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Emergency Rules

DECLARATION OF EMERGENCY

Department of Children and Family Services Division of Programs Economic Stability Section

Child Welfare Emergency Assistance Services Program
(LAC 67:III.5597)

The Department of Children and Family Services (DCFS), Division of Programs, Economic Stability Section, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to amend LAC 67:III, Subpart 15, Chapter 55, TANF Initiatives to adopt Section 5597. This Emergency Rule extension will become effective January 2, 2013 and will remain in effect until the final Rule becomes effective.

The department considers emergency action necessary to prevent a threat to the health, safety, and welfare of TANF eligible children who have been removed from their parents by the courts and are in need of emergency assistance to cover the urgent situation.

The authorization to promulgate emergency rules to facilitate the expenditure of temporary assistance for needy families (TANF) is contained in Act 13 of the 2012 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Economic Stability

Subpart 15. Temporary Assistance for Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5597. Child Welfare Emergency Assistance Services Program

A. The Child Welfare Emergency Assistance Services Program will provide services to children who are removed from their parents by the courts and are in foster care. These services include case management and planning as performed by DCFS' staff. The types of assistance that meet the emergency situation may include shelter care, foster family care or emergency shelter care including food, clothing and supervision.

B. TANF eligibility is limited to children in foster care who are in the first four months of a single placement in a 12 month period and are recipients of Family Independence Temporary Assistance Program (FITAP) and/or Supplemental Nutrition Assistance Program (SNAP) during the first month of placement.

C. These services are TANF-eligible based on inclusion in the state's approved AFDC Emergency Assistance Program that was in effect as of August 21, 1996.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., P.L. 104-193., R.S. 46:231 and R.S. 36:474

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Economic Stability Section, LR 39:

Suzy Sonnier
Secretary

1212#069

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Office of State Uniform Payroll

Temporary Extension of Time Period to Meet the Minimum Participation Level for Certain Approved Statewide Vendors
(LAC 4:III.114 and 115)

The Division of Administration through the Office of State Uniform Payroll (OSUP) is exercising the emergency provisions of the Administrative Procedures Act (APA), R.S. 49:953(B), and pursuant to the authority granted under R.S. 42:455(A), adopts the following Emergency Rule effective December 20, 2012. Unless extended, this Emergency Rule shall remain in effect for the maximum period allowed under the APA, or until it expires under its own terms and conditions, whichever period is shorter.

The application and approval process of statewide vendors and products sold to state employees through payroll deductions, many of which qualify as "flexible benefits" under IRS rules, is coordinated with the Office of Group Benefits (OGB) Flexible Benefits Plan year. The new OGB Flexible Benefits Plan year, January 1-December 31, disrupted OSUP's application submission and approval deadlines, and the approved time periods of statewide vendors. Approximately 40,000 employees paid through the LaGov HCM system qualify to take advantage of flexible and supplemental insurance products provided through payroll deductions which include coverage for accident, cancer, dental, disability, heart, hospital indemnity, identity theft, intensive care, legal, long term care, term life, universal life, vision, and whole life. Due to the change of annual enrollment dates, certain vendors' timeframes in which to meet participation levels need to be extended to avoid detrimental effects to both vendors and employees. Unless this Emergency Rule is adopted to extend the deadline, many employees will be unable to take advantage of the flexible and supplemental insurance products they have come to rely upon.

**Title 4
ADMINISTRATION**

Part III. Payroll

Chapter 1. Payroll Deductions

§114. Statewide Vendor Requirements and Responsibility

A. - C.2. ...

3. maintain individual product (product categories as defined by OSUP) participation levels that meet or exceed 100 employees paid through the LaGov HCM payroll system. Vendors will be allowed 12 months after initial product approval to meet the minimum product participation requirements. Statewide vendors who were approved to sell new products beginning January 1, 2012 will be allowed 18 months after initial product approval to meet the participation level requirements;

C.4. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 32:87 (January 2006), amended LR 38:798 (March 2012), LR 39:

§115. Temporary Extension of Time Period to Meet the Minimum Participation Level for Certain Approved Statewide Vendors

A. The Office of Group Benefits has modified their Flexible Benefits Plan year to be on a calendar year basis (January 1-December 31) instead of a fiscal year basis (July 1-June 30), effective January 1, 2012. Some of the products offered by Statewide Vendors are included in the OGB Flexible Benefits Plan. Therefore, temporary changes are required to coordinate the OSUP application and approval process with the new plan year.

1. Section 114.C.3 regarding the attainment of participation levels is temporarily modified as follows:

a. Statewide Vendors who were approved to sell new products beginning January 1, 2012 will be allowed 18 months after initial product approval to meet the participation level requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455(A).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 39:

Monique Appeaning
Assistant Commissioner

1212#048

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
Tax Commission**

Ad Valorem Taxation
(LAC 61:V. 101, 303, 304, 703, 907,
1103, 1307, 1503, and 2503)

The Louisiana Tax Commission exercised the provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 47:1837, adopted the

following additions, deletions and amendments to the Real/Personal Property Rules and Regulations. The adoption date for this Emergency Rule is December 7, 2012.

This Emergency Rule is necessary in order for ad valorem tax assessment tables to be disseminated to property owners and local tax assessors no later than the statutory valuation date of record of January 1, 2013. Cost indexes required to finalize these assessment tables are not available to this office until late October 2012. The effective date of this Emergency Rule is January 1, 2013.

Pursuant to the Administrative Procedure Act, this Emergency Rule shall be in effect for a maximum of one hundred twenty days or until adoption of the Final Rule or another Emergency Rule, whichever occurs first.

Title 61

REVENUE AND TAXATION

Part V. Ad Valorem Taxation

Chapter 1. Constitutional and Statutory Guides to Property Taxation

§101. Constitutional Principles for Property Taxation

A. - F.3.h. ...

G. Special Assessment Level

1. - 1.d. ...

2. Any person or persons shall be prohibited from receiving the special assessment as provided in this Section if such person's or persons' adjusted gross income, for the year prior to the application for the special assessment, exceeds \$69,463 for tax year 2013 (2014 Orleans Parish). For persons applying for the special assessment whose filing status is married filing separately, the adjusted gross income for purposes of this Section shall be determined by combining the adjusted gross income on both federal tax returns.

3. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution of 1974, Article VII, §18.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 15:1097 (December 1989), amended by the Department of Revenue, Tax Commission, LR 24:477 (March 1998), LR 26:506 (March 2000), LR 31:700 (March 2005), LR 32:425 (March 2006), LR 33:489 (March 2007), LR 34:673 (April 2008), LR 35:492 (March 2009), LR 36:765 (April 2010), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 37:1394 (May 2011), LR 38:799 (March 2012), LR 39:

Chapter 3. Real and Personal Property

§303. Real Property

A. - B.2. ...

C. In assessing affordable rental housing, the income approach is recommended. As defined in this Section, "affordable rental housing" means residential housing consisting of one or more rental units, the construction and/or rental of which is subject to Section 42 of the Internal Revenue Code (26 USC 42), the Home Investment Partnership Program under the Cranston-Gonzalez National Affordable Housing Act (42 USC 12741 et seq.), the Federal Home Loan Banks Affordable Housing Program established pursuant to the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 (Public Law 101-73), or any other federal, state or similar program intended to provide affordable housing to persons of low or moderate income and the occupancy and

maximum rental rates of such housing are restricted based on the income of the persons occupying such housing.

1. Audited financial statements shall be submitted to the assessor as an attachment to the LAT filing, or as soon thereafter as practicable, but no later than June 15th of each year. For properties under construction and newly constructed property prior to the first full year of operation, the owner shall provide net operating income based on projected or pro-forma operating income and expense information.

C.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 7:44 (February 1981), amended by the

Department of Revenue and Taxation, Tax Commission, LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:764 (December 1987), LR 16:1063 (December 1990), LR 17:611 (June 1991), LR 21:186 (February 1995), amended by the Department of Revenue, Tax Commission, LR 25:312 (February 1999), LR 26:506 (March 2000), LR 29:367 (March 2003), LR 30:487 (March 2004), LR 34:678 (April 2008), LR 35:492 (March 2009), LR 36:765 (April 2010), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 38:799 (March 2012).

§304. Electronic Change Order Specifications, Property Classifications Standards and Electronic Tax Roll Export Specifications

A. Electronic Change Order Specifications

* * *

Class Code	Class Description (TC-33)	Sub-Class Code	Sub-Class Description (Grand Recap)	Class Definition
Real Estate				
10	Agricultural Lands Class I	1000	Agricultural Lands Class I (Use Value)	Agricultural Land – Class I containing 3 Acres or more in area using the first four classifications of the U.S. Soil Conservation Service.
* * *	* * *	* * *	* * *	* * *
32	Other Acreage (Greater Than 1 Acre But Less Than 3 Acres)	3200	Agricultural Acreage (Market Value)	Agricultural land more than 1 acre but less than 3 acres in area valued as Market Value since Use Value Form has not been filed with the Assessor's office.
		* * *	* * *	* * *
		3232	GOLF COURSE	When the land is to be valued by the hole as opposed to by the acre.
		3240	INDUSTRIAL ACREAGE (MARKET VALUE)	Industrial land more than 1 acre but less than 3 acres in area designated for industrial use.
* * *	* * *	* * *	* * *	* * *
36	Other Lots	3600	Residential Non-Subdivision Lot	Residential non-subdivision lot or parcel not having recorded plats
		* * *	* * *	* * *
		3690	MISCELLANEOUS LANDS	Will not be valued in the same manner as other lands. (Ex. Common areas for condominium complexes where the land is assessed to the association but may have a different valuation method from either acreage or residential/commercial subdivision lots. Ex. A sliver of land that remains when a new road/street is cut and the taxpayer is left with this virtually worthless piece of property)
* * *	* * *	* * *	* * *	* * *
53	Miscellaneous Personal Property	5300	Computer Hardware/Software	Includes Computer Hardware, Software, Computer network equipment, printers, etc.
		* * *	* * *	* * *
		5350	Video Poker Machines	Includes Video Poker Machines, Slot Machines and other gambling related equipment.
		5360	Cable Television	Allow vendors to tie the property class to the LAT 8 for reporting on cable television equipment.
* * *	* * *	* * *	* * *	* * *

B. Property Classifications Standards

* * *

C. Electronic Tax Roll Export Specifications

Parish Information (Parish.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
FIPS_code	Numeric	5	Yes	Parish identification number. (See FIPS table.)
***	***	***	***	***
Zip4	Character	4	Yes	Extended zip code (9999).
Assessor_name	Character	45	Yes	Assessor's name

Assessment Information (Assmt.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
***	***	***	***	***
Homestead_exempt	Numeric	1	Yes	0 = None (Default), 1 = Homestead Exemption, 2 = Over 65 Freeze, 3 = Disabled, 4 = Disabled Vet Freeze, 5 = Widow of POW/MIA and 6 = 100% Disabled Vet Homestead
homestead_percent	Numeric	6.2	Yes	Homestead Exemption percentage to be applied to assessment. (Format: 100.00 (Default) = 100%)
***	***	***	***	***
Taxpayer_addr3	Character	40	No	Tax payer's address line 3.

Assessment Value Information (Avalue.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax Year Submitting (Format: 1999, 2000,2001,2002,2003,2004, Etc.)
***	***	***	***	***
Homestead_credit	Numeric	5	Yes	Assessed value to be credited by Homestead exemption. (Not to exceed 15,000 of Assessed Value)
***	***	***	***	***
Other_exempt	Numeric	1	Yes	Old status of any special exemptions to be applied to item 1. 0 = None (Default), 1 = Commerce/Industry (Ten Year Exemption), 2 = Agricultural, 3 = Institutional, 4 = Timber and 5 = Marshland

Assessment Millage Information (Amillage.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
***	***	***	***	***
Millage Group Information (Tgroup.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
***	***	***	***	***
Flat_fee	Numeric	6.2	Yes	Flat fee amount (format 999.99)
Place_fips	Numeric	5	Yes	FIPS Place Code of Ward or Municipality. (See FIPS Table)

Parcel Information (Parcel.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (Format: 1999, 2000,2001,2002,2003,2004, etc.)
***	***	***	***	***
Lender_id	Character	8	No	Lender or Mortgage Company's identification number supplied by Tax Commission.
Tax_sale	Character	1	Yes	Y = Yes and N = No (default)
Taxsale_date	Numeric	10	Yes	Date of Tax Sale (Format 01/01/1999)

Legal Description Information (Legal.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
***	***	***	***	***

Additional Owner Information (Owners.txt) (Optional)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (see FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Taxpayer_id	Numeric	10	No	Taxpayer's identification number.
Own_percent	Numeric	6.2	No	Percent of ownership. (format: 999.99)
Taxpayer_name	Character	50	Yes	Taxpayer's name.
Primary_owner	Character	50	Yes	Primary owner's name
Contact_name	Character	50	No	Contact's name.
Taxpayer_addr1	Character	40	No	Taxpayer's address line 1.
Taxpayer_addr2	Character	40	No	Taxpayer's address line 2.
Taxpayer_addr3	Character	40	No	Taxpayer's address line 3.

Document Information (Document.txt) (Optional)				
Field Name	Field Type	Field Length	Required	Comments
***	***	***	***	***

Improvement Information (Improve.txt) (optional)				
Field Name	Field Type	Field Length	Required	Comments
***	***	***	***	***

Place FIPS Information (FIPS.txt)				
Field Name	Field Type	Field Length	Required	Comments
***	***	***	***	***

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution of 1974, Article VII, §18 and R.S. 47:1837.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Commission, LR 31:703 (March 2005), amended LR 32:427 (March 2006), LR 36:765 (April 2010), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 38:799 (March 2012), LR 39:

Chapter 7. Watercraft

§703. Tables—Watercraft

A. Floating Equipment—Motor Vessels

Table 703.A Floating Equipment—Motor Vessels				
Cost Index (Average)		Average Economic Life 12 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2012	0.994	1	94	.93
2011	1.022	2	87	.89
2010	1.054	3	80	.84
2009	1.046	4	73	.76
2008	1.077	5	66	.71
2007	1.119	6	58	.65
2006	1.180	7	50	.59
2005	1.235	8	43	.53
2004	1.328	9	36	.48
2003	1.374	10	29	.40
2002	1.397	11	24	.34
2001	1.405	12	22	.31
2000	1.417	13	20	.28

B. Floating Equipment—Barges (Non-Motorized)

Table 703.B Floating Equipment—Barges (Non-Motorized)				
Cost Index Average		Average Economic Life 20 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2012	0.994	1	97	.96
2011	1.022	2	93	.95
2010	1.054	3	90	.95
2009	1.046	4	86	.90
2008	1.077	5	82	.88
2007	1.119	6	78	.87
2006	1.180	7	74	.87
2005	1.235	8	70	.86
2004	1.328	9	65	.86
2003	1.374	10	60	.82
2002	1.397	11	55	.77
2001	1.405	12	50	.70
2000	1.417	13	45	.64
1999	1.443	14	40	.58
1998	1.447	15	35	.51
1997	1.460	16	31	.45
1996	1.483	17	27	.40
1995	1.506	18	24	.36
1994	1.560	19	22	.34
1993	1.604	20	21	.34
1992	1.635	21	20	.33

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:924 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:204 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:479 (March 1998), LR 25:312 (February 1999), LR 26:506 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:487 (March 2004), LR 31:715 (March 2005), LR 32:430 (March 2006), LR 33:490 (March 2007), LR 34:678 (April 2008), LR 35:492 (March 2009), LR 36:772 (April 2010), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 37:1394 (May 2011), LR 38:802 (March 2012), LR 39:

Chapter 9. Oil and Gas Properties

§907. Valuation of Oil, Gas, and Other Wells

A. ...

Instructions for Use of Tables 907.A-1,
907.A-2 and 907.A-3
and
Procedure for Arriving at Assessed Value

1. - 5. ...

