they maintain a rating by A.M. Best of no less than a B, are in good standing with the Department of Insurance, and comply with other applicable rules, and regulations, and laws and the provisions of this Section;

b. have been doing business under the same name for not less than three years;

c. offer like product, service, or coverage to citizens of Louisiana;

d. be in compliance with all procedural, accounting, and reporting requirements governing employee deductions.

2. Domestic companies shall:

a. have a current rating in A.M. Best of B or better, or if the company is of insufficient size to obtain a rating by A.M. Best, has posted a bond with the division of administration in the amount of:

i. $100,000, if the company is a member insurer of the Louisiana Life and Health Insurance Guaranty Association; or

ii. $250,000, if the company is not a member insurer of the Louisiana Life and Health Insurance Guaranty Association, or if the product for which the deductions are proposed is not covered under the Louisiana Life and Health Guaranty Association Act;

b. have been doing business under the same name for not less than three years;

c. provide like product, service, or coverage to citizens of Louisiana;

d. be in compliance with all procedural, accounting, and reporting requirements of all rules and requirements governing employee deductions.

3. Vendors offered through other state agencies or political subdivisions, if approved by the executive director.

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 33:676 (April 2007), LR 34:1639 (August 2008), LR 35:

§1105. Notification, Implementation and Transition

A. - B. …

C. Participation shall be at least 30 or more retirees, if approved by the executive director.

D. If a vendor falls below the participation level approved by the executive director, LASERS has the right to discontinue the payroll deduction immediately.

E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:

§1107. Deduction Authorization

A. - C. …

D. Vendor is responsible for submitting a computer file of monthly deductions to LASERS by the twelfth day of the month preceding the deduction using the electronic format and specifications established by LASERS. All deductions for a single vendor shall be submitted on one monthly file.

E. A retiree may discontinue any voluntary payroll deduction amount by providing written notification of that intent to the vendor. Vendors shall remove these persons from the file.

F. A retiree cannot authorize total deductions which exceed the amount of the benefit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:

§1109. Solicitation of State Retirees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), repealed LR 35:

§1111. Vendor Responsibilities

A. Vendors shall not be authorized to submit any deduction which was obtained from a retiree for the purpose of transmitting any part of that deduction to a third party.

B. The vendor is responsible for refunding any amounts deducted in error to the individual retiree.

C. Any information received from LASERS shall be handled in accordance with the Louisiana Public Records law.

D. - K. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:

§1113. LASERS' Responsibilities

A. LASERS shall be responsible for making the monthly deductions in the amount that are timely submitted by the vendor.

B. LASERS shall remit the amount deducted to the vendor and shall provide a listing of all exceptions.

C. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:

§1115. Reporting

A. …

B. - D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:

§1117. Fees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), repealed LR 35:

§1119. Termination of Payroll Deduction

A. ...

B. Payroll deduction authority may be revoked for any vendor that is removed from the annual listing maintained by the Office of State Uniform Payroll.

C. Payroll deduction authority may be revoked for any vendor that fails to comply with requirements of this rule.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:

Family Impact Statement

The proposed Rule change amends LAC 58:I.1103-1119. This Rule change should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed rules.

No preamble for these rules has been prepared. Interested persons may submit written comments on the proposed changes until 4:30 p.m., September 25, 2009, to Steve Stark, Board of Trustees for the Louisiana State Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804.

Cindy Rougeou
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Voluntary Deductions from Retiree Benefits Payroll

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No implementation costs to state or local governmental units are anticipated to result from the implementation of this rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effect on revenue collections of state or local governmental units is anticipated to result from the implementation of this rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Insurance vendors would be affected; the changes update the rules to provide increased access to vendors and to strike obsolete or redundant provisions. LASERS expects no associated costs or economic benefits to result from the proposed rule amendments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment in the public or private sectors is anticipated to result from the proposed rule change.

Maris Leblanc
Deputy Director
0908#109

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Resident Game Hunting Season—Kisatchie National Forest
(LAC 76:XIX.103)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate rules and regulations governing the hunting of resident game birds and game quadrupeds.

Title 76
WILDLIFE AND FISHERIES
Part XIX. Hunting and WMA Regulations
Chapter 1. Resident Game Hunting Season
§103. Resident Game Birds and Animals

A. - G.4. …

H. The hunting season for Kisatchie National Forest (KNF) during the 2009-2010 hunting season shall be as follows:

1. All Seasons for KNF are for 2009-10 only. Bag Limit=1 deer of the appropriate sex per day up to the statewide seasonal limit of three antlered and three antlerless deer. All deer must be tagged as required by LDWF regulations. Hunting stand, blind, tripod, etc. regulations applicable to LDWF WMAs are in effect on KNF (refer to "Methods of Taking Game" section of 2009-2010 LDWF Wildlife Management Area Regulations).

2. Motorized travel off designated roads and trails and outside designated areas is prohibited on the entire KNF. Motor Vehicle Use Maps (MVUM) showing designated roads and trails and associated vehicles and travel seasons are available in all Forest Service offices and on the Kisatchie Web site www.fs.fed.us/r8/kisatchie. ATV travel is allowed between 1 hour before sunrise and 1 hour after sunset; nighttime ATV travel is prohibited. Game retrieval with an ATV is only allowed within designated 300-foot corridors within the National Wildlife Management Preserves (see MVUM). Camping corridors for highway-legal vehicles to drive within 100 feet of the road and camp are designated on the Caney District and in the National Red Dirt Wildlife Management Preserve.