6. Adjustments for Allowance of Economic Obsolescence
a. All wells producing 10 bbls oil or 100 mcf gas, or less, per day, as well as, all active service wells (i.e. injection, salt water disposal, water source, etc.) shall be allowed a 40 percent reduction. Taxpayer shall provide the assessor with proper documentation to claim this reduction. Once the 40 percent reduction has been applied and calculated, an additional 60 percent reduction shall be applied for any well producing 1 bbl of oil or 10 mcf of gas or less per day.

i. for wells producing 5 mcf or less of gas per day an additional reduction of 33 percent shall be applied;

ii. for wells producing 2 mcf or less of gas per day an additional reduction of 25 percent shall be applied;

6.b. - 7. ...

1. Oil, Gas and Associated Wells; Region 1—North Louisiana

Table 907.A.1 Oil, Gas and Associated Wells; Region 1—North Louisiana				
Producing Depths	Cost—New By Depth, Per Foot		15% of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0-1,249 ft.	37.12	129.89	5.57	19.48
1,250-2,499 ft.	33.51	95.51	5.03	14.33
2,500-3,749 ft.	26.34	63.25	3.95	9.49
3,750-4,999 ft.	36.42	63.02	5.46	9.45
5,000-7,499 ft.	42.83	61.52	6.42	9.23
7,500-9,999 ft.	93.90	82.92	14.09	12.44
10,000-12,499 ft.	273.82	100.59	41.07	15.09
12,500-14,999 ft.	N/A	151.88	N/A	22.78
15,000-Deeper ft.	N/A	173.20	N/A	25.98

2. Oil, Gas and Associated Wells; Region 2—South Louisiana

Table 907.A.2 Oil, Gas and Associated Wells; Region 2—South Louisiana				
Producing Depths	Cost—New By Depth, Per Foot		15% of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0-1,249 ft.	285.35	129.04	42.80	19.36
1,250-2,499 ft.	98.54	214.48	14.78	32.17
2,500-3,749 ft.	96.22	171.00	14.43	25.65
3,750-4,999 ft.	84.82	136.79	12.72	20.52

Table 907.A.2 Oil, Gas and Associated Wells; Region 2—South Louisiana				
Producing Depths	Cost—New By Depth, Per Foot		15% of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
5,000-7,499 ft.	115.87	155.38	17.38	23.31
7,500-9,999 ft.	158.07	162.68	23.71	24.40
10,000-12,499 ft.	215.55	212.65	32.33	31.90
12,500-14,999 ft.	282.75	275.12	42.41	41.27
15,000-17,499 ft.	458.00	368.35	68.70	55.25
17,500-19,999 ft.	559.21	521.75	83.88	78.26
20,000-Deeper ft.	298.60	783.31	44.79	117.50

3. Oil, Gas and Associated Wells; Region 3—Offshore State Waters

Table 907.A.3 Oil, Gas and Associated Wells; Region 3—Offshore State Waters*				
Producing Depths	Cost—New By Depth, Per Foot		15% Of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0 -1,249 ft.	N/A	N/A	N/A	N/A
1,250 -2,499 ft.	1,430.36	1,045.14	214.55	156.77
2,500 -3,749 ft.	735.50	803.23	110.33	120.48
3,750 -4,999 ft.	1,049.86	736.53	157.48	110.48
5,000 -7,499 ft.	522.45	682.19	78.37	102.33
7,500 -9,999 ft.	662.38	645.55	99.36	96.83
10,000 -12,499 ft.	749.87	654.36	112.48	98.15
12,500 -14,999 ft.	652.17	636.81	97.83	95.52
15,000 -17,499 ft.	449.51	660.76	67.43	99.11
17,500 -19,999 ft.	N/A	631.70	N/A	94.76
20,000 - Deeper ft.	N/A	992.97	N/A	148.95

B. The determination of whether a well is a Region 2 or Region 3 well is ascertained from its onshore/offshore status as designated on the Permit to Drill or Amended Permit to Drill form (Location of Wells Section), located at the Department of Natural Resources as of January 1 of each tax year. Each assessor is required to confirm the onshore/offshore status of wells located within their parish by referring to the Permit to Drill or Amended Permit to Drill form on file at the Department of Natural Resources.

1. Parishes Considered to be Located in Region I

Table 907.B.1 Parishes Considered to be Located in Region 1			
Bienville	DeSoto	Madison	Tensas
Bossier	East Carroll	Morehouse	Union
Caddo	Franklin	Natchitoches	Webster
Caldwell	Grant	Ouachita	West Carroll
Catahoula	Jackson	Red River	Winn
Claiborne	LaSalle	Richland	
Concordia	Lincoln	Sabine	

NOTE: All wells in parishes not listed above are located in Region 2 or Region 3.

2. Serial Number to Percent Good Conversion Chart

Table 907.B.2 Serial Number to Percent Good Conversion Chart			
Year	Beginning Serial Number	Ending Serial Number	20 Year Life Percent Good
2012	244268	Higher	97
2011	242592	244267	93
2010	240636	242591	90
2009	239277	240635	86
2008	236927	239276	82
2007	234780	236926	78

Table 907.B.2 Serial Number to Percent Good Conversion Chart			
Year	Beginning Serial Number	Ending Serial Number	20 Year Life Percent Good
2006	232639	234779	74
2005	230643	232638	70
2004	229010	230642	65
2003	227742	229009	60
2002	226717	227741	55
2001	225352	226716	50
2000	223899	225351	45
1999	222882	223898	40
1998	221596	222881	35
1997	220034	221595	31
1996	218653	220033	27
1995	217588	218652	24
1994	216475	217587	22
1993	215326	216474	21
1992	Lower	215325	20 *
VAR.	900000	Higher	50

*Reflects residual or floor rate.

NOTE: For any serial number categories not listed above, use year well completed to determine appropriate percent good. If spud date is later than year indicated by serial number; or, if serial number is unknown, use spud date to determine appropriate percent good.

C. Surface Equipment

1. Listed below is the cost-new of major items used in the production, storage, transmission and sale of oil and gas. Any equipment not shown shall be assessed on an individual basis.

2. All surface equipment, including other property associated or used in connection with the oil and gas industry in the field of operation, must be rendered in accordance with guidelines established by the Tax Commission and in accordance with requirements set forth on LAT Form 12-Personal Property Tax Report—Oil and Gas Property.

3. Oil and gas personal property will be assessed in seven major categories, as follows:

- a. oil, gas and associated wells;
- b. oil and gas equipment (surface equipment);
- c. tanks (surface equipment);
- d. lines (oil and gas lease lines);
- e. inventories (material and supplies);
- f. field improvements (docks, buildings, etc.);
- g. other property (not included above).

4. The cost-new values listed below are to be adjusted to allow depreciation by use of the appropriate percent good listed in Table 907.B.2. When determining the value of equipment associated with a single well, use the age of that well to determine the appropriate percent good. When determining the value of equipment used on multiple wells, the average age of the wells within the lease/field will determine the appropriate year to be used for this purpose.

5. Functional and/or economic obsolescence shall be considered in the analysis of fair market value as substantiated by the taxpayer in writing. Consistent with Louisiana R.S. 47:1957, the assessor may request additional documentation.

6. Sales, properly documented, should be considered by the assessor as fair market value, provided the sale meets all tests relative to it being a valid sale.

Table 907.C.1 Surface Equipment		\$ Cost New
Property Description		
Actuators—(see Metering Equipment)		
Automatic Control Equipment—(see Safety Systems)		
Automatic Tank Switch Unit—(see Metering Equipment)		
Barges - Concrete—(assessed on an individual basis)		
Barges - Storage—(assessed on an individual basis)		
Barges - Utility—(assessed on an individual basis)		
Barges - Work—(assessed on an individual basis)		
Communication Equipment—(see Telecommunications)		
Dampeners—(see Metering Equipment—"Recorders")		
DESORBERS—(no metering equipment included):		
125#		110,350
300#		121,680
500#		138,460
Destroilets—(see Metering Equipment—"Regulators")		
Desurgers—(see Metering Equipment—"Regulators")		
Desilters—(see Metering Equipment—"Regulators")		
Diatrollers—(see Metering Equipment—"Regulators")		
Docks, Platforms, Buildings—(assessed on an individual basis)		
Dry Dehydrators (Driers)—(see Scrubbers)		
Engines-Unattached—(only includes engine and skids):		
Per Horsepower		350
Evaporators—(assessed on an individual basis)		
Expander Unit—(no metering equipment included):		
Per Unit		40,480
Flow Splitters—(no metering equipment included):		
48 In. Diameter Vessel		19,710
72 In. Diameter Vessel		26,110
96 In. Diameter Vessel		40,010
120 In. Diameter Vessel		56,850
Fire Control System—(assessed on an individual basis)		
Furniture & Fixtures—(assessed on an individual basis) (Field operations only, according to location.)		
Gas Compressors-Package Unit—(Skids, scrubbers, cooling system, and power controls. No metering or regulating equipment.):		
1 - 49 HP		730
50 - 99 HP		1,450
100 - 999 HP		1,190
1,000 - 1,499 HP		910
1,500 HP and Up		800
Gas Coolers—(no metering equipment);		
5,000 MCF/D		31,090
10,000 MCF/D		35,020
20,000 MCF/D		108,950
50,000 MCF/D		247,170
100,000 MCF/D		404,810
Generators—Package Unit only -(no special installation)		
Per K.W.		230
Glycol Dehydration-Package Unit—(Including pressure gauge, relief valve and regulator. No other metering equipment.):		
Up to 4.0 MMCF/D		21,820
4.1 to 5.0 MMCF/D		24,350
5.1 to 10.0 MMCF/D		46,930
10.1 to 15.0 MMCF/D		65,300
15.1 to 20.0 MMCF/D		88,880
20.1 to 25.0 MMCF/D		115,580
25.1 to 30.0 MMCF/D		219,530
30.1 to 50.0 MMCF/D		245,230
50.1 to 75.0 MMCF/D		305,070
75.1 & Up MMCF/D		352,010
Heaters—(Includes unit, safety valves, regulators and automatic shut-down. No metering equipment.):		
Steam Bath—Direct Heater:		
24 In. Diameter Vessel - 250,000 BTU/HR Rate		7,570
30 In. Diameter Vessel - 500,000 BTU/HR Rate		9,500
36 In. Diameter Vessel - 750,000 BTU/HR Rate		11,500
48 In. Diameter Vessel - 1,000,000 BTU/HR Rate		17,010
60 In. Diameter Vessel - 1,500,000 BTU/HR Rate		21,000
Water Bath—Indirect Heater:		

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
24 In. Diameter Vessel - 250,000 BTU/HR Rate	6,450
30 In. Diameter Vessel - 500,000 BTU/HR Rate	8,860
36 In. Diameter Vessel - 750,000 BTU/HR Rate	11,560
48 In. Diameter Vessel - 1,000,000 BTU/HR Rate	16,370
60 In. Diameter Vessel - 1,500,000 BTU/HR Rate	20,940
Steam—(Steam Generators):	
24 In. Diameter Vessel - 250,000 BTU/HR Rate	8,270
30 In. Diameter Vessel - 450,000 BTU/HR Rate	10,330
36 In. Diameter Vessel - 500 to 750,000 BTU/HR Rate	15,490
48 In. Diameter Vessel - 1 to 2,000,000 BTU/HR Rate	17,780
60 In. Diameter Vessel - 2 to 3,000,000 BTU/HR Rate	20,120
72 In. Diameter Vessel - 3 to 6,000,000 BTU/HR Rate	31,800
96 In. Diameter Vessel - 6 to 8,000,000 BTU/HR Rate	38,190
Heat Exchange Units-Skid Mounted—(see Production Units)	
Heater Treaters—(Necessary controls, gauges, valves and piping. No metering equipment included.):	
Heater - Treaters - (non-metering):	
4 x 20 ft.	16,540
4 x 27 ft.	21,300
6 x 20 ft.	22,290
6 x 27 ft.	28,040
8 x 20 ft.	35,730
8 x 27 ft.	41,830
10 x 20 ft.	47,230
10 x 27 ft.	55,560
L.A.C.T. (Lease Automatic Custody Transfer)—see Metering Equipment)	
JT Skid (Low Temperature Extraction)—(includes safety valves, temperature controllers, chokes, regulators, metering equipment, etc.—complete unit.):	
Up to 2 MMCF/D	41,070
Up to 5 MMCF/D	58,670
Up to 10 MMCF/D	140,800
Up to 20 MMCF/D	234,670
Liqua Meter Units—(see Metering Equipment)	
Manifolds—(see Metering Equipment)	
Material & Supplies-Inventories—(assessed on an individual basis)	
Meter Calibrating Vessels—(see Metering Equipment)	
Meter Prover Tanks—(see Metering Equipment)	
Meter Runs—(see Metering Equipment)	
Meter Control Stations—(not considered Communication Equipment) - (assessed on an individual basis)	
Metering Equipment	
Actuators—hydraulic, pneumatic & electric valves	6,390
Controllers—time cycle valve - valve controlling device (also known as Intermitter)	1,990
Fluid Meters:	
1 Level Control	
24 In. Diameter Vessel - 1/2 bbl. Dump	4,870
30 In. Diameter Vessel - 1 bbl. Dump	6,280
36 In. Diameter Vessel - 2 bbl. Dump	8,680
2 Level Control	
20 In. Diameter Vessel - 1/2 bbl. Dump	4,580
24 In. Diameter Vessel - 1/2 bbl. Dump	5,510
30 In. Diameter Vessel - 1 bbl. Dump	6,920
36 In. Diameter Vessel - 2 bbl. Dump	9,330
L.A.C.T. and A.T.S. Units:	
30 lb. Discharge	30,740
60 lb. Discharge	35,020
Manifolds—Manual Operated:	
High Pressure	
per well	24,110
per valve	8,150
Low Pressure	
per well	11,670
per valve	3,870

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Manifolds—Automatic Operated:	
High Pressure	
per well	43,590
per valve	14,370
Low Pressure	
per well	31,090
per valve	10,500
NOTE: Automatic Operated System includes gas hydraulic and pneumatic valve actuators, (or motorized valves), block valves, flow monitors-in addition to normal equipment found on manual operated system. No Metering Equipment Included.	
Meter Runs—piping, valves & supports—no meters:	
2 In. piping and valve	6,570
3 In. piping and valve	7,390
4 In. piping and valve	8,920
6 In. piping and valve	12,440
8 In. piping and valve	18,680
10 In. piping and valve	24,880
12 In. piping and valve	31,090
14 In. piping and valve	42,360
16 In. piping and valve	55,320
18 In. piping and valve	68,520
20 In. piping and valve	89,060
22 In. piping and valve	112,230
24 In. piping and valve	137,400
Metering Vessels (Accumulators):	
1 bbl. calibration plate (20 x 9)	3,810
5 bbl. calibration plate (24 x 10)	4,110
7.5 bbl. calibration plate (30 x 10)	5,750
10 bbl. calibration plate (36 x 10)	7,160
Recorders (Meters)—Includes both static element and tube drive pulsation dampener-also one and two pen operations. per meter	2,640
Solar Panel (also see Telecommunications) per unit (10' x 10')	350
Pipe Lines—Lease Lines	
Steel	
2 In. nominal size - per mile	19,130
2 1/2 In. nominal size - per mile	25,760
3 & 3 1/2 In. nominal size - per mile	32,850
4, 4 1/2 & 5 In. nominal size - per mile	56,500
6 In. nominal size - per mile	82,960
Poly Pipe	
2 In. nominal size - per mile	10,500
2 1/2 In. nominal size - per mile	14,140
3 In. nominal size - per mile	18,070
4 In. nominal size - per mile	31,040
6 In. nominal size - per mile	45,580
Plastic-Fiberglass	
2 In. nominal size - per mile	16,310
3 In. nominal size - per mile	27,930
4 In. nominal size - per mile	47,990
6 In. nominal size - per mile	70,460
NOTE: Allow 90% obsolescence credit for lines that are inactive, idle, open on both ends and dormant, which are being carried on corporate records solely for the purpose of retaining right of ways on the land and/or due to excessive capital outlay to refurbish or remove the lines.	
Pipe Stock—(assessed on an individual basis)	
Pipe Stock - Exempt—Under La. Const., Art. X, §4 (19-C)	
Production Units:	
Class I - per unit—separator & 1 heater—500 MCF/D	20,650
Class II - per unit—separator & 1 heater—750 MCF/D	27,520
Production Process Units—These units are by specific design and not in the same category as gas compressors, liquid and gas production units or pump-motor units. (Assessed on an individual basis.)	

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Pumps—In Line per horsepower rating of motor	290
Pump-Motor Unit—pump and motor only Class I - (water flood, s/w disposal, p/l, etc.) Up to 300 HP - per HP of motor	350
Class II - (high pressure injection, etc.) 301 HP and up per HP of motor	410
Pumping Units-Conventional and Beam Balance—(unit value includes motor) - assessed according to API designation.	
16 D	6,750
25 D	12,670
40 D	15,840
57 D	21,120
80 D	35,260
114 D	36,670
160 D	49,340
228 D	53,560
320 D	67,700
456 D	80,370
640 D	97,330
912 D	102,960
NOTE: For "Air Balance" and "Heavy Duty" units, multiply the above values by 1.30.	
Regenerators (Accumulator)—(see Metering Equipment)	
Regulators: per unit	2,700
Safety Systems Onshore And Marsh Area Basic Case: well only	5,400
well & production equipment	6,220
with surface op. ssv, add	9,330
Offshore 0 - 3 Miles Wellhead safety system (excludes wellhead actuators) per well	15,550
production train	38,900
glycol dehydration system	23,350
P/L pumps and LACT	54,440
Compressors	34,200
Wellhead Actuators (does not include price of the valve) 5,000 psi	3,870
10,000 psi and over	5,810
NOTE: For installation costs - add 25%	
Sampler—(see Metering Equipment—"Fluid Meters")	
Scrubbers—Two Classes Class I - Manufactured for use with other major equipment and, at times, included with such equipment as part of a package unit.	
8 In. Diameter Vessel	3,290
10 In. Diameter Vessel	4,690
12 In. Diameter Vessel	5,340
Class II - Small "in-line" scrubber used in flow system usually direct from gas well. Much of this type is "shop-made" and not considered as major scrubbing equipment.	
8 In. Diameter Vessel	1,530
12 In. Diameter Vessel	1,990
NOTE: No metering or regulating equipment included in the above.	

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Separators—(no metering equipment included) Horizontal—Filter /1,440 psi (High Pressure) 6-5/8" OD x 5'-6"	4,810
8-5/8" OD x 7'-6"	5,220
10-3/4" OD x 8'-0"	7,330
12-3/4" OD x 8'-0"	9,860
16" OD x 8'-6"	15,840
20" OD x 8'-6"	23,410
20" OD x 12'-0"	24,640
24" OD x 12'-6"	33,210
30" OD x 12'-6"	48,460
36" OD x 12'-6"	57,610
Separators—(no metering equipment included) Vertical 2—Phase /125 psi (Low Pressure) 24" OD x 7'-6"	5,460
30" OD x 10'-0"	5,870
36" OD x 10'-0"	12,260
Vertical 3—Phase /125 psi (Low Pressure) 24" OD x 7'-6"	5,750
24" OD x 10'-0"	6,510
30" OD x 10'-0"	9,030
36" OD x 10'-0"	12,850
42" OD x 10'-0"	14,900
Horizontal 3—Phase /125 psi (Low Pressure) 24" OD x 10'-0"	8,510
30" OD x 10'-0"	10,910
36" OD x 10'-0"	11,910
42" OD x 10'-0"	19,010
Vertical 2—Phase /1440 psi (High Pressure) 12-3/4" OD x 5'-0"	3,230
16" OD x 5'-6"	4,810
20" OD x 7'-6"	9,150
24" OD x 7'-6"	11,090
30" OD x 10'-0"	16,900
36" OD x 10'-0"	21,880
42" OD x 10'-0"	35,020
48" OD x 10'-0"	41,300
54" OD x 10'-0"	62,540
60" OD x 10'-0"	78,200
Vertical 3 - Phase /1440 psi (High Pressure) 16" OD x 7'-6"	5,630
20" OD x 7'-6"	9,860
24" OD x 7'-6"	11,440
30" OD x 10'-0"	17,660
36" OD x 10'-0"	22,590
42" OD x 10'-0"	36,840
48" OD x 10'-0"	42,710
Horizontal 2—Phase /1440 psi (High Pressure) 16" OD x 7'-6"	5,510
20" OD x 7'-6"	8,860
24" OD x 10'-0"	12,090
30" OD x 10'-0"	18,600
36" OD x 10'-0"	23,580
42" OD x 15'-0"	47,870
48" OD x 15'-0"	55,210
Horizontal 3—Phase /1440 psi (High Pressure) 16" OD x 7'-6"	8,510
20" OD x 7'-6"	9,500
24" OD x 10'-0"	13,850
30" OD x 10'-0"	19,710
36" OD x 10'-0"	28,400
36" OD x 15'-0"	31,740
Offshore Horizontal 3—Phase /1440 psi (High Pressure) 30" OD x 10'-0"	40,890
36" OD x 10'-0"	39,010
36" OD x 12'-0"	56,610
36" OD x 15'-0"	59,080
42" OD x 15'-0"	91,700

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Skimmer Tanks—(see Flow Tanks in Tanks section)	
Stabilizers—per unit	6,040
Sump/Dump Tanks—(See Metering Equipment -"Fluid Tanks")	
Tanks—no metering equipment	Per Barrel*
Flow Tanks (receiver or gunbarrel) 50 to 548 bbl. Range (average tank size - 250 bbl.)	37.80
Stock Tanks (lease tanks) 100 to 750 bbl. Range (average tank size – 300 bbl.)	29.30
Storage Tanks (Closed Top)	
1,000 barrel	25.00
1,500 barrel	22.10
2,000 barrel	21.50
2,001 - 5,000 barrel	19.70
5,001 - 10,000 barrel	18.50
10,001 - 15,000 barrel	17.40
15,001 - 55,000 barrel	12.10
55,001 - 150,000 barrel	9.20
Internal Floating Roof	
10,000 barrel	35.70
20,000 barrel	24.20
30,000 barrel	18.00
50,000 barrel	16.00
55,000 barrel	15.40
80,000 barrel	13.60
100,000 barrel	11.90
*I.E.: (tanks size bbls.) X (no. of bbls.) X (cost-new factor.)	
Telecommunications Equipment	
Microwave System	
Telephone & data transmission	46,930
Radio telephone	3,520
Supervisory controls:	
remote terminal unit, well	10,030
master station	22,880
towers (installed):	
heavy duty, guyed, per foot	590
light duty, guyed, per foot	50
heavy duty, self supporting, per foot	600
light duty, self supporting, per foot	130
equipment building, per sq. ft.	180
solar panels, per sq. ft.	60
Utility Compressors per horsepower - rated on motor	770
Vapor Recovery Unit—no Metering Equipment	
60 MCF/D or less	20,530
105 MCF/D max	29,330
250 MCF/D max	38,720
Waterknockouts—Includes unit, backpressure valve and regulator, but, no metering equipment.	
2' diam. x 16'	5,570
3' diam. x 10'	8,330
4' diam. x 10'	11,500
6' diam. x 10'	18,830
6' diam. x 15'	21,770
8' diam. x 10'	27,280
8' diam. x 15'	31,330
8' diam. x 20'	34,730
8' diam. x 25'	38,660
10' diam. x 20'	45,470

Table 907.C.2 Service Stations Marketing Personal Property *Alternative Procedure	
Property Description	\$ Cost New
Air and Water Units:	
Above ground	1,310
Below ground	560
Air Compressors:	
1/3 to 1 H.P.	1,760
1/2 to 5 H.P.	2,970

Table 907.C.2 Service Stations Marketing Personal Property *Alternative Procedure	
Property Description	\$ Cost New
Car Wash Equipment:	
In Bay (roll over brushes)	47,230
In Bay (pull through)	73,310
Tunnel (40 to 50 ft.)	159,580
Tunnel (60 to 75 ft.)	213,550
Drive On Lifts:	
Single Post	8,620
Dual Post	9,720
Lights:	
Light Poles (each)	880
Lights - per pole unit	970
Pumps:	
Non-Electronic - self contained and/or remote controlled computer	
Single	3,730
Dual	5,550
Computerized - non-self service, post pay, pre/post pay. self contained and/or remote controlled dispensers	
Single	6,310
Dual	8,510
Read-Out Equipment (at operator of self service) Per Hose Outlet	1,380
Signs:	
Station Signs	
6 ft. lighted - installed on 12 ft. pole	4,170
10 ft. lighted - installed on 16 ft. pole	7,630
Attachment Signs (for station signs)	
Lighted "self-serve" (4 x 11 ft.)	3,470
Lighted "pricing" (5 x 9 ft.)	3,560
High Rise Signs - 16 ft. lighted - installed on:	
1 pole	12,630
2 poles	16,520
3 poles	18,480
Attachment Signs (for high rise signs)	
Lighted "self-serve" (5 x 17 ft.)	6,710
Lighted "pricing" (5 x 9 ft.)	3,560
Submerged Pumps—(used with remote control equipment, according to number used - per unit)	3,730
Tanks—(average for all tank sizes)	
Underground - per gallon	2.10

NOTE: The above represents the cost-new value of modern stations and self-service marketing equipment. Other costs associated with such equipment are included in improvements. Old style stations and equipment should be assessed on an individual basis, at the discretion of the tax assessor, when evidence is furnished to substantiate such action.

*This alternative assessment procedure should be used only when acquisition cost and age are unknown or unavailable. Otherwise, see general business section (Chapter 25) for normal assessment procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:480 (March 1998), LR 25:313 (February 1999), LR 26:507 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:488 (March 2004), LR 31:717 (March 2005), LR 32:431 (March 2006), LR 33:492 (March 2007), LR 34:679 (April 2008), LR 35:495 (March 2009), LR 36:773 (April 2010), amended by the Office of the Governor, Division of Administration, Tax

Chapter 11. Drilling Rigs and Related Equipment
§1103. Drilling Rigs and Related Equipment Tables

A. Land Rigs

Table 1103.A Land Rigs		
Depth "0" to 7,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
3,000	802,000	120,300
4,000	866,700	130,000
5,000	1,138,800	170,800
6,000	1,529,300	229,400
7,000	2,166,000	324,900
Depth 8,000 to 10,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
8,000	2,915,200	437,300
9,000	3,682,400	552,400
10,000	4,413,400	662,000
Depth 11,000 to 15,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
11,000	5,065,800	759,900
12,000	5,609,700	841,500
13,000	6,029,300	904,400
14,000	6,323,300	948,500
15,000	6,506,700	976,000
Depth 16,000 to 20,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
16,000	6,611,800	991,800
17,000	6,688,800	1,003,300
18,000	6,807,700	1,021,200
19,000	7,058,600	1,058,800
20,000	7,553,700	1,133,100
Depth 21,000 + Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
21,000	8,427,600	1,264,100
25,000 +	9,838,900	1,475,800

1. - 2. ...