3. Catahoula Ranger District (Grant and Rapides Parishes), Winn Ranger District (Winn, Grant & Natchitoches Parishes), Kisatchie Ranger District (Natchitoches Parish), Evangeline Unit of the Calcasieu Ranger District (Rapides Parish):

a. Deer hunting with dogs on the Catahoula Ranger District shall occur only north of La. 8, excluding the National Catahoula Wildlife Management Preserve. Deer hunting with dogs on the Evangeline Unit shall occur only in the portion of the unit located south of La. 121 from near McNutt southwesterly to Spring Creek, east of Spring Creek southeasterly to US 165, except dogs may be used in Palustris Experimental Forest. National Forest lands within the Evangeline Unit, Calcasieu Ranger District, described in still hunt only area shall be still hunt only.

b. Deer:

i. Oct. 24-25, either-sex, primitive firearms, still hunt only.

ii. Oct. 31-Nov. 1, either-sex, still hunt only.

iii. Nov. 2, bucks only, still hunt only

iv. Nov. 7-8, 14-15, 21-26, bucks only, still hunt only.

v. Nov. 27, either-sex, still hunt only.

vi. Nov. 28-29, bucks only, still hunt only.

vii. Dec. 5-6, 12-13, buck only, still hunt only.

viii. Dec. 19-24, 26-27, bucks only, with or without dogs.

ix. Jan. 1-3, bucks only, still hunt only.

x. Jan. 8-10, bucks only, still hunt only.

4. Vernon Unit of the Calcasieu Ranger District (Vernon Parish, excluding Fort Polk WMA):

a. Oct. 24-25, either-sex, primitive firearms, still hunt only.

b. Oct. 31-Nov. 1, either-sex, still hunt only.

c. Nov. 2, bucks only, still hunt only.

d. Nov. 7-8, 14-15, 21-26, bucks only, still hunt only.

e. Nov. 27-29 either-sex, still hunt only.

f. Dec. 5-6, 12-13, 19-24, 26-31, bucks only, still hunt only.

g. Jan. 1-3, bucks only, still hunt only.

h. Jan. 8-10, bucks only, still hunt only.

5. Caney Ranger District (Webster and Claiborne Parishes):

a. Deer—Same as outside including Youth Hunt (Area 2) except still hunt only. Either-sex entire season.

6. Other seasons on KNF:

a. Archery: Vernon Unit, Calcasieu Ranger District: Sept. 19-Jan. 15. Remainder of KNF: Oct. 1-Jan. 31. Either-sex deer may be taken at any time by archers during archery season except when bucks-only firearms seasons are in progress on KNF (archers must hunt only bucks during bucks-only firearm seasons).

b. All Other Small Game: Same as outside except closed to squirrel hunting during the spring season and waterfowl hunting ceases at 2 p.m.

c. Unmarked Hogs, Coyotes, Armadillos and Beavers: May be taken incidentally on any KNF hunt by properly licensed hunters with weapons legal for that hunt until the daily or seasonal bag limit of game is taken. The placing of seed, corn, wheat, salt, or other feed to constitute a lure or enticement for any species, including hogs, is prohibited on KNF. Hunting over such feed is prohibited on KNF. Moving deer or hogs with organized drivers and standers, drivers, or making use of noise or noise-making devices is prohibited.

d. Raccoons and opossums: May be hunted during daylight or nighttime from Oct. 1-Feb. 28 only. A licensed hunter may take raccoon or opossum, one per person per day, except during the trapping season when there shall be no limit. Night-time chase only: May 1-Sept. 30, Tuesdays and Thursdays only. No firearms allowed. Nighttime ATV travel is prohibited.

e. Crows, blackbirds, grackles, and cowbirds: May be taken September 1-January 1 only.

7. All hunters (including archers and small game hunters; excluding waterfowl and dove hunters) must display 400 square inches of hunter orange and wear a hunter orange cap during any firearm season for deer. Deer hunters hunting from concealed ground blinds during firearms season must display a minimum of 400 square inches of hunter orange

above or around their blinds which is visible from 360 degrees. Rabbit, quail, and woodcock hunters must wear a hunter orange vest or cap outside the firearm seasons for deer. All persons afield during hunting seasons are encouraged to wear hunter orange. Hunting in or within 150 yards of a developed recreation site, campsite, any residence, or any building is prohibited.

8. Hunting-dog training from Mar. 1-Sept. 30 is allowed only in the following circumstances: dogs are within voice-command distance of handler; dogs are participating in night-time raccoon chases mentioned above; dogs are participating in licensed events conducted by nationally-recognized kennel clubs (KNF permit required—contact Forest Supervisor's office); dogs are under close control of hikers; and any dog on a leash. The training of deer dogs is prohibited year-round. No firearms allowed while training dogs.

9. National Catahoula Wildlife Management Preserve and National Red Dirt Wildlife Management Preserve. Owner—U.S. Forest Service: Catahoula Preserve—36,000 Acres in Grant and Winn Parishes; Red Dirt Preserve—38,000 Acres in Natchitoches Parish. Season Permit required from Forest Supervisor's office, Winn, Catahoula or Kisatchie Ranger District offices or www.fs.fed.us/r8kisatchie/hunting/index.html for all hunting. Additionally, weekend permits, available at the check stations, are required for deer gun hunts.

a. Deer:

i. Oct. 17-18, special youth hunt, either-sex, still hunt only. Weekend permit required. Youths between the ages of 8-17 inclusive only. Youths 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 the youth. Adults may not possess a firearm. Youths may possess only one firearm while hunting. Legal firearms are the same as described for deer 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. Also, special season for physically-challenged hunters with a LDWF Physically Challenged Hunt Permit, either-sex, still hunt only. Weekend permit required.