B. Jack-Ups

Table 1103.B Jack-Ups			
Type	Water Depth Rating	Fair Market Value	Assessment
IC	0-199 FT.	\$ 52,600,000	7,890,000
	200-299 FT.	105,100,000	15,765,000
	300-Up FT.	210,000,000	31,500,000
IS	0-199 FT.	15,800,000	2,370,000
	200-299 FT.	26,300,000	3,945,000
	300- Up FT.	31,500,000	4,725,000
MC	0-199 FT.	5,300,000	795,000
	200-299 FT.	10,500,000	1,575,000
	300- Up FT.	42,100,000	6,315,000
MS	0-249 FT.	11,000,000	1,650,000
	250 FT. and Deeper	21,700,000	3,255,000

IC - Independent Leg Cantilever
 IS - Independent Leg Slot
 MC - Mat Cantilever
 MS - Mat Slot

C. Semisubmersible Rigs

Table 1103.C Semisubmersible Rigs		
Water Depth Rating	Fair Market Value	Assessment
	\$	\$
0- 800 FT.	48,000,000	7,200,000
801-1,800 FT.	86,100,000	12,915,000
1,801-2,500 FT.	157,700,000	23,655,000
2,501 FT. and Deeper	495,000,000	74,250,000

NOTE: The fair market values and assessed values indicated by these tables are based on the current market (sales) appraisal approach and not the cost approach.

1. - 3.b.i. ...

D. Well Service Rigs Land Only

Table 1103.D Well Service Rigs Land Only				
Class	Mast	Engine	Fair Market Value (RCNLD)	Assessment
I	72' X 125M# 75' X 150M#	6V71	260,000	39,000
II	96' X 150M# 96' X 180M# 96' X 185M# 96' X 205M# 96' X 210M# 96' X 212M# 96' X 215M#	8V71	320,000	48,000
III	96' X 240M# 96' X 250M# 96' X 260M# 102' X 215M#	8V92	375,000	56,300
IV	102' X 224M# 102' X 250M# 103' X 225M# 103' X 250M# 104' X 250M# 105' X 225M# 105' X 250M#	12V71	450,000	67,500
V	105' X 280M# 106' X 250M# 108' X 250M# 108' X 260M# 108' X 268M# 108' X 270M# 108' X 300M#	12V71 12V92	525,000	78,800
VI	110' X 250M# 110' X 275M# 112' X 300M# 112' X 350M#	12V71 (2) 8V92	580,000	87,000
VII	117' X 215M#	(2) 8V92 (2) 12V71	670,000	100,500

D.1. - E.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:939 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:487 (March 1998), LR 25:315 (February 1999), LR 26:508 (March 2000), LR 27:426 (March 2001), LR 28:519 (March 2002), LR 30:488 (March 2004), LR 31:718 (March

2005), LR 32:431 (March 2006), LR 33:493 (March 2007), LR 34:683 (April 2008), LR 35:497 (March 2009), LR 36:778 (April 2010), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 37:1399 (May 2011), LR 38:808 (March 2012), LR 39:

Chapter 13. Pipelines

§1307. Pipeline Transportation Tables

A. Current Costs for Other Pipelines (Onshore)

Table 1307.A Current Costs for Other Pipelines (Onshore)		
Diameter (inches)	Cost per Mile	15% of Cost per Mile
2	\$ 158,400	\$ 23,760
4	186,910	28,040
6	220,550	33,080
8	260,250	39,040
10	307,090	46,060
12	362,360	54,350
14	427,580	64,140
16	504,540	75,680
18	595,350	89,300
20	702,500	105,380
22	828,940	124,340
24	978,130	146,720
26	1,154,180	173,130
28	1,361,910	204,290
30	1,607,030	241,050
32	1,896,270	284,440
34	2,237,570	335,640
36	2,640,290	396,040
38	3,115,500	467,330
40	3,676,230	551,430
42	4,337,890	650,680
44	5,118,640	767,800
46	6,039,910	905,990
48	7,126,990	1,069,050

NOTE: Excludes river and canal crossings

B. Current Costs for Other Pipelines (Offshore)

Table 1307.B Current Costs for Other Pipelines (Offshore)		
Diameter (inches)	Cost per Mile	15% of Cost per Mile
2	\$ 938,350	\$ 140,750
4	940,000	141,000
6	942,450	141,370
8	954,570	143,190
10	973,850	146,080
12	1,000,290	150,040
14	1,033,900	155,090
16	1,074,680	161,200
18	1,122,620	168,390
20	1,177,730	176,660
22	1,240,000	186,000
24	1,309,440	196,420
26	1,386,040	207,910
28	1,469,810	220,470
30	1,560,740	234,110
32	1,658,840	248,830
34	1,764,100	264,620
36	1,876,530	281,480
38	1,996,120	299,420
40	2,122,880	318,430
42	2,256,800	338,520
44	2,397,890	359,680
46	2,546,150	381,920
48	2,701,570	405,240

C. Pipeline Transportation Allowance for Physical Deterioration (Depreciation)

Table 1307.C Pipeline Transportation Allowance for Physical Deterioration (Depreciation)	
Actual Age	26.5 Year Life Percent Good
1	98
2	96
3	94
4	91
5	88
6	86
7	83
8	80
9	77
10	73
11	70
12	67
13	63
14	60
15	56
16	52
17	48
18	44
19	39
20	35
21	33
22	30
23	28
24	26
25	25
26	23
27 and older	20 *

* Reflects residual or floor rate.

NOTE: See §1305.G (page PL-3) for method of recognizing economic obsolescence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:941 (November 1984), LR 12:36 (January 1986), LR 16:1063 (December 1990), amended by the Department of Revenue, Tax Commission, LR 24:489 (March 1998), LR 25:316 (February 1999), LR 26:509 (March 2000), LR 27:426 (March 2001), LR 31:719 (March 2005), LR 32:432 (March 2006), LR 33:494 (March 2007), LR 34:684 (April 2008), LR 35:499 (March 2009), LR 36:778 (April 2010), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 37:1401 (May 2011), LR 38:809 (March 2012), LR 39:

Chapter 15. Aircraft

§1503. Aircraft (Including Helicopters) Table

A. Aircraft (Including Helicopters)

Table 1503 Aircraft (Including Helicopters)				
Cost Index (Average)		Average Economic Life (20 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2012	0.994	1	97	.96
2011	1.022	2	93	.95
2010	1.054	3	90	.95
2009	1.046	4	86	.90
2008	1.077	5	82	.88
2007	1.119	6	78	.87
2006	1.180	7	74	.87
2005	1.235	8	70	.86

Table 1503 Aircraft (Including Helicopters)				
Cost Index (Average)		Average Economic Life (20 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2004	1.328	9	65	.86
2003	1.374	10	60	.82
2002	1.397	11	55	.77
2001	1.405	12	50	.70
2000	1.417	13	45	.64
1999	1.443	14	40	.58
1998	1.447	15	35	.51
1997	1.460	16	31	.45
1996	1.483	17	27	.40
1995	1.506	18	24	.36
1994	1.560	19	22	.34
1993	1.604	20	21	.34
1992	1.635	21	20	.33

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:943 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:206 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:316 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR 30:489 (March 2004), LR 31:719 (March 2005), LR 32:433 (March 2006), LR 33:495 (March 2007), LR 34:685 (April 2008), LR 35:499 (March 2009), LR 36:779 (April 2010), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 37:1401 (May 2011), LR 38:809 (March 2012), LR 39:

Chapter 25. General Business Assets

§2503. Tables Ascertain Economic Lives, Percent Good and Composite Multipliers of Business and Industrial Personal Property

A. ...

* * *

B. Cost Indices

Table 2503.B Cost Indices			
Year	Age	National Average 1926 = 100	January 1, 2012 = 100*
2012	1	1545.9	0.994
2011	2	1503.2	1.022
2010	3	1457.4	1.054
2009	4	1468.6	1.046
2008	5	1427.3	1.077
2007	6	1373.3	1.119
2006	7	1302.3	1.180
2005	8	1244.5	1.235
2004	9	1157.3	1.328
2003	10	1118.6	1.374
2002	11	1100.0	1.397
2001	12	1093.4	1.405
2000	13	1084.3	1.417
1999	14	1065.0	1.443
1998	15	1061.8	1.447
1997	16	1052.7	1.460
1996	17	1036.0	1.483

Table 2503.B Cost Indices			
Year	Age	National Average 1926 = 100	January 1, 2012 = 100*
1995	18	1020.4	1.506
1994	19	985.0	1.560
1993	20	958.0	1.604
1992	21	939.8	1.635
1991	22	928.5	1.655
1990	23	910.2	1.688
1989	24	886.5	1.733
1988	25	841.4	1.826
1987	26	806.9	1.904

*Reappraisal Date: January 1, 2012 – 1536.5 (Base Year)

C. ...

* * *

D. Composite Multipliers 2013 (2014 Orleans Parish)

Table 2503.D Composite Multipliers 2013 (2014 Orleans Parish)									
Age	3 Yr	5 Yr	6 Yr	8 Yr	10 Yr	12 Yr	15 Yr	20 Yr	25 Yr
1	.70	.84	.86	.89	.91	.93	.94	.96	.97
2	.50	.71	.75	.81	.86	.89	.92	.95	.97
3	.36	.55	.60	.71	.80	.84	.90	.95	.96
4	.17	.36	.43	.56	.70	.76	.83	.90	.94
5		.25	.32	.46	.62	.71	.79	.88	.94
6		.20	.21	.37	.55	.65	.76	.87	.94
7			.21	.31	.46	.59	.73	.87	.93
8				.27	.37	.53	.68	.86	.93
9				.27	.32	.48	.65	.86	.92
10					.29	.40	.59	.82	.92
11					.28	.34	.52	.77	.92
12						.31	.44	.70	.90
13						.28	.37	.64	.85
14							.33	.58	.81
15							.30	.51	.75
16							.29	.45	.70
17								.40	.65
18								.36	.59
19								.34	.53
20								.34	.48
21								.33	.46
22									.43
23									.41
24									.35
25									.34
26									.33

1. Data sources for tables are:

- a. Cost Index—Marshall and Swift Publication Co.;
- b. Percent Good—Marshall and Swift Publication Co.;
- c. Average Economic Life—various.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 10:944 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:207 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:317 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR

30:489 (March 2004), LR 31:719 (March 2005), LR 32:433 (March 2006), LR 33:496 (March 2007), LR 34:686 (April 2008), LR 35:500 (March 2009), LR 36:780 (April 2010), amended by the Office of the Governor, Division of Administration, Tax Commission, LR 37:1402 (May 2011), LR 38:810 (March 2012), LR 39:

James D. "Pete" Peters
Chairman

1212#045

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Behavioral Health

Behavioral Health Services
Statewide Management Organization
LaCHIP Affordable Plan Benefits Administration
(LAC 50:XXXIII.103)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend LAC 50:XXXIII.103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide services through the utilization of a Statewide Management Organization that is responsible for the necessary administrative and operational functions to ensure adequate coordination and delivery of behavioral health services (*Louisiana Register*, Volume 38, Number 2).

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health now propose to amend the February 2012 Rule in order to include the administration of behavioral health services covered under the LaCHIP Affordable Plan (Phase 5). LaCHIP Affordable Plan benefits, including behavioral health services, are currently administered by the Office of Group Benefits. The administration of these services will now be transferred to the Statewide Management Organization under the Louisiana Behavioral Health Partnership.

This action is being taken to avoid a budget deficit in the medical assistance programs, and to promote the health and welfare of LaCHIP Affordable Plan recipients. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$126,047 for state fiscal year 2012-2013.

Effective January 1, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing behavioral health services coordinated

by the Statewide Management Organization to include recipients covered under the LaCHIP Affordable Plan.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXXIII. Behavioral Health Services

Subpart 1. Statewide Management Organization

Chapter 1. General Provisions

§103. Recipient Participation

A. The following Medicaid recipients shall be mandatory participants in the coordinated behavioral health system of care:

1. – 6. ...
7. Title XXI SCHIP populations, including:
 - a. LaCHIP Phases 1 - 3; and
 - b. LaCHIP Affordable Plan (Phase 5).

B. ...

C. Notwithstanding the provisions of §103.A above, the following Medicaid recipients are excluded from enrollment in the PIHP/SMO:

1. – 7. ...
8. repealed
8. recipients who receive services through the Program of All-Inclusive Care for the Elderly (PACE);
9. recipients enrolled in the Low Income Subsidy Program;
10. participants in the TAKE CHARGE Family Planning Waiver; and
11. recipients enrolled in the LaMOMS Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:361 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 38:

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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1212#088

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Coordinated Care Network
(LAC 50:I.3103-3109 and 3307)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:I. 3103-3109 and §3307 in the Medical Assistance Program as authorized

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

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions which implemented a coordinated system of care in the Medicaid Program designed to improve performance and health care outcomes through a healthcare delivery system called coordinated care networks, also known as the BAYOU HEALTH Program (*Louisiana Register*, Volume 37, Number 6).

The department promulgated an Emergency Rule which amended the provisions of the June 20, 2011 Rule to revise the BAYOU HEALTH Program enrollment process to implement immediate auto-assignment of pregnant women whose Medicaid eligibility is limited to prenatal, delivery and post-partum services. Act 13 of the 2012 Regular Session of the Louisiana Legislature eliminated the CommunityCARE Program. This Emergency Rule also amended these provisions to align the BAYOU HEALTH Program with the directives of Act 13 by removing provisions relative to the former CommunityCARE Program (*Louisiana Register*, Volume 38, Number 8).

The department now proposes to amend the August 1, 2012 Emergency Rule to clarify the provisions for enrollment. This action is being taken to promote the health and welfare of pregnant women by ensuring their immediate access to quality health care services.

Effective November 29, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 1, 2012 Emergency Rule governing the coordinated care network.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Medicaid Coordinated Care

Chapter 31.Coordinated Care Network

§3103. Recipient Participation

A. - B.1.b.v. ...

NOTE: Repealed.

C. - D.1.j. ...

k. are enrolled in the Louisiana Health Insurance Premium Payment (LaHIPP) Program.

E. ...

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 37:1573 (June 2011), amended LR 39:

§3105. Enrollment Process

A. - D.1. ...

2. The CCN and its providers shall be required to register all births through the Louisiana Electronic Event Registration System (LEERS) administered by DHH/Vital Records Registry and complete any other Medicaid enrollment form required by DHH.

E. - E.1. ...

2. New recipients, excluding those whose Medicaid eligibility is predicated upon determination of pregnancy, shall be given no less than 30 calendar days from the postmark date of an enrollment form mailed by the enrollment broker to select a CCN and primary care provider (PCP).

a. ...

3. Pregnant recipients with Medicaid eligibility limited to prenatal, delivery, and post-partum services will immediately be automatically assigned to a CCN by the enrollment broker.

a. - d. Repealed.

4. The following provisions will be applicable for recipients who are mandatory or voluntary participants.

a. If there are two or more CCNs in a department designated service area in which the recipient resides, they shall select one.

b. If there is only one CCN in a department designated service area where the recipient resides, the recipient must choose either the CCN, Medicaid fee-for-service or an alternative Medicaid managed care program that coordinates care and which the department makes available in accordance with the promulgation of administrative Rules.

c. Recipients who fail to make a selection will be automatically assigned to a participating CCN in their area.

d. Recipients may request to transfer out of the CCN for cause and the effective date of enrollment shall be no later than the first day of the second month following the calendar month that the request for disenrollment is filed.