ii. Oct. 24-25, primitive firearms, either-sex, still hunt only, weekend permit.

iii. Oct. 31-Nov.1, either-sex, still hunt only, weekend permit.

iv. Nov. 27, either-sex, still hunt only, weekend permit.

v. Nov. 28-29, bucks only, still hunt only, weekend permit.

b. Rabbit: Same as outside except beagles allowed for rabbit Jan. 9-Feb. 28 only. Only beagle hounds which do not exceed 15 inches at the front shoulder and which have recognizable characteristics of the breed may be used on the Wildlife Management Preserve.

c. Squirrel: Same as outside except squirrel hunting with dogs allowed Jan. 9-Feb. 28 only. Hunting parties may not include more than one dog. Closed to squirrel hunting during the spring season.

d. Raccoon (Nighttime): Dogs allowed Jan.9-Feb. 28 only.

e. All Other Game: Consult KNF's Catahoula and Red Dirt Preserve Regulations issued by KNF. To obtain permits and information, visit website listed above or contact: KNF Forest Supervisor's Office, 2500 Shreveport Hwy., Pineville, LA 71360, telephone (318) 473-7160. Office hours 8 a.m. to 4:30 p.m.

B. The aforementioned season dates, bag limits and shooting hours shall supplant and supersede those season dates, bag limits and shooting hours for Kisatchie National Forest previously adopted and which will be published in the July 20, 2009 *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115, R.S. 56:109(B) and R.S. 56:141(C).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:1324 (July 1998), LR 25:1290 (July 1999), repromulgated LR 25:1526 (August 1999), LR 26:1506 (July 2000), LR 27:1061 (July 2001), LR 28:1615 (July 2002), LR 29:1122 (July 2003), repromulgated LR 29:1521 (August 2003), LR 30:1494 (July 2004), LR 31:1627 (July 2005), LR 32:1254 (July 2006), LR 33:115 (January 2007), LR 33:1399 (July 2007), LR 34:1447 (July 2008), LR 35:1280 (July 2009), LR 35:

Comments will be accepted at regularly scheduled Wildlife and Fisheries Commission Meetings from August through November. Interested persons may submit written comments relative to the proposed rule until 4:30 p.m., Wednesday, November 4, 2009, to Mr. Randy Myers, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/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).

Robert J. Samanie, III
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Resident Game Hunting Season—Kisatchie National Forest

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposed rule is anticipated to have no effect of on costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is anticipated to have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule establishes the 2009-2010 hunting season and amends regulations previously adopted for the Kisatchie National Forest. Licensed hunters choosing to hunt in the Kisatchie National Forest will benefit by the proposed rule. The hunting season structure as proposed in the rule will provide many days of quality hunting opportunity in the national forest. Hunters choosing to utilize dogs to hunt deer will not be required to have an additional hunting permit from the Kisatchie National Forest. Hunters will not have to use electronic tracking collars nor other forms of identification on their dogs. Additionally, no additional costs, workload or paperwork will result from implementing the proposed rules and regulations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is anticipated to have no effect on competition and employment.

Wynette Kees
Deputy Undersecretary
0908#097

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry
Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 7-8, 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:	September 4, 2009
Re-Take Candidates:	September 25, 2009
Reciprocity Candidates:	November 6, 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 September 4, 2009. Questions may be directed to (225) 952-8100.

Mike Strain, DVM
Commissioner

0908#045

POTPOURRI

Department of Agriculture and Forestry
Horticulture Commission

Retail Floristry Examination

The next retail floristry examinations will be given October 26-30, 2009, at 9:30 a.m. in the Nelson Memorial Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending in application and fee is September 11, 2009. No applications will be accepted after September 11, 2009.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to September 11, 2009. Questions may be directed to (225) 952-8100.

Mike Strain, DVM
Commissioner

0908#044

POTPOURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Advance Notice of Rulemaking and Solicitation of Comments on Organic Solvents and Solvent Degreasers, Log #AQ307 (LAC 33:III.111 and 2123) (0908Pot1)

The Louisiana Department of Environmental Quality is requesting comments on the draft regulations regarding organic solvents and solvent degreasers, LAC 33:III.111 and 2123 (AQ307). The draft regulation is a result of new and revised Control Techniques Guidelines (CTG) issued by the Environmental Protection Agency (EPA). This is a preliminary step in the rulemaking process. Official rulemaking will be initiated after review and consideration of the comments received on this advance notice. The revisions include changes to surface coating industries (LAC 33:III.2123.C) using organic solvents for the surface coating of: miscellaneous metal parts and products; miscellaneous plastic parts and products; automotive/transportation plastic parts; business machine plastic parts; pleasure crafts; motor vehicle materials; marine vessels and oilfield tubulars and ancillary oilfield equipment; assembly line automobiles and light duty trucks; and fiberglass boat manufacturing materials.

The Clean Air Act (CAA) Section 172(c)(1) provides that state implementation plans (SIPs) for nonattainment areas must include reasonably available control measures (RACM), including reasonably available control technology (RACT), for sources of emissions. CAA Section 182(b)(2)(A) provides that for certain nonattainment areas, states must revise their SIPs to include RACT for each category of VOC sources covered by a CTG document issued between November 15, 1990, and the date of attainment. Through issuance of a CTG, EPA provides states with guidance concerning what types of controls could constitute a RACT for a given source category. States can follow the CTG and adopt state regulations to implement the recommendations contained therein, or they can adopt alternative approaches. The states must submit their RACT rules to EPA for review and approval as part of the SIP process. This rule amends the state air regulations to follow the CTG recommendations provided by EPA, which will then be included in the SIP to meet the requirements of the CAA.