F. Automatic Assignment Process

1. The following participants shall be automatically assigned to a CCN by the enrollment broker in accordance with the department's algorithm/formula and the provisions of §3105.E:

a. mandatory CCN participants that fail to select a CCN and voluntary participants that do not exercise their option not to participate in the CCN program within the minimum 30 day window;

b. pregnant women with Medicaid eligibility limited to prenatal care, delivery, and post-partum services; and

c. other recipients as determined by the department.

2. CCN automatic assignments shall take into consideration factors including, but not limited to:

a. the potential enrollee's geographic parish of residence;

b. assigning members of family units to the same CCN;

c. previous relationships with a Medicaid provider;

d. CCN capacity; and

e. CCN performance outcome indicators (when available).

3. Neither the MCO model nor the shared savings model will be given preference in making automatic assignments.

4. CCN automatic assignment methodology shall be available to recipients upon request to the enrollment broker prior to enrollment.

G. - G.2.a. ...

b. selects a PCP within the CCN that has reached their maximum physician/patient ratio;

c. selects a PCP within the CCN that has restrictions/limitations (e.g. pediatric only practice); or

d. has been automatically assigned to the CCN due to eligibility limited to pregnancy-related services.

3. Members who do not proactively choose a PCP with a CCN will be automatically assigned to a PCP by the CCN. The PCP automatically assigned to the member shall be located within geographic access standards of the member's home and/or best meets the needs of the member. Members for whom a CCN is the secondary payor will not be assigned to a PCP by the CCN, unless the members request that the CCN do so.

G.4. - H.1. ...

2. The 90 day option to change is not applicable to CCN linkages as a result of open enrollment.

I. Annual Open Enrollment

1. The department will provide an opportunity for all CCN members to retain or select a new CCN during an open enrollment period. Notification will be sent to each CCN member at least 60 days prior to the effective date of the annual open enrollment. Each CCN member shall receive information and the offer of assistance with making informed choices about CCNs in their area and the availability of choice counseling.

2. ...

3. During the open enrollment period, each Medicaid enrollee shall be given the option to either remain in their existing CCN or select a new CCN.

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 37:1574 (June 2011), amended LR 39:

§3107. Disenrollment and Change of Coordinated Care Network

A. - F.1.j. ...

k. member enrolls in the Louisiana Health Insurance Premium Payment (LaHIPP) Program.

G. - G.2. ...

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 37:1575 (June 2011), amended LR 39:

§3109. Member Rights and Responsibilities

A. - A.11. ...

B. Members shall have the freedom to exercise the rights described herein without any adverse effect on the member's treatment by the department or the CCN, or its contractors or providers.

C. - C.8. ...

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 37:1576 (June 2011), amended LR 39:

Chapter 33. Coordinated Care Network Shared Savings Model

§3303. Shared Savings Model Responsibilities

A. - R.4. ...

a. immediately notifying the department if he or she has a Workman's Compensation claim, a pending personal injury or medical malpractice law suit, or has been involved in an auto accident;

R.4.b. - T.3. ...

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 37:1578 (June 2011), amended LR 39:

§3307. Reimbursement Methodology

A. - C. ...

1. The CCN-S may reimburse the PCP a monthly base case management fee for each enrollee assigned to the PCP.

2. ...

3.-3.b. Repealed.

D. - F. ...

1. The reconciliation shall compare the actual aggregate cost of authorized/preprocessed services as specified in the contract and include the enhanced primary care case management fee for dates of services in the reconciliation period, to the aggregate Per Capita Prepaid Benchmark (PCPB).

2. - 5.c. ...

6. In the event the CCN-S exceeds the PCPB in the aggregate (for the entire CCN-S enrollment) as calculated in the final reconciliation, the CCN-S will be required to refund up to 50 percent of the total amount of the enhanced primary care case management fees paid to the CCN-S during the period being reconciled.

7. ...

a. Due to federally mandated limitations under the Medicaid State Plan, shared savings will be limited to five percent of the actual aggregate costs including the enhanced primary care case management fees paid. Such amounts shall be determined in the aggregate and not for separate enrollment types.

b. Repealed.

8. ...

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 37:1581 (June 2011), amended LR 39:

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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1212#062

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Coordinated Care Network
LACHIP Affordable Plan Benefits Administration
(LAC 50:I.3103)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:I.3103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions which implemented a coordinated system of care in the Medicaid Program designed to improve performance and health care outcomes through a healthcare delivery system called coordinated care networks, also known as the BAYOU HEALTH Program (*Louisiana Register*, Volume 37, Number 6).

The department now proposes to amend the provisions governing the coordinated care networks in order to include health care services provided to LaCHIP Affordable Plan recipients in the BAYOU HEALTH Program. These services are currently administered by the Office of Group Benefits. The administration of these services will now be transferred to the health plans participating in the BAYOU HEALTH Program.

This action is being taken to avoid a budget deficit in the medical assistance programs and to promote the health and welfare of recipients enrolled in the LaCHIP Affordable Plan. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$122,491 for state fiscal year 2012-2013.

Effective January 1, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing coordinated care networks in order to include Affordable Plan recipients in the BAYOU HEALTH Program.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Medicaid Coordinated Care

Chapter 31. Coordinated Care Network

§3103. Recipient Participation

A. The following Medicaid recipients shall be mandatory participants in coordinated care networks:

1. – 1.c. ...

d. uninsured women under the age of 65 who have been screened through the Centers for Disease Control National Breast and Cervical Cancer Early Detection Program and identified as being in need of treatment for breast and/or cervical cancer, including pre-cancerous conditions and early stage cancer, and are not otherwise eligible for Medicaid;

e. ...

f. children under the age of 19 enrolled in the LaCHIP Affordable Care Plan (Phase 5); and

A.2. – B.1.b.v. ...

NOTE: Repealed.

C. ...

D. Participation Exclusion

1. The following Medicaid and/or CHIP recipients are excluded from participation in a CCN and cannot voluntarily enroll in a CCN. Individuals who:

a. – g. ...

h. Repealed.

h. are participants in the Take Charge Family Planning Waiver Program;

i. are eligible through the Tuberculosis Infected Individual Program; or

j. are enrolled in the Louisiana Health Insurance Premium Payment (LaHIPP) Program.

E. ...

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 37:1573 (June 2011), amended LR 38:

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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1212#089

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments
Distinct Part Psychiatric Units
Payment Methodology (LAC 50:V.2709)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.2709 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 for the reimbursement of uncompensated care costs for psychiatric services provided by non-state acute

care hospitals that expand their distinct part psychiatric units and enter into an agreement with the Office of Mental Health (OMH), and established provisions for disproportionate share hospital (DSH) payments to non-state acute care hospitals that enroll a new distinct part psychiatric unit and enter into an agreement with OMH (*Louisiana Register*, Volume 34, Number 8). The department promulgated an Emergency Rule which amended the provisions governing DSH payments to non-state distinct part psychiatric units that enter into a cooperative endeavor agreement with the department's Office of Behavioral Health (*Louisiana Register*, Volume 38, Number 2). The department promulgated an Emergency Rule which amended the February 10, 2012 Emergency Rule to clarify the provisions for the qualifying hospitals (*Louisiana Register*, Volume 38, Number 5). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective January 17, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments to distinct part psychiatric units.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 27. Qualifying Hospitals

§2709. Distinct Part Psychiatric Units

A. Effective for dates of service on or after February 10, 2012, a Medicaid enrolled non-state acute care hospital that enters into a cooperative endeavor agreement (CEA) with the Department of Health and Hospitals, Office of Behavioral Health to provide inpatient psychiatric hospital services to Medicaid and uninsured patients, and which also assumes the operation and management of a state-owned and formerly state-operated hospital distinct part psychiatric unit, shall be paid a per diem rate of \$581.11 per day for each uninsured inpatient.

B. Qualifying hospitals must submit costs and patient specific data in a format specified by the department.

1. Cost and lengths of stay will be reviewed for reasonableness before payments are made.

C. Payments shall be made on a quarterly basis.

D. - 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 34:1627 (August 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this

Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1212#092

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments
Low Income and Needy Care Collaboration
(LAC 50:V.2503 and 2713)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.2503 and adopts §2713 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the disproportionate share hospital (DSH) payment methodology in LAC 50:V.Chapters 25 and 27 (*Louisiana Register*, Volume 34, Number 4). The department amended the provisions governing disproportionate share hospital payments to provide for a supplemental payment to hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 1). The department promulgated an Emergency Rule which amended the provisions of the January 20, 2010 Emergency Rule to revise the participation requirements for the Low Income and Needy Care Collaboration (*Louisiana Register*, Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of uninsured individuals by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective December 27, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 25. Disproportionate Share Hospital Payment Methodologies

§2503. Disproportionate Share Hospital Qualifications

A. - A.5. ...

6. effective September 15, 2006, be a non-rural community hospital as defined in §2701.A.;

7. effective January 20, 2010, be a hospital participating in the Low Income and Needy Care Collaboration as defined in §2713.A.; and

8. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 27. Qualifying Hospitals

§2713. Low Income and Needy Care Collaboration

A. Definitions

Low Income and Needy Care Collaboration Agreement—an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

B. In order to qualify under this DSH category in any period, a hospital must be party to a Low Income and Needy Care Collaboration Agreement with the Department of Health and Hospitals in that period.

C. DSH payments to Low Income and Needy Care Collaborating Hospitals shall be calculated as follows.

1. In each quarter, the department shall divide hospitals qualifying under this DSH category into two pools. The first pool shall include hospitals that, in addition to qualifying under this DSH category, also qualify for DSH payments under any other DSH category. Hospitals in the first pool shall be eligible to receive DSH payments under §2713.C.2 provisions. The second pool shall include all other hospitals qualifying under this DSH category. Hospitals in the second pool shall be eligible to receive DSH payments under §2713.C.3 provisions.

2. In each quarter, to the extent the department appropriates funding to this DSH category, hospitals that qualify under the provisions of §2713.C.2 shall receive 100 percent of the total amount appropriated by the department for this DSH category.

a. If the net uncompensated care costs of these hospitals exceed the amount appropriated for this pool, payment shall be made based on each hospital's pro rata share of the pool.

i. The pro rata share shall be calculated by dividing the hospital's net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying under §2713.C.2 and multiplying by the amount appropriated by the department.

b. If the amount appropriated for this DSH category exceeds the net uncompensated care costs of all hospitals qualifying under §2713.C.2, payment shall be made up to each hospital's net uncompensated care costs.

c. Any amount available after all distributions are made under §2713.C.2 provisions shall be distributed subject to the provisions in §2713.C.3.

3. In each quarter, to the extent distributions are available, and after all distributions are made under §2713.C.2 provisions, distributions under §2713.C.3 provisions shall be made according to the following terms.

a. If the net uncompensated care costs of all hospitals qualifying for payment under §2713.C.3 provisions

exceed the amount available for this pool, payment shall be made based on each hospital's pro rata share of the pool.

i. The pro rata share shall be calculated by dividing its net uncompensated care costs by the total of the net uncompensated care costs for all hospitals qualifying under §2713.C.3.

b. If the amount available for payments under §2713.C.3 exceeds the net uncompensated care costs of all qualifying hospitals, payments shall be made up to each hospital's net uncompensated care costs and the remaining amount shall be used by the department to make disproportionate share payments under this DSH category in future quarters.

D. In the event it is necessary to reduce the amount of disproportionate share payments under this DSH category to remain within the federal disproportionate share allotment in any quarter, the department shall calculate a pro rata decrease for each hospital qualifying under the provisions of §2713.C.3.

1. The pro rata decrease shall be based on a ratio determined by:

a. dividing that hospital's DSH payments by the total DSH payments for all hospitals qualifying under §2713.C.3 in that quarter; and

b. multiplying the amount of DSH payments calculated in excess of the federal disproportionate share allotment.

2. If necessary in any quarter, the department will reduce Medicaid DSH payments under these provisions to zero for all applicable hospitals.

E. After the reduction in §2713.D has been applied, if it is necessary to further reduce the amount of DSH payments under this DSH category to remain within the federal disproportionate share allotment in any quarter, the department shall calculate a pro rata decrease for each hospital qualifying under §2713.C.2.

1. The pro rata decrease shall be based on a ratio determined by:

a. dividing that hospital's DSH payments by the total DSH payments for all hospitals qualifying under §2713.C.2 in that quarter; and

b. multiplying the amount of DSH payments calculated in excess of the federal disproportionate share allotment.

2. If necessary in any quarter, the department shall reduce Medicaid DSH payments under these provisions to zero for all applicable hospitals.

F. Qualifying hospitals must submit costs and patient specific data in a format specified by the department. Costs and lengths of stay will be reviewed for reasonableness before payments are made.

G. Payments shall be made on a quarterly basis, however, each hospital's eligibility for DSH and net uncompensated care costs shall be determined on an annual basis.

H. Payments to hospitals qualifying under this DSH category shall be made subsequent to any DSH payments for which a hospital is eligible under another DSH category.

I. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a

hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit. The remaining payments shall be redistributed to the other hospitals in accordance with these provisions.

J. If the amount appropriated for this DSH category exceeds the specific DSH limits of all qualifying hospitals, payment will be made up to each hospital's specific DSH limit and the remaining amount shall be used by the department to make disproportionate share payments under this DSH category in future quarters.

K. Effective for dates of service on or after January 1, 2011, all parties that participate in Medicaid DSH payments under this Section, either as a qualifying hospital by receipt of Medicaid DSH payments or as a state or local governmental entity funding Medicaid DSH payments, must meet the following conditions during the period of their participation:

1. Each participant must comply with the prospective conditions of participation in the Louisiana Private Hospital Upper Payment Limit Supplemental Reimbursement Program.

2. A participating hospital may not make a cash or in-kind transfer to their affiliated governmental entity that has a direct or indirect relationship to Medicaid payments and would violate federal law.

3. A participating governmental entity may not condition the amount it funds the Medicaid Program on a specified or required minimum amount of low income and needy care.

4. A participating governmental entity may not assign any of its contractual or statutory obligations to an affiliated hospital.

5. A participating governmental entity may not recoup funds from an affiliated hospital that has not adequately performed under the Low Income and Needy Care Collaboration Agreement.

6. A participating hospital may not return any of the Medicaid DSH payments it receives under this Section to the governmental entity that provides the non-federal share of the Medicaid DSH payments.

7. A participating governmental entity may not receive any portion of the Medicaid DSH payments made to a participating hospital under this Section.

L. Each participant must certify that it complies with the requirements of §2713.K by executing the appropriate certification form designated by the department for this purpose. The completed form must be submitted to the Department of Health and Hospitals, Bureau of Health Services Financing.

M. Each qualifying hospital must submit a copy of its Low Income and Needy Care Collaboration Agreement to the department.

N. The Medicaid DSH payments authorized in LAC 50:V.Subpart 3 shall not be considered as interim Medicaid inpatient payments in the determination of cost settlement amounts for inpatient hospital services rendered by children's specialty hospitals.

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 38:

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

Bruce D. Greenstein
Secretary

1212#093

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments Small Rural Hospitals—Qualifying Criteria (LAC 50.V.2705)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.2705 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the disproportionate share hospital (DSH) payment methodology in LAC 50:V.Chapters 25 and 27 (*Louisiana Register*, Volume 34, Number 4).

Act 147 of the 2010 Regular Session of the Louisiana Legislature redefined the qualifying criteria for rural hospitals. In compliance with Act 147, the department promulgated an Emergency Rule which amended the provisions governing DSH payments to small rural hospitals in order to redefine the qualifying criteria (*Louisiana Register*, Volume 38, Number 8). This Emergency Rule is being promulgated to continue the provisions of the September 1, 2012 Emergency Rule. This action is being taken to promote the public health and welfare of uninsured individuals to ensure their continued access to health care by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective December 31, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing disproportionate share hospital payments to small-rural hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 27. Qualifying Hospitals

§2705. Small-Rural Hospitals

A. Definitions

* * *

Small Rural Hospital—a hospital (excluding a long-term care hospital, rehabilitation hospital, or freestanding

psychiatric hospital but including distinct part psychiatric units) that meets the following criteria:

- a. - i.i. ...
- ii. in a parish with a population of less than 15,800 as measured by the 2000 census; or
- m. has no more than 60 hospital beds as of November 1, 2013 and is located:
 - i. as measured by the 2000 census, in a municipality with a population of less than 33,000;
 - ii. as measured by the 2000 census, in a parish with a population of less than 68,000; and
 - iii. within 3 miles of Jackson Barracks.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended LR 34:2402 (November 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

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

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

Bruce D. Greenstein
Secretary

1212#094

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Federally Qualified Health Centers
Fluoride Varnish Applications
(LAC 50:XI.10301 and 10701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.10301 and §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 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 federally qualified health centers (FQHCs) to provide Medicaid reimbursement for diabetes self-management training services and to reorganize the existing provisions governing provider participation and services in a more clear and concise manner in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 37, Number 9). The department published an Emergency Rule which amended the September 20, 2011 Rule to adopt

provisions for the coverage of fluoride varnish application services rendered to Medicaid recipients (*Louisiana Register* Volume 37, Number 11). The department promulgated an Emergency Rule which amended the December 1, 2011 Emergency Rule to clarify the provisions governing the scope of services for fluoride varnish applications (*Louisiana Register*, Volume 38, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 20, 2012 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients.

Effective January 17, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing federally qualified health centers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 13. Federally-Qualified Health Centers

Chapter 103. Services

§10301. Scope of Services

A. - B.1. ...

C. Effective December 1, 2011, the department shall provide coverage for fluoride varnish applications performed in the FQHC. This service shall be limited to recipients from six months through five years of age. Fluoride varnish applications may be covered once every six months per Medicaid recipient.

1. Fluoride varnish applications shall be reimbursed when performed in the FQHC by:

- a. the appropriate dental providers;
- b. physicians;
- c. physician assistants;
- d. nurse practitioners;
- e. registered nurses; or
- f. licensed practical nurses.

2. All participating staff shall review the Smiles for Life training module for fluoride varnish and successfully pass the post assessment. All staff involved in the varnish application must be deemed as competent to perform the service by the FQHC.

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 30:2328 (October 2004), repromulgated LR 30:2487 (November 2004), amended LR 32:1901 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2927 (September 2011), LR 39:

Chapter 107. Reimbursement Methodology

§10701. Prospective Payment System

A. - B.3.a. ...

4. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall include coverage for fluoride varnish applications in the FQHC encounter rate.

a. Fluoride varnish applications shall only be reimbursed to the FQHC when performed on the same date of service as an office visit or preventative screening. Separate encounters for fluoride varnish services are not permitted and the application of fluoride varnish does not constitute an encounter visit.

C. - F. ...

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 32:1902 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2630 (September 2011), LR 39:

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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1212#095

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 Allocation of Waiver Opportunities
(LAC 50:XXI.11107)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.11107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions in the Children's Choice Waiver for the allocation of additional waiver opportunities for the Money Follows the Person Rebalancing Demonstration Program (*Louisiana Register*, Volume 35, Number 9). The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver to provide for the allocation of waiver opportunities for children who have been identified by the Office for Citizens with Developmental Disabilities regional offices and human services authorities and districts as meeting state-funded family support criteria for priority level 1 and 2, and needing more family support services than what is currently available through state-funded family support services (*Louisiana Register*, Volume 36, Number 9). This Emergency Rule is being promulgated to continue the provisions of the September 20, 2010 Emergency Rule.

This action is being taken to secure enhanced federal funding.

Effective January 14, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the allocation of opportunities in 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

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

1. The only exceptions to the first come, first served allocation of waiver opportunities shall be for the:

a. Money Follows the Person Rebalancing Demonstration waiver opportunities which are allocated to demonstration participants only; and

b. waiver opportunities which are allocated to children who have been determined to need more services than what is currently available through state funded family support services.

B. - B.1.b. ...

C. Four hundred twenty-five opportunities shall be designated for qualifying children with developmental disabilities that have been identified by the Office for Citizens with Developmental Disabilities (OCDD) regional offices and human services authorities and districts as needing more family support services than what is currently available through state funded family support services.

1. To qualify for these waiver opportunities, children must:

a. be under 18 years of age;

b. be designated by the OCDD regional office, human services authority or district as meeting priority level 1 or 2 criteria;

c. be Medicaid eligible;

d. be eligible for state developmental disability services; and

e. meet the ICF/DD level of care.

2. Each OCDD regional office and human services authority or district shall be responsible for the prioritization of these opportunities. Priority levels shall be defined according to the following criteria:

a. Priority Level 1. Without the requested supports, there is an immediate or potential threat of out-of-home placement or homelessness due to:

i. the individual's medical care needs;

ii. documented abuse or neglect of the individual;

iii. the individual's intense or frequent challenging behavioral needs; or

iv. death or inability of the caregiver to continue care due to their own age or health; or

v. the possibility that the individual may experience a health crisis leading to death, hospitalization or placement in a nursing facility.

b. Priority Level 2. Supports are needed to prevent the individual's health from deteriorating or the individual from losing any of their independence or productivity.

3. Children who qualify for one of these waiver opportunities are not required to have a protected request date on the Developmental Disabilities Request for Services Registry.

4. Each OCDD regional office, human services authority and district shall have a specific number of these opportunities designated to them for allocation to waiver recipients.

6. In the event one of these opportunities is vacated, the opportunity shall be returned to the allocated pool for that particular OCDD regional office, human services authority or district for another opportunity to be offered.

7. Once all of these opportunities are filled, supports and services, based on the priority determination system, will be identified and addressed through other resources currently available for individuals with developmental disabilities.

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 35:1892 (September 2009), amended LR 38:

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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1212#096

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
Residential Options Waiver
(LAC 50:XXI.Chapters 161-169)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.Chapters 161-169 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 for Citizens with Developmental Disabilities adopted provisions establishing the Residential Options Waiver (ROW), a home and community-based services (HCBS) waiver program, to promote independence for individuals with developmental disabilities by offering a wide array of services, supports and residential options that assist individuals to transition from institutional care (*Louisiana Register*, Volume 33, Number 11). The department promulgated an Emergency Rule which amended the November 20, 2007 Rule to revise the provisions governing the allocation of waiver opportunities and the delivery of services in order to provide greater clarity (*Louisiana Register*, Volume 36, Number 4). As a result of a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the Residential Options Waiver to clarify the provisions governing the annual service budget for waiver participants and to reduce the reimbursement rates for waiver services (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the May 1, 2010 Emergency Rule to incorporate the provisions of the August 1, 2010 Emergency Rule (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 20, 2010 Emergency Rule governing the allocation of waiver opportunities in order to adopt criteria for crisis diversion, to revise the provisions governing the individuals who may be offered a waiver opportunity, and to clarify the provisions governing the Developmental Disabilities Request for Services Registry (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the May 20, 2011 Emergency Rule. This action is being taken to comply with the provisions of the approved waiver application and to secure enhanced federal funding.

Effective January 14, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the Residential Options Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers

Subpart 13. Residential Options Waiver

Chapter 161. General Provisions

§16101. Introduction

A. The residential options waiver (ROW), a 1915(c) home and community-based services (HCBS) waiver, is designed to enhance the long-term services and supports available to individuals with developmental disabilities. These individuals would otherwise require an intermediate care facility for persons with developmental disabilities (ICF/DD) level of care.

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 for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16103. Program Description

A. The ROW is designed to utilize the principles of self determination and to supplement the family and/or community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, ROW includes a self-direction option which allows for greater flexibility in hiring, training and general service delivery issues. ROW services are meant to enhance, not replace existing informal networks.

B. ROW offers an alternative to institutional care that:

1. utilizes a wide array of services, supports and residential options which best meet the individual's needs and preferences;

2. meets the highest standards of quality and national best practices in the provision of services; and

3. ensures health and safety through a comprehensive system of participant safeguards.

4. Repealed.

C. All ROW services are accessed through the support coordination agency of the participant's choice.

1. The plan of care (POC) shall be developed using a person-centered process coordinated by the participant's support coordinator.

D. All services must be prior authorized and delivered in accordance with the approved POC.

E. The total expenditures available for each waiver participant is established through an assessment of individual support needs and will not exceed the approved ICF/DD ICAP rate established for that individual.

1. When the department determines that it is necessary to adjust the ICF/DD ICAP rate, each waiver participant's annual service budget shall be adjusted to ensure that the participant's total available expenditures do not exceed the approved ICAP rate.

F. No reimbursement for ROW services shall be made for a participant who is admitted to an inpatient setting.

G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16105. Participant Qualifications

A. In order to qualify for services through the ROW, an individual must be offered a ROW opportunity and meet all of the following criteria:

1. have a developmental disability as specified in the Louisiana Developmental Disability Law and determined through the developmental disabilities system entry process;

2. meet the requirements for an ICF/DD level of care which requires active treatment for developmental disabilities under the supervision of a qualified developmental disabilities professional;

3. meet the financial eligibility requirements for the Louisiana Medicaid Program;

4. be a resident of Louisiana; and

5. be a citizen of the United States or a qualified alien.

B. Assurances are required that the health, safety and welfare of the individual can be maintained in the community with the provision of ROW services.

1 - 3.c. Repealed.

C. Justification must be documented in the OCDD approved POC that the ROW services are appropriate, cost effective and represent the least restrictive environment for the individual.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2441 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities, LR 39:

§16106. Money Follows the Person Rebalancing Demonstration

A. The Money Follows the Person (MFP) Rebalancing Demonstration is a federal demonstration grant awarded by the Centers for Medicare and Medicaid Services to the Department of Health and Hospitals. The MFP 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 the purposes of these provisions, a qualified institution is a nursing facility, hospital, or Medicaid enrolled intermediate care facility for people with developmental disabilities (ICF/DD).

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

1. Participants with a developmental disability must:

a. occupy a licensed, approved Medicaid enrolled nursing facility, hospital or ICF/DD bed for at least three consecutive months; and

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

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

C. Participants in the demonstration are not required to have a protected date on the developmental disabilities request for services registry.

D. All other ROW provisions apply to the Money Follows the Person Rebalancing Demonstration.

E. MFP participants cannot participate in ROW shared living services which serve more than four persons in a single 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 Office for Citizens with Developmental Disabilities, LR 39:

§16107. Programmatic Allocation of Waiver Opportunities

A. The Developmental Disabilities Request for Services Registry (RFSR), hereafter referred to as "the registry," shall be used to evaluate individuals for ROW opportunities and to fill waiver opportunities for persons with developmental disabilities, except for those specific opportunities to be provided to persons who are described in Paragraph B.1-5 of this Section, who are not on the registry.

1. The next individual on the registry shall be notified in writing that a waiver opportunity is available and that he/she is next in line to be evaluated for a possible waiver

assignment. The individual shall then choose a support coordination agency that will assist in the gathering of the documents needed for both the financial eligibility and medical certification process for the level of care determination.

a. - e. Repealed.

2. If the individual is determined to be ineligible, either financially or medically, that individual shall be notified in writing. The next individual on the registry shall be notified, as stated in Paragraph B.1 of this Section, and the process continues until an eligible individual is assigned the waiver opportunity.

3. A waiver opportunity shall be assigned to an individual when eligibility is established and the individual is certified. By accepting a ROW opportunity, this person's name will be removed from the registry.

B. ROW opportunities will be offered to the following individuals:

1. persons who meet the ICF/DD level of care and are being serviced through the OCDD Host Home contracts;

2. persons who meet the ICF/DD level of care and who need HCBS due to a health and/or safety crisis situation (crisis diversion):

a. requests for crisis diversion shall be made through OCDD. To be considered for a crisis diversion opportunity, the individual must need long-term supports, not temporary or short-term supports;

b. determination of priority for a crisis diversion ROW opportunity will be considered by OCDD for the individual who is eligible for services and meets one of the following criteria:

- i. homeless;
- ii. at imminent risk of losing current residential placement;
- iii. referred by the judicial system;
- iv. referred by child, adult, or elderly protective authorities;
- v. without a caregiver and cannot adequately care for self;
- vi. with a caregiver who can no longer provide care; or
- vii. whose needs cannot be met within a community living situation;

3. children who:

- a. are from birth to age 18;
- b. reside in a nursing facility;
- c. meet the high-need requirements for a nursing facility level of care, as well as the ROW level of care requirements;
- d. participate in the MFP Rebalancing Demonstration; and
- e. have parents or legal guardians who wish to transition them to a home and community-based residential services waiver;

4. persons who reside in a Medicaid-enrolled ICF/DD and wish to transition to a home and community-based residential services waiver through a voluntary ICF/DD bed conversion process;

5. persons who wish to transition from a supports and services center into a ROW opportunity;

6. adults in nursing facilities (NFs) who wish to transition to home and community-based residential services and who meet the level of care (LOC) that qualifies them for ROW eligibility based on their RFSR protected date on a first come, first served basis; and

7. persons residing in ICFs/DD who wish to transition to a home and community-based residential services setting and are eligible based on their RFSR protected date on a first come, first served basis.