The department is seeking comments regarding relevant information concerning the fiscal impact and regulatory flexibility that the draft regulation could have on small businesses. Specific information sought by the department

is: identification and estimate of the number of small businesses subject to the draft regulation; reporting, recordkeeping, and other administrative costs required for compliance with the draft regulation; less intrusive or less costly alternative methods which would achieve the same purpose of the draft regulation; and probable effect on impacted small businesses.

A public hearing will be held on September 24, 2009, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Timothy Bergeron at the address given below or at (225) 219-3490. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are encouraged to submit written comments on the draft proposal. Comments are due no later than 4:30 p.m., September 24, 2009, and should be submitted to Timothy Bergeron, Office of Environmental Assessment, Engineering Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3240 or by email to timothy.bergeron@la.gov. Persons commenting should reference this document as AQ307. If you have any questions regarding this document please contact Timothy Bergeron at (225) 219-3490. Copies of this draft proposed rule can be purchased by contacting DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ307. This draft rule is available on the internet at http://www.deq.louisiana.gov/portal/tabid/1669/Default.aspx

The draft rule is also 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; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 1. General Provisions

§111. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

* * *

Coldset Printing—a web offset printing process in which ink is allowed to dry naturally through absorption and evaporation.

* * *

Flexible Package Printing Facility—a facility that uses either rotogravure printing or flexographic printing processes on flexible packaging.

Flexible Packaging—any package or part of a package the shape of which can be readily changed, including, but not limited to, bags, pouches, liners, and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

* * *

Fountain Solution—a solution used on an offset lithographic press to keep the ink from adhering to the non-image areas of the offset lithographic plate.

* * *

Heatset Dryer—a hot air dryer used in heatset lithography to heat the printed substrate and to promote the evaporation of the ink oils.

Heatset Web Offset Lithographic Printing—a type of web offset lithographic printing process where heat is applied via a drying oven to set and dry the ink.

* * *

Letterpress Printing—relief printing of text and/or images using a press with a "type-high bed," in which a reversed, raised surface is inked and then pressed into a sheet of paper to obtain a positive, right-reading image.

* * *

Miscellaneous Metal Parts and Products Coating—the coating of miscellaneous metal parts and products in the following categories:

a. – f. …

g. any other category of coated metal products except those on the specified list in LAC 33:III.2123.C.Table 1, Items1-6 and 13-17 of surface coating processes, which are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries).

* * *

Offset Lithographic Printing—an indirect printing method in which ink is transferred from the lithographic plate to a rubber-covered intermediate "blanket" cylinder, and then from the blanket cylinder to the paper or other printing substrate.

* * *

Sheet-Fed Printing—a process in which individual sheets of paper or other substrates are fed into the press.

* * *

Web Printing—a process where a continuous roll of paper or other substrate is fed into the press, and rewound or cut to size after printing.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:70 (January 2008), LR 35:1101 (June 2009), LR 36:

Chapter 21. Control of Emission of Organic Compounds

Subchapter B. Organic Solvents

§2123. Organic Solvents

A. Except as provided in Subsections B and C of this Section, any emission source using organic solvents having an emission of organic solvents of more than 15 pounds (6.8 kilograms) per day shall reduce the emission, where feasible, by incorporating one or more of the following control methods:

A.1. - B.2. …

C. Surface Coating Industries. No person may cause, suffer, allow, or permit volatile organic compound (VOC) emissions from the surface coating of any materials affected by this Subsection to exceed the emission limits as specified in this Section.

Table 1. Surface Coating Industries		
Affected Facility	**Daily Weighted Average VOC Emission Limitation**	
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	**Kgs. per Liter of Coating as applied (minus water and exempt solvent)**
1. Large Appliance Coating Industry		
General, One Component (Baked/Air Dried)	2.3 / 2.3	0.275 / 0.275
General, Multi-Component (Baked/Air Dried)	2.3 / 2.8	0.275 / 0.340
Extreme High Gloss (Baked/Air Dried)	3.0 / 2.8	0.360 / 0.340
Extreme Performance (Baked/Air Dried)	3.0 / 3.5	0.360 / 0.420
Heat Resistant (Baked/Air Dried)	3.0 / 3.5	0.360 / 0.420
Metallic (Baked/Air Dried)	3.5 / 3.5	0.420 / 0.420
Pretreatment Coatings (Baked/Air Dried)	3.5 / 3.5	0.420 / 0.420
Solar Absorbent (Baked/Air Dried)	3.0 / 3.5	0.360 / 0.420
2. Surface Coating of Cans		
Sheet Basecoat (Exterior and Interior) and Over-Varnish: Two-Piece Can Exterior (Basecoat and Over-Varnish)	2.8	0.34
Two and Three-Piece Can Interior Body Spray, Two-Piece Can Exterior End (Spray or Roll Coat)	4.2	0.51
Three-Piece Can Side-Seam Spray	5.5	0.66
End Sealing Compound	3.7	0.44
3. Surface Coating of Coils		
Prime and Topcoat or Single Coat Operation	2.6	0.31
4. Surface Coating of Fabrics		
Fabric Facility	2.9	0.35
Vinyl Coating Line (Except Plasticol Coatings)	3.8	0.45
5. Surface Coating–Magnet Wire Coating		
Coating Line	1.7	0.20
6. Surface Coating of Metal Furniture		
General, One Component (Baked/Air Dried)	2.3 / 2.3	0.275 / 0.275
General, Multi-Component (Baked/Air Dried)	2.3 / 2.8	0.275 / 0.340
Extreme High Gloss (Baked/Air Dried)	3.0 / 2.8	0.360 / 0.340
Extreme Performance (Baked/Air Dried)	3.0 / 3.5	0.360 / 0.420
Heat Resistant (Baked/Air Dried)	3.0 / 3.5	0.360 / 0.420
Metallic (Baked/Air Dried)	3.5 / 3.5	0.420 / 0.420
Pretreatment Coatings (Baked/Air Dried)	3.5 / 3.5	0.420 / 0.420
Solar Absorbent (Baked/Air Dried)	3.0 / 3.5	0.360 / 0.420
7. Surface Coating of Miscellaneous Metal Parts and Products		
General, One Component or Multi-Component (Baked/Air Dried)	2.3 / 2.8	0.28 / 0.34
Camouflage	3.5	0.42
Electric Insulating Varnish	3.5	0.42
Etching Filler	3.5	0.42
Extreme High Gloss (Baked/Air Dried)	3.0 / 3.5	0.36 / 0.42
Extreme Performance (Baked/Air Dried)	3.0 / 3.5	0.36 / 0.42
Heat Resistant (Baked/Air Dried)	3.0 / 3.5	0.36 / 0.42
High Performance Architectural	6.2	0.74
High Temperature	3.5	0.42
Metallic	3.5	0.42
Military Specification (Baked/Air Dried)	2.3 / 2.8	0.28 / 0.34
Mold Seal	3.5	0.42
Pan Baking	3.5	0.42
Prefabricated Architectural, One Component or Multi-Component (Baked/Air Dried)	2.3 / 3.5	0.28 / 0.42
Pretreatment Coatings	3.5	0.42
Repair and Touch Up (Baked/Air Dried)	3.0 / 3.5	0.36 / 0.42
Silicone Release	3.5	0.42
Solar Absorbent (Baked/Air Dried)	3.0 / 3.5	0.36 / 0.42
Vacuum Metalizing	3.5	0.42
Drum Coating, New, Exterior	2.8	0.34
Drum Coating, New, Interior	3.5	0.42
Drum Coating, Reconditioned, Exterior	3.5	0.42
Drum Coating, Reconditioned, Interior	4.2	0.50
8. Surface Coating of Miscellaneous Plastic Parts and Products		
General, One Component	2.3	0.28
General, Multi-Component	3.5	0.42
Electric Dissipating Coatings and Shock-Free Coatings	6.7	0.80
Extreme Performance	3.5 (2-pack coatings)	0.42 (2-pack coatings)
Metallic	3.5	0.42
Military Specification	2.8 (1 pack) 3.5 (2 pack)	0.34 (1 pack) 0.42 (2 pack)
Mold Seal	6.3	0.76

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	Kgs. per Liter of Coating as applied (minus water and exempt solvent)
Multi-Colored Coatings	5.7	0.68
Optical Coatings	6.7	0.80
Vacuum Metalizing	6.7	0.80
9. Surface Coating of Automotive/Transportation Plastic Parts		
a. High Bake Coatings–Interior and Exterior Parts		
Flexible Primer	4.5	0.54
Non-Flexible Primer	3.5	0.42
Base Coat	4.3	0.52
Clear Coat	4.0	0.48
Non-Base Coat/Clear Coat	4.3	0.52
b. Low Bake/Air Dried Coatings–Exterior Parts		
Primer	4.8	0.58
Base Coat	5.0	0.60
Clear Coat	4.5	0.54
Non-Base Coat/Clear Coat	5.0	0.60
c. Low Bake/Air Dried Coatings–Interior Parts	5.0	0.60
d. Touch Up and Repair Coatings	5.2	0.62
For red, yellow, and black auto coatings, except touch up and repair coatings, the limit is determined by multiplying the appropriate limit in Item 9 of this Table by 1.15.		
10. Surface Coating of Business Machine Plastic Parts		
Primer	2.9	0.35
Topcoat	2.9	0.35
Texture Coat	2.9	0.35
Fog Coat	2.2	0.26
Touch Up and Repair	2.9	0.35
11. Surface Coating of Pleasure Crafts		
Extreme High Gloss Topcoat	4.1	0.49
High Gloss Topcoat	3.5	0.42
Pretreatment Wash Primer	6.5	0.78
Finish Primer/Surfacer	3.5	0.42
High Build Primer Surfacer	2.8	0.34
Aluminum Substrate Antifoulant Coating	4.7	0.56
Other Substrate Antifoulant Coating	2.8	0.33
All Other Pleasure Craft Surface Coatings for Metal or Plastic	3.5	0.42
12. Surface Coating of Motor Vehicle Materials		
Motor Vehicle Cavity Wax	5.4	0.65
Motor Vehicle Sealer	5.4	0.65
Motor Vehicle Deadener	5.4	0.65
Motor Vehicle Gaskets/Gasket-Sealing Material	1.7	0.20
Motor Vehicle Underbody Coating	5.4	0.65
Motor Vehicle Trunk Interior Coating	5.4	0.65
Motor Vehicle Bedliner	1.7	0.20
Motor Vehicle Lubricating Wax/Compound	5.8	0.70
The limits in Items 7-12 of this Table do not apply to operations covered in Items 1-6 or 13-17 herein, or to aerosol coatings, architectural coatings, or automobile refinish coatings.		
13. Factory Surface Coating of Flat Wood Paneling with VOC Emissions Greater Than 15 Pounds Per Day Before Controls		
All Inks, Coatings, and Adhesives	2.1	0.25
14. Surface Coating for Marine Vessels and Oilfield Tubulars and Ancillary Oilfield Equipment		