C. The Office for Citizens with Developmental Disabilities has the responsibility to monitor the utilization of ROW opportunities. At the discretion of OCDD, specifically allocated waiver opportunities may be reallocated to better meet the needs of citizens with developmental disabilities in the State of Louisiana.

C.1. - 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 for Citizens with Developmental Disabilities, LR 33:2441 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16109. Admission Denial or Discharge Criteria

A. Admission to the ROW Program shall be denied if one of the following criteria is met.

1. The individual does not meet the financial eligibility requirements for the Medicaid Program.

2. The individual does not meet the requirements for an ICF/DD level of care.

3. The individual does not meet developmental disability system eligibility.

4. The individual is incarcerated or under the jurisdiction of penal authorities, courts or state juvenile authorities.

5. The individual resides in another state.

6. The health and welfare of the individual cannot be assured through the provision of ROW services.

7. The individual fails to cooperate in the eligibility determination process or in the development of the POC.

8. Repealed.

B. Participants shall be discharged from the ROW Program if any of the following conditions are determined:

1. loss of Medicaid financial eligibility as determined by the Medicaid Program;

2. loss of eligibility for an ICF/DD level of care;

3. loss of developmental disability system eligibility;

4. incarceration or placement under the jurisdiction of penal authorities, courts or state juvenile authorities;

5. change of residence to another state;

6. admission to an ICF/DD or nursing facility with the intent to stay and not to return to waiver services;

7. the health and welfare of the participant cannot be assured through the provision of ROW services in accordance with the participant's approved POC;

8. the participant fails to cooperate in the eligibility renewal process or the implementation of the approved POC, or the responsibilities of the ROW participant; or

9. continuity of stay for consideration of Medicaid eligibility under the special income criteria is interrupted as

a result of the participant not receiving ROW services during a period of 30 consecutive days;

a. continuity of stay is not considered to be interrupted if the participant is admitted to a hospital, nursing facility or ICF/DD.

i. the participant shall be discharged from the ROW if the treating physician documents that the institutional stay will exceed 90 days.

10. continuity of services is interrupted as a result of the participant not receiving ROW services during a period of 30 consecutive days.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

Chapter 163. Covered Services

§16301. Assistive Technology and Specialized Medical Equipment and Supplies

A. Assistive technology and specialized medical equipment and supplies (AT/SMES) are equipment, devices, controls, appliances, supplies and services which enable the participant to:

1. have life support;
2. address physical conditions;
3. increase ability to perform activities of daily living;
4. increase, maintain or improve ability to function more independently in the home and/or community; and
5. increase ability to perceive, control or communicate.

B. AT/SMES services provided through the ROW include the following services:

1. evaluation of participant needs;
2. customization of the equipment or device;
3. coordination of necessary therapies, interventions or services;
4. training or technical assistance on the use and maintenance of the equipment or device for the participant or, where appropriate, his/her family members, legal guardian or responsible representative;
5. training or technical assistance, when appropriate, for professionals, other service providers, employers, or other individuals who are substantially involved in the participant's major life functions;
6. all service contracts and warranties included in the purchase of the item by the manufacturer; and
7. equipment or device repair and replacement of batteries and other items that contribute to ongoing maintenance of the equipment or device.

a. Separate payment will be made for repairs after expiration of the warranty only when it is determined to be cost effective.

C. Approval of AT/SMES services through ROW is contingent upon the denial of a prior authorization request for the item as a Medicaid State Plan service and demonstration of the direct medical, habilitative or remedial benefit of the item to the participant.

1. Items reimbursed in the ROW may be in addition to any medical equipment and supplies furnished under the Medicaid State Plan.

1.a. - 7. Repealed.

D. ...

E. Service Exclusions

1. Assistive technology devices and specialized equipment and supplies that are of general utility or maintenance and have no direct medical or remedial benefit to the participant are excluded from coverage.

2. Any equipment, device, appliance or supply that is covered and has been approved under the Medicaid State Plan, Medicare or any other third party insurance is excluded from coverage.

3. For adults over the age of 20 years, specialized chairs, whether mobile or travel, are not covered.

F. Provider Participation Requirements. Providers of AT/SMES services must meet the following participation requirements. The provider must:

1. be enrolled in the Medicaid Program as a assistive devices or durable medical equipment provider and must meet all applicable vendor standards and requirement for manufacturing, design and installation of technological equipment and supplies;

2. furnish written documentation of authorization to sell, install and/or repair technological equipment and supplies from the respective manufacturer of the designated equipment and supplies; and

3. provide documentation of individual employees' training and experience with the application, use, fitting and repair of the equipment or devices which they propose to sell or repair;

a. upon completion of the work and prior to payment, the provider shall give the participant a certificate of warranty for all labor and installation and all warranty certificates.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16303. Community Living Supports

A. Community Living Supports (CLS) are services provided to assist participants to achieve and maintain the outcomes of increased independence, productivity and inclusion in the community by utilizing teaching and support strategies. CLS may be furnished through self-direction or through a licensed, enrolled agency.

B. Community living supports are related to acquiring, retaining and improving independence, autonomy and adaptive skills. CLS may include the following services:

1. direct support services or self-help skills training for the performance of all the activities of daily living and self-care;

2. socialization skills training;

a. Repealed.

3. cognitive, communication tasks, and adaptive skills training; and

a. Repealed.

4. development of appropriate, positive behaviors.

a. - b. Repealed.

C. ...

D. Community living supports may be shared by up to three recipients who may or may not live together, and who have a common direct service provider. In order for CLS services to be shared, the following conditions must be met:

1. an agreement must be reached among all involved participants or their legal guardians regarding the provisions of shared CLS services;

2. the health and welfare of each participant must be assured through the provision of shared services;

3. services must be reflected in each participant's approved plan of care and based on an individual-by-individual determination; and

4. a shared rate must be billed.

E. - E.1. ...

2. Routine care and supervision that is normally provided by the participant's spouse or family, and services provided to a minor by the child's parent or step-parent, are not covered.

3. CLS services may not be furnished in a home that is not leased or owned by the participant or the participant's family.

4. Participants may not live in the same house as CLS staff.

5. Room and board or maintenance, upkeep and improvement of the individual's or family's residence is not covered.

6. Community living supports shall not be provided in a licensed respite care facility.

a. - d. Repealed.

7. Community living supports services are not available to individuals receiving the following services:

a. shared living;

b. home host; or

c. companion care.

8. Community living supports cannot be billed or provided for during the same hours on the same day that the participant is receiving the following services:

a. day habilitation;

b. prevocational;

c. supported employment;

d. respite-out of home services; or

e. transportation-community access.

F. - F.1. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2443 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16305. Companion Care

A. Companion care services assist the recipient to achieve and/or maintain the outcomes of increased independence, productivity and inclusion in the community. These services are designed for individuals who live independently and can manage their own household with limited supports. The companion provides services in the participant's home and lives with the participant as a roommate. Companion care services may be furnished through self-direction or through a licensed provider agency as outlined in the participant's POC. This service includes:

1. providing assistance with all of the activities of daily living as indicated in the participant's POC; and

2. community integration and coordination of transportation services, including medical appointments.

3. Repealed.

B. Companion Care services can be arranged by licensed providers who hire companions, or services can be self-directed by the participant. The companion is a principal care provider who is at least 18 years of age who lives with the participant as a roommate and provides services in the participant's home.

1. - 2. Repealed.

C. Provider Responsibilities

1. The provider organization shall develop a written agreement as part of the participant's POC which defines all of the shared responsibilities between the companion and the participant. The written agreement shall include, but is not limited to:

a. - c. ...

2. Revisions to this agreement must be facilitated by the provider and approved by the support team. Revisions may occur at the request of the participant, the companion, the provider or other support team members.

3. The provider is responsible for performing the following functions which are included in the daily rate:

a. arranging the delivery of services and providing emergency services as needed;

b. making an initial home inspection to the participant's home, as well as periodic home visits as required by the department;

c. contacting the companion a minimum of once per week or as specified in the participant's POC; and

d. providing 24-hour oversight and supervision of the companion care services, including back-up for the scheduled and unscheduled absences of the companion.

4. The provider shall facilitate a signed written agreement between the companion and the participant.

a. - b. Repealed.

D. Companion Responsibilities

1. The companion is responsible for:

a. participating in and abiding by the POC;

b. ...

c. purchasing his/her own food and personal care items.

E. Service Limits

1. The provider agency must provide relief staff for scheduled and unscheduled absences, available for up to 360 hours (15 days) as authorized by the POC. Relief staff for scheduled and unscheduled absences is included in the provider agency's rate.

F. Service Exclusions

1. Companion care is not available to individuals receiving the following services:

a. respite care service-out of home;

b. shared living;

c. community living supports; or

d. host home.

2. - 2.d. Repealed.

G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2444 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16307. Day Habilitation Services

A. Day habilitation services are aimed at developing activities and/or skills acquisition to support or further community integration opportunities outside of an individual's home. These activities shall promote independence, autonomy and assist the participant with developing a full life in his community. The primary focus of day habilitation services is acquisition of new skills or maintenance of existing skills based on individualized preferences and goals.

1. The skill acquisition and maintenance activities should include formal strategies for teaching the individualized skills and include the intended outcome for the participant.

2. ...

3. As an individual develops new skills, training should progress along a continuum of habilitation services offered toward greater independence and self-reliance.

B. Day habilitation services shall:

1. focus on enabling participants to attain maximum skills;

2. be coordinated with any physical, occupational or speech therapies included in the participant's POC;

3. - 4. ...

a. services are based on a one-half day unit of service and on time spent at the service site by the participant;

b. the one-half day unit of service requires a minimum of 2.5 hours;

c. two one-half day units may be billed if the participant spends a minimum of 5 hours at the service site;

d. any time less than 2.5 hours of services is not billable or payable; and

e. no rounding up of hours is allowed.

C. The provider is responsible for all transportation from the agency to all work sites related to the provision of service.

1. Transportation to and from the service site is offered and billable as a component of the Day Habilitation service; however, transportation is payable only when a Day Habilitation service is provided on the same day.

2. - 4.c. Repealed.

D. Participants may receive more than one type of vocational/habilitative service per day as long as the service and billing criteria are followed and as long as requirements for the minimum time spent on site are adhered to.

E. Service Exclusions

1. Time spent traveling to and from the day habilitation program site shall not be included in the calculation of the total number of day habilitation service hours provided per day.

a. Travel training for the purpose of teaching the participant to use transportation services may be included in determining the total number of service hours provided per day, but only for the period of time specified in the POC.

2. Transportation-community access will not be used to transport ROW participants to any day habilitation services.

3. Day habilitation services cannot be billed or provided during the same hours on the same day as any of the following services:

a. community living supports;

b. professional services, except those direct contacts needed to develop a behavioral management plan or any other type of specialized assessment/plan; or

c. respite care services—out of home.

F. Provider Qualifications. Providers must be licensed as an adult day care agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16309. Dental Services

A. Dental services are available to adult participants over the age of 21 as a component of the ROW. Covered dental services include:

1. diagnostic services;

2. preventative services;

3. restorative services;

4. endodontic services;

5. periodontal services;

6. removable prosthodontics services;

7. maxillofacial prosthetics services;

8. fixed prosthodontics services;

9. oral and maxillofacial surgery

10. orthodontic services; and

11. adjunctive general services.

B. Service Exclusion. Participants must first access dental services covered under the Medicaid State Plan before utilizing dental services through the residential options waiver.

C. Provider Qualifications. Providers must have a current, valid license to provide dental services from the Louisiana State Board of Examiners for Dentistry for the specific dental services in all specialty areas provided to the participant.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2445 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16311. Environmental Accessibility Adaptations

A. Environmental Accessibility Adaptations are physical adaptations to the participant's home or vehicle which must be specified in the POC as necessary to enable the participant to integrate more fully into the community and to ensure his/her health, welfare and safety.

1. Reimbursement shall not be paid until receipt of written documentation that the job has been completed to the satisfaction of the participant.

B. Environmental adaptation services to the home and vehicle include the following:

1. assessments to determine the types of modifications that are needed;
2. training the participant and appropriate direct care staff in the use and maintenance of devices, controls, appliances and related items;
3. repair of all equipment and/or devices, including replacement of batteries and other items that contribute to the ongoing maintenance of the adaptation(s); and
4. all service contracts and warranties which the manufacturer includes in the purchase of the item.

C. In order to accommodate the medical equipment and supplies necessary to assure the welfare of the participant, home accessibility adaptations may include the following:

1. installation of ramps and grab-bars;
2. widening of doorways;
3. modification of bathroom facilities; or
4. installation of specialized electric and plumbing systems.

D. Home accessibility adaptations may be applied to rental or leased property only under the following conditions:

1. the participant is renting or leasing the property; and
2. written approval is obtained from the landlord and OCDD.

E. - F.4.g. ...

5. Home modifications shall not be paid for in the following residential services:

- a. host home; or
- b. shared living settings which are provider owned or leased.

G. Vehicle adaptations are modifications to an automobile or van that is the waiver participant's primary means of transportation in order to accommodate his/her special needs. .

1. The modifications may include the installation of a lift or other adaptations to make the vehicle accessible to the participant or for him/her to drive.

2. Repealed.

H. Service Exclusions for Vehicle Adaptations

1. Payment will not be made to:
 - a. adapt vehicles that are owned or leased by paid caregivers or providers of waiver services, or
 - b. to purchase or lease a vehicle.
2. - 4. ...

I. Provider Responsibilities

1. The environmental accessibility adaptation(s) must be delivered, installed, operational and reimbursed in the POC year in which it was approved.

a. - b. Repealed.

2. A written itemized detailed bid, including drawings with the dimensions of the existing and proposed floor plans relating to the modifications, must be obtained and submitted for prior authorization.

a. Repealed.

3. Vehicle modifications must meet all applicable standards of manufacture, design and installation for all adaptations to the vehicle.

4. Upon completion of the work and prior to payment, the provider shall give the participant a certificate of

warranty for all labor and installation and all warranty certificates from manufacturers.

J. Provider Qualifications. In order to participate in the Medicaid Program, providers must meet the following qualifications.

1. Providers of environmental accessibility adaptations for the home must be registered through the Louisiana State Licensing Board for Contractors as a home improvement contractor.

a. In addition, these providers must:

- i. meet the applicable state and/or local requirements governing their licensure or certification; and
- ii. comply with the applicable state and local building or housing code standards governing home modifications.

b. The individuals performing the actual service (building contractors, plumbers, electricians, carpenters, etc.) must also comply with the applicable state and/or local requirements governing individual licensure or certification.