Table 1. Surface Coating Industries		
Affected Facility	Daily Weighted Average VOC Emission Limitation	
	Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	Kgs. per Liter of Coating as applied (minus water and exempt solvent)
a. Except as otherwise provided in this Section, a person shall not apply a marine coating with a VOC content in excess of the following limits:		
Baked Coatings	3.5	0.42
Air-Dried, Single-Component Alkyd or Vinyl Flat or Semi-Gloss Finish Coatings	3.5	0.42
Two Component Coatings	3.5	0.42
b. Except for the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, in which the VOC limitations in Item 14.a of this Table may not be exceeded, specialty marine coatings and coatings on oilfield tubulars and ancillary oilfield equipment with a VOC content not in excess of the following limits may be applied:		
Heat Resistant	3.5	0.42
Metallic Heat Resistant	4.42	0.53
High Temperature (Fed. Spec. TT-P-28)	5.41	0.65
Pre-Treatment Wash Primer	6.5	0.78
Underwater Weapon	3.5	0.42
Elastomeric Adhesives With 15 Percent by Weight Natural or Synthetic Rubber	6.08	0.73
Solvent-Based Inorganic Zinc Primer	5.41	0.65
Pre-Construction and Interior Primer	3.5	0.42
Exterior Epoxy Primer	3.5	0.42
Navigational Aids	3.5	0.42
Sealant for Wire-Sprayed Aluminum	5.4	0.648
Special Marking	4.08	0.49
Tack Coat (Epoxies)	5.08	0.61
Low Activation Interior Coating	4.08	0.49
Repair and Maintenance Thermoplastic	5.41	0.65
Extreme High Gloss Coating	4.08	0.49
Antenna Coating	4.42	0.53
Antifoulant	3.66	0.44
High Gloss Alkyd	3.5	0.42
Anchor Chain Asphalt Varnish (Fed. Spec. TT-V-51)	5.2	0.62
Wood Spar Varnish (Fed. Spec. TT-V-119)	4.1	0.492
Dull Black Finish Coating (DOD-P-15146)	3.7	0.444
Tank Coating (DOD-P-23236)	3.5	0.42
Potable Water Tank Coating (DOD-P-23236)	3.7	0.444
Flight Deck Markings (DOD-C-24667)	4.2	0.504
Vinyl Acrylic Top Coat	5.4	0.648
Antifoulant Applied to Aluminum Hulls	4.5	0.55
15. Paper, Film, Foil, Pressure-	Daily Weighted Average VOC Emission Limitation	

Table 1. Surface Coating Industries			
Affected Facility		**Daily Weighted Average VOC Emission Limitation**	
		Lbs. per Gal. of Coating as applied (minus water and exempt solvent)	**Kgs. per Liter of Coating as applied (minus water and exempt solvent)**
Sensitive Tape, and Label Surface Coating		**Kgs. VOC/Kgs. Solids (Lbs. VOC/Lbs. Solids)**	**Kgs. VOC/Kgs. Coating (Lbs. VOC/Lbs. Coating)**
Paper, Film, and Foil		0.40	0.08
Pressure-Sensitive Tape and Label		0.20	0.067
16. Surface Coating of Assembly Line Automobiles and Light Duty Trucks		**Daily Weighted Average VOC Emission Limitation**	
		Lbs. per Gal. of Deposited Solids (minus water and exempt solvent)	**Kgs. per Liter of Deposited Solids (minus water and exempt solvent)**
Primer-Surfacer Operations (Including Application Area, Flashoff Area, and Oven)		12	1.44
Topcoat Application (Including Application Area, Flashoff Area and Oven)		12	1.44
Final Repair Application (Including Flashoff Area and Oven)		4.8	0.58
Electrodeposition Primer Operations (Including Application Area, Spray/Rinse Stations, and Curing Oven)	**When Solids Turnover Ratio is $R_T \geq 0.16$**	**When $0.040 \leq R_T < 0.160$**	**When $R_T < 0.040$**
	0.084 kgs./liter (0.7 lbs./gal) coating solids applied	0.084 x $350^{0.160-R_T}$ kgs./liter (0.084 x $350^{0.160-R_T}$ x 8.34 lbs./gal.) coating solids applied	No VOC emission limit
17. Fiberglass Boat Manufacturing Materials			
These operations shall comply with all requirements of 40 CFR Part 63, Subpart VVVV, as incorporated by reference in LAC 33:III.3003, if total VOC emissions from all fiberglass boat manufacturing operations are more than 15 pounds (6.8 kilograms) per day.			

D. Control Techniques

1. If add-on controls such as incinerators or vapor recovery systems are used to comply with the emission limitation requirements, in terms of pounds per gallon of solids as applied (determined in accordance with Paragraph D.8 of this Section), the volatile organic compound capture and abatement system shall be at least 80 percent efficient overall (85 percent for industrial cleaning solvents; and 90 percent for factory surface coating of flat wood paneling, surface coating of metal furniture, large appliance coating, surface coating of miscellaneous metal parts and products, surface coating of miscellaneous plastic parts and products, surface coating of automotive/transportation plastic parts, surface coating of business machine plastic parts, surface coating of pleasure craft, and surface coating of motor vehicle materials). All surface coating facilities shall submit to the Office of Environmental Services, for approval, design data for each capture system and emission control device that is proposed for use. The effectiveness of the capture system (i.e., capture efficiency) shall be determined using the procedure specified in Paragraph E.6 of this Section.

2. – 3. ...

4. Compliance with the emission limits established in Table 1, Item 16 of Subsection C of this Section shall be determined in accordance with EPA's "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light Duty Truck Topcoat Operations", EPA 453/R-08-002, September, 2008.

5. ...

6. Surface coating facilities on any property in Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge parishes that when controlled have a potential to emit, at maximum production, a combined weight (total from the property) of VOCs less than 10 tons in any consecutive 12 calendar months are exempt from the provisions of Subsection C of this Section. Surface coating facilities on any property in parishes other than Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge that when uncontrolled have a potential to emit a combined weight of VOCs less than 100 pounds (45 kilograms) in any consecutive 24-hour period are exempt from the provisions of Subsection C of this Section. Any surface coating facility with VOC emissions of less than or equal to 15 pounds (6.8 kilograms) per day is exempt from the provisions of Table 1, Items 1, 7, and 15 of Subsection C of this Section.

7. - 9. ...

10. Control techniques for use of industrial cleaning solvents include:

a. covering open containers and used applicators;

b. minimizing air circulation around cleaning operations;

c. properly disposing of used solvent and shop towels;

d. implementing equipment practices that minimize emissions (e.g., keeping arts cleaners covered, maintaining cleaning equipment to repair solvent leaks, etc.);

e. employing cleaning material with a VOC content limit of 50 grams VOC per liter (0.42 lb./gal.), or a composite vapor pressure of 8 millimeters of mercury at 20 degrees Celsius.

E. - I. …

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:119 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 22:340 (May 1996), LR 22:1212 (December 1996), LR 23:1678 (December 1997), LR 24:23 (January 1998), LR 24:1285 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR

25:1240 (July 1999), LR 26:2453 (November 2000), LR 28:1765 (August 2002), LR 30:746 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2440 (October 2005), LR 33:2086 (October 2007), LR 35:1102 (June 2009), LR 36:

Herman Robinson, CPM
Executive Counsel

0908#037

POTPOURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Baton Rouge Area Ozone Attainment Demonstration
State Implementation Plan Revision (0908Pot2)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the secretary gives notice that the Office of Environmental Assessment, Air Quality Assessment Division, will submit a revision to the State Implementation Plan (SIP) for the five-parish Baton Rouge ozone nonattainment area to implement specific emission reduction control strategies and demonstrate compliance with the 8-hour ozone air quality standard. The SIP revision is mandated under the requirements of the 1990 Clean Air Act Amendments.

The Baton Rouge ozone nonattainment area, namely Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes, did not attain the 8-hour National Ambient Air Quality Standards (NAAQS) by June 15, 2007, which was the attainment date for marginal nonattainment areas set forth by the Clean Air Act. As a result the U.S. Environmental Protection Agency (EPA), by operation of law, reclassified the Baton Rouge area from marginal to moderate nonattainment effective April 21, 2008. The new attainment date for the Baton Rouge area is June 15, 2010.

A public hearing will be held on September 24, 2009, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the SIP revision. Should individuals with a disability need an accommodation in order to participate, contact Vivian Aucoin at the address given below or at (225) 219-3509. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are encouraged to submit written comments on the attainment demonstration SIP revision. Comments are due no later than 4:30 p.m., September 24, 2009, and should be submitted to Vivian H. Aucoin, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3240 or by e-mail to vivian.aucoin@la.gov. If you have any questions regarding this document please contact Vivian H. Aucoin at (225) 219-3509.

A copy of the attainment demonstration SIP revision may be viewed from 8 a.m. to 4:30 p.m. in the DEQ Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, LA. This SIP revision is available on the internet at http://www.deq.louisiana.gov/portal/tabid/2920/Default.aspx

Herman Robinson, CPM
Executive Counsel

0908#038

POTPOURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Baton Rouge Area Redesignation Request and
1997 8-Hour Ozone Maintenance Plan (0908Pot3)

Under the authority of the Louisiana Environmental Quality Act, R. S. 30:2001 et seq., the secretary gives notice that the Office of Environmental Assessment, Air Quality Assessment Division, will submit a proposed Redesignation Request and Ozone Maintenance Plan for the 1997 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) for the Baton Rouge Area, which includes the parishes of East Baton Rouge, West Baton Rouge, Livingston, Ascension, and Iberville. The Redesignation Request is being submitted as required under the Section 107(d)(3)(E) of the 1990 Clean Air Act Amendments (CAAA), and the Ozone Maintenance Plan is being submitted as required under Section 175A of the 1990 CAAA.

A public hearing will be held at 1:30 p.m. on September 24, 2009, in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA. Should individuals with a disability need an accommodation in order to participate, please contact Vivian H. Aucoin at (225) 219-3509 or at the address listed below. Interested persons are invited to attend and submit oral comments on the proposal.

All interested persons are invited to submit written comments concerning the Redesignation Request and the Ozone Maintenance Plan for the Baton Rouge Area no later than 4:30 p.m., September 24, 2009, to Vivian H. Aucoin, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3240 or by e-mail to vivian.aucoin@la.gov.

A copy of the Redesignation Request and Ozone Maintenance Plan for the Baton Rouge Area may be viewed from 8 a.m. to 4:30 p.m. in the DEQ Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, LA. The document is available on the Internet at www.deq.louisiana.gov/portal/Default.aspx?tabid=2381.

Herman Robinson,
CPM Executive Counsel

0908#039

POTPOURRI

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Control Techniques Guidelines (CTG) State Implementation Plan (SIP) (0908Pot4)

Under the authority of the Louisiana Environmental Quality Act, R. S. 30:2001 et seq., the secretary gives notice that the Office of Environmental Assessment, Air Quality Assessment Division, will submit a revision to the State Implementation Plan (SIP) to demonstrate specific emission reduction control strategies to bring Louisiana into compliance with the ozone National Ambient Air Quality Standards (NAAQS). The SIP revision is mandated under the requirements of the 1990 Clean Air Act Amendments.

The Clean Air Act (CAA) Section 172(c)(1) provides that state implementation plans (SIPs) for nonattainment areas must include reasonably available control measures (RACM), including reasonably available control technology (RACT), for sources of emissions. CAA Section 182(b)(2)(A) provides that for certain nonattainment areas, states must revise their SIPs to include RACT for each category of volatile organic compound (VOC) source covered by a Control Techniques Guidelines (CTG) document issued between November 15, 1990, and the date of attainment. The Environmental Protection Agency (EPA) provides states with guidance concerning what types of controls could constitute RACT for a given source category through issuance of a CTG. States can follow the CTG and adopt regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either event, states must submit their RACT rules to EPA for review and approval as part of the SIP process.

A public hearing will be held at 1:30 p.m. on September 24, 2009, in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA. Should individuals with a disability need an accommodation in order to participate, please contact Vivian H. Aucoin at (225) 219-3509 or at the address listed below. Interested persons are invited to attend and submit oral comments on the proposal.

All interested persons are invited to submit written comments concerning the CTG SIP revision no later than 4:30 p.m., September, 24, 2009, to Vivian H. Aucoin, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4313 or to FAX (225) 219-3240 or by e-mail to vivian.aucoin@la.gov

A copy of the CTG SIP revision may be viewed from 8 a.m. to 4:30 p.m. in the DEQ Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, LA. The document is available on the internet at www.deq.louisiana.gov/portal/default.aspx?tabid=2381

Herman Robinson, CPM
Executive Counsel

0908#040

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
Quintana Petroleum Corp.	Larose	L	Priscilla A Fairbanks Et Al	001	72627
Hughes Eastern Petroleum, Inc.	Breton Sound Block 33	L	SL 4458	001	136733(30)
Inactive Operator	Red River-Bull Bayou	S	Red River Natl Wildlife Refuge	001	990464

James H. Welsh
Commissioner

0908#043

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 3 claims in the amount of $9,309.48 were received for payment during the period July 1, 2009-July 31, 2009.

There were 3 claims paid and 0 claims denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2923.940	9144.460	Vermilion
2924.387	8939.339	Plaquemines
2954.683	8950.564	St. Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225)342-0122.

Scott A. Angelle
Secretary

0908#042

POTPOURRI

Department of Revenue
Policy Services Division
Office of the Secretary

Meeting of Act 442 Collaboative Working Group

The next meeting for the Collaborative Working Group will be held on Wednesday, August 26, 2009, at 2 p.m. in the law offices of Kean Miller Hawthorne D'Armond McGowan & Jarman LLP, 18th Floor, One American Place, 301 Main Street, Baton Rouge, LA.

Section 4 of Act 442 of the 2009 Regular Session of the Louisiana Legislature established a collaborative working group of state and local tax administrators and industry representatives for the purpose of assisting in developing policy regarding the determination of which items should be considered as moveable or immovable property for the purposes of state and local sales and use tax.

The group's mission is to study and develop specific proposals on the definition of tangible personal property under Chapters 2, 2-A, 2-B and 2-D of Title 47 of the Louisiana Revised Statutes of 1950. The group shall report its policy recommendations to the Chairman of the House Committee on Ways and Means and Senate Committee on Revenue and Fiscal Affairs no later than January 31, 2011.

The group shall cease to exist on June 30, 2011.

Further information concerning this meeting may be obtained from Ted James, Office of the Secretary, P.O. Box 66258, Baton Rouge, LA 70896, phone (225) 219-2707.

Cynthia Bridges
Secretary

0908#041

POTPOURRI

Supreme Court of Louisiana
Judicial Council of the Supreme Court of Louisiana

Notification of Judicial Council Action on
Act No. 26 of the 2009 Regular Session

It is hereby noted that the court costs/fees referenced in Act 26 have received a favorable review by the Judicial Council.

Catherine Kimball, Chief Justice
Chair

0908#111

POTPOURRI

Supreme Court of Louisiana
Judicial Council of the Supreme Court of Louisiana

Notification of Judicial Council Action on
Act No. 77 of the 2009 Regular Session

It is hereby noted that the court costs/fees referenced in Act 77 have not received a favorable review by the Judicial Council.

Catherine Kimball, Chief Justice
Chair

0908#118

POTPOURRI

Supreme Court of Louisiana
Judicial Council of the Supreme Court of Louisiana

Notification of Judicial Council Action on
Act No. 88 of the 2009 Regular Session

It is hereby noted that the court costs/fees referenced in Act 88 have not received a favorable review by the Judicial Council.

Catherine Kimball, Chief Justice
Chair

0908#119

POTPOURRI

Supreme Court of Louisiana
Judicial Council of the Supreme Court of Louisiana

Notification of Judicial Council Action on
Act No. 121 of the 2009 Regular Session

It is hereby noted that the court costs/fees referenced in Act 121 have not received a favorable review by the Judicial Council.

Catherine Kimball, Chief Justice
Chair

0908#120

POTPOURRI

Supreme Court of Louisiana
Judicial Council of the Supreme Court of Louisiana

Notification of Judicial Council Action on
Act No. 267 of the 2009 Regular Session

It is hereby noted that the court costs/fees referenced in Act 267 have not received a favorable review by the Judicial Council.

Catherine Kimball, Chief Justice
Chair

0908#121

POTPOURRI

Supreme Court of Louisiana
Judicial Council of the Supreme Court of Louisiana

Notification of Judicial Council Action on
Act No. 269 of the 2009 Regular Session

It is hereby noted that the court costs/fees referenced in Act 269 have received a favorable review by the Judicial Council.

Catherine Kimball, Chief Justice
Chair

0908#122

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