2. Providers of environmental accessibility adaptations to vehicles must be licensed by the Louisiana Motor Vehicle Commission as a specialty vehicle dealer and accredited by the National Mobility Equipment Dealers Association under the Structural Vehicle Modifier category.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2446 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16313. Host Home

A. Host home services assist participants in meeting their basic adaptive living needs and offer direct support where required. Participants are afforded a welcoming, safe and nurturing family atmosphere in a family home environment in which the participant may receive supports, services and training in accordance with the POC. Host home services take into account compatibility, including individual interests, age, needs for privacy, supervision and support needs. These services are provided in a private home by a contractor of the host home agency who lives in the home, and either rents or owns the residence. The contractor utilizes specific teaching strategies to encourage independence and autonomy when required as a part of the participant's POC.

1. Repealed.

B. Host home services include:

1. assistance with the activities of daily living sand adaptive living needs;
2. assistance to develop leisure interests and daily activities in the home setting;
3. assistance to develop relationships with other members of the household;
4. supports in accessing community services, activities and pursuing and developing recreational and social interests outside the home; and
5. teaching community living skills to achieve participant's goals concerning community and social life as well as to maintain contacts with biological families and natural supports.

C. Host home provider agencies oversee and monitor the Host home contractor to ensure the availability, quality, and continuity of services as specified in the ROW manual. Host Home provider agencies are responsible for the following functions:

1. arranging for a host home;
2. making an initial and periodic inspections of the host home; and
3. providing 24-hour oversight and supervision of host home services including providing emergency services and back-up for the scheduled and nonscheduled absences of the contractor;

a. Repealed.

D. Host home contractors are responsible for:

1. assisting with the development of the participant's POC and complying with the provisions of the plan;
2. maintaining and providing data to assist in the evaluation of the participant's personal goals
3. maintaining adequate records to substantiate service delivery and producing such records upon request;
4. undergoing any specialized training deemed necessary by the provider agency, or required by the department, to provide supports in the Host Home setting; and
5. immediately reporting to the department and applicable authorities any major issues or concerns related to the participant's safety and well-being.

6. - 10. Repealed.

E. ...

F. Host home contractors serving adults are required to be available for daily supervision, support needs or emergencies as outlined in the adult participant's POC based on medical, health and behavioral needs, age, capabilities and any special needs.

1. - I.1. ...

2. Separate payment will not be made for the following residential service models if the participant is receiving host home services:

2.a. - 3. ...

J. Provider Qualifications

1. All agencies must:
 - a. have experience in delivering therapeutic services to persons with developmental disabilities;
 - b. have staff who have experience working with persons with developmental disabilities;
 - c. screen, train, oversee and provide technical assistance to the host home contractors in accordance with OCDD requirements, including the coordination of an array of medical, behavioral and other professional services appropriate for persons with developmental disabilities; and
 - d. provide on-going assistance to the host home contractors so that all HCBS requirements are met.

2. Agencies serving children must be licensed by the Department of Children and Family Services as a Class "A" Child Placing Agency.

3. Agencies serving adults must be licensed by the Department of Health and Hospitals as a provider of Substitute Family 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, Office for Citizens with Developmental Disabilities, LR 33:2447 (November 2007) , amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16315. Intensive Community Supports

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 for Citizens with Developmental Disabilities, LR 33:2448 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16317. Nursing Services

A. Nursing services are medically necessary services ordered by a physician and provided by a licensed registered nurse or a licensed practical nurse within the scope of the State's Nurse Practice Act. Nursing services provided in the ROW are an extension of nursing services provided through the Home Health Program covered under the Medicaid State Plan.

1. The services require an individual nursing service plan and must be included in the plan of care.

2. The nurse must submit updates of any changes to the individual's needs and/or the physician's orders to the support coordinator every 60 days.

3. Repealed.

B. Nursing consulting services include assessments and health related training and education for participants and caregivers.

1. - 2. ...

3. The health related training and education service is the only nursing service which can be provided to more than one participant simultaneously. The cost of the service is allocated equally among all participants.

C. Service Requirement. Participants over the age of 21 years must first exhaust all available nursing visits provided under the Medicaid State Plan prior to receiving services through the waiver program.

D. Provider Qualifications

1. In order to participate in the Medicaid Program, the provider agency must possess a current, valid license as a home health agency or, if under the ROW Shared Living Conversion Model, be an enrolled Shared Living Services agency with a current, valid license as a Supervised Independent Living agency.

E. Staffing Requirements

1. ...

2. The RN or the LPN must possess one year of service delivery experience to persons with developmental disabilities defined under the following criteria:

a. full-time experience gained in advanced and accredited training programs (i.e. masters or residency level training programs), which includes treatment services for persons with developmental disabilities;

b. paid, full-time nursing experience in specialized service/treatment settings for persons with developmental disabilities (i.e. intermediate care facilities for persons with developmental disabilities);

c. paid, full-time nursing experience in multi-disciplinary programs for persons with developmental disabilities (i.e. mental health treatment programs for persons with dual diagnosis—mental illness and developmental disabilities); or

d. paid, full-time nursing experience in specialized educational, vocational and therapeutic programs or settings for persons with developmental disabilities (i.e. school special education program).

3. Two years of part-time experience with a minimum of 20 hours per week may be substituted for one year of full-time experience.

4. The following activities do not qualify for the required experience:

a. volunteer nursing experience; or

b. experience gained by caring for a relative or friend with developmental disabilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16319. One Time Transitional Services

A. One Time Transitional Services are one-time, set-up services to assist individuals in making the transition from an ICF/DD to their own home or apartment in the community of their choice.

1. - 1.d.iii. Repealed.

B. Allowable transitional expenses may include:

1. nonrefundable security deposits that do not include rental payments;

2. set up fees for utilities;

3. essential furnishings to establish basic living arrangements, including:

a. bedroom and living room furniture;

b. table and chairs;

c. window blinds; and

d. food preparation items and eating utensils;

4. set-up/deposit fee for telephone service;

5. moving expenses; and

6. health and safety assurances including:

a. pest eradication; or

b. one-time cleaning prior to occupancy.

C. Service Limits

1. One time transitional expenses are capped at \$3,000 per person over a participant's lifetime.

D. Service Exclusions

1. One time transitional services may not be used to pay for:

a. housing, rent or refundable security deposits; or

b. furnishings or setting up living arrangements that are owned or leased by a waiver provider.

2. One time transitional services are not available to participants who are receiving Host Home services.

3. One time transitional services are not available to participants who are moving into a family member's home.

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2449 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16321. Personal Emergency Response System (PERS)

A. Personal Emergency Response System (PERS) is a system connected to the participant's telephone that incorporates an electronic device which enables the participant to secure help in an emergency. The device can be worn as a portable "help" button and when activated, a response center is contacted.

B. Participant Qualifications. PERS services are available to individuals who:

1. ...

2. are unable to use other communication systems due to experiencing difficulty in summoning emergency assistance; or

3. ...

C. PERS services includes rental of the electronic device, initial installation, training the participant to use the equipment, and monthly maintenance fees.

D. Service Exclusions

1. Separate payment will not be made for Shared Living Services.

E. Provider Qualifications

1. The provider must be authorized by the manufacturer to install and maintain equipment for personal emergency response systems.

2. The provider shall be in compliance with all applicable federal, state, and local regulations governing the operation of personal emergency response systems including staffing requirements for the response center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2249 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16323. Prevocational Services

A. Prevocational Services are activities designed to assist participants in acquiring and maintaining basic work-related skills necessary to acquire and retain meaningful employment. Services should include real and simulated employment tasks to assist in determining their vocational potential. Overall goals include regular community inclusion and development of work skills and habits to improve the participant's employability. Services must be reflective of the participant's POC and focused toward habilitation rather than teaching a specific job skill.

1. - 2.b. ...

B. In the event participants are compensated while receiving prevocational services, the compensation must be in accordance with the United States Fair Labor Standards Act of 1985.

1. If participants are paid in excess of 50 percent of the minimum wage, the provider must, at a minimum:

a. - c. ...

C. The provider is responsible for all transportation from the agency to all vocational sites related to provision of services.

1. Travel training may be included in determining the number of hours of services provided per day for the period of time specified in the participant's POC.

a. Repealed.

D. Service Limits

1. Services shall be limited to no more than eight hours per day, five days per week.

2. Services are based on a one-half day unit of service and time spent at the service site by the participant.

a. the one-half day unit of service requires a minimum of 2.5 hours at the service site by the participant;

b. two one-half day units may be billed in one day if the participant spends a minimum of 5 hours at the service site;

c. any time less than 2.5 hours of service is not billable or payable; and

d. no rounding up of hours is allowed.

3. Participants may receive more than one vocational/habilitative service per day as long as the billing criteria are followed for each service and the requirements for the minimum time spent on site are adhered to.

3a. - 5.a. Repealed.

E. Service Exclusions

1. Prevocational Services are not available to participants who are eligible to participate in programs funded under the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.

2. Multiple vocational/habilitative services cannot be provided or billed for during the same hours on the same day as the following services:

a. community living supports;

b. professional services, except those direct contacts needed to develop a behavioral management plan or other type of specialized assessment/plan; or

c. respite care services—out of home.

3. Transportation to and from the service site is only payable when a vocational/habilitative service is provided on the same day.

4. Time spent in traveling to and from the prevocational program site shall not be included in the calculation of the total number of service hours provided per day.

a. During travel training, providers must not also bill for the transportation component as this is included in the rate for the number of service hours provided.

5. Transportation-Community Access shall not be used to transport ROW participants to any Prevocational Services.

F. Provider Qualifications. Providers must have a current, valid license as an adult day care center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16325. Professional Services

A. Professional Services are direct services to participants, based on need, that may be utilized to increase the individual's independence, participation and productivity in the home, work and community. Service intensity, frequency and duration will be determined by individual need. Professional services must be delivered with the participant present and in accordance with approved POC.

1. - 8.a. Repealed.

B. Professional services include the services provided by the following licensed professionals:

1. occupational therapist;

2. physical therapist;

3. speech therapist;

4. registered dietician;

5. social worker; and

6. psychologist.

C. Professional services may be utilized to:

1. perform assessments and/or re-assessments specific to professional disciplines to accomplish the desired outcomes for the participant and to provide recommendations, treatment, and follow-up;

a. - b. Repealed.

2. provide training or therapy to a participant and/or natural and formal supports necessary to either develop critical skills that may be self-managed by the participant or maintained according to the participant's needs;

3. intervene in and stabilize a crisis situation (behavioral or medical) that could result in the loss of home and community-based services, including the development, implementation, monitoring, and modification of behavioral support plans;

a. Repealed.

4. provide consultative services and recommendations;

5. provide necessary information to the participant, family, caregivers, and/or team to assist in planning and implementing services or treatment;

6. provide caregiver counseling for the participant's natural, adoptive, foster, or host family members in order to develop and maintain healthy, stable relationships among all caregivers, including family members, to support meeting the needs of the participant;

a. emphasis is placed on the acquisition of coping skills by building upon family strengths; and

b. services are intended to maximize the emotional and social adjustment and well-being of the individual, family, and caregiver; and

7. provide nutritional services, including dietary evaluation and consultation with individuals or their care provider.

a. Services are intended to maximize the individual's nutritional health.

NOTE: Psychologists and social workers will provide supports and services consistent with person-centered practices and Guidelines for Support Planning.

D. Service Exclusions

1. Professional services may only be furnished and reimbursed through ROW when the services are medically necessary, or have habilitative or remedial benefit to the participant.

a. Repealed.
2. Recipients who are participating in ROW and are up to the age of 21 must access these services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

a. - d. Repealed.

E. Provider Qualifications

1. Enrollment of individual practitioners. Individual practitioners who enroll as providers of professional services must:

a. have a current, valid license from the appropriate governing board of Louisiana for that profession; and
b. possess one year of service delivery experience with persons with developmental disabilities.
c. In addition, the specific service delivered must be consistent with the scope of the license held by the professional.

2. Provider agency enrollment of professional services.

a. The following provider agencies may enroll to provide professional services:

i. a Medicare certified free-standing rehabilitation center;
ii. a licensed home health agency;
iii. a supervised independent living agency licensed by the department to provide shared living services;
or
iv. a substitute family care agency licensed by the department to provide host home services.

b. Enrolled provider agencies may provide professional services by one of the following methods:

i. employing the professionals; or
ii. contracting with the professionals.

c. Provider agencies are required to verify that all professionals employed by or contracted with their agency meet the same qualifications required for individual practitioners as stated in §16325.E.1.a-c.

3. All professionals delivering professional services must meet the required one year of service delivery experience as defined by the following:

a. full-time experience gained in advanced and accredited training programs (i.e. master's or residency level training programs), which includes treatment services for persons with developmental disabilities;

b. paid, full-time experience in specialized service/treatment settings for persons with developmental disabilities (i.e. ICFs/DD);

c. paid, full-time experience multi-disciplinary programs for persons with developmental disabilities (i.e. mental health treatment programs for persons with dual diagnosis-mental illness and developmental disability); or

d. paid, full-time experience in specialized educational, vocational, and therapeutic programs or settings for persons with developmental disabilities (i.e. school special education program).

e. Two years of part-time experience with a minimum of 20 hours per week of the qualifying work experience activities may be substituted for one year of full-time experience.

4. The following activities do not qualify for the professional's required service delivery experience:

a. volunteer experience; or

b. experience gained by caring for a relative or friend with developmental disabilities.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2450 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16327. Respite Care Services—Out of Home

A. Respite Care Services—Out of Home are supports and services provided for the relief of those unpaid caregivers who normally provide care to participants who are unable to care for themselves. These services are furnished on a short-term basis in a licensed respite care center.

1. A licensed respite care facility shall insure that community activities are available to the participant in accordance with the approved POC, including transportation to and from these activities.

a. ...

2. While receiving respite care services, the participant's routine is maintained in order to attend school, school activities, or other community activities that he/she would typically participate in if not in the center-based respite facility.

B. Service Limits

1. Respite Care Services are limited to 720 hours per participant per POC year.

2. Requests for an extension of the service limit are subject to the department's established approval process and require proper justification and documentation.

C. Service Exclusions

1. ...

2. Respite care services-out of home may not be billed for participants receiving the following services:

a. shared living;
b. companion care; or
c. host home.
d. Repealed.

D. Provider Qualifications. The provider must possess a current, valid license as a respite care center issued by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2451 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16329. Shared Living Services

A. Shared Living Services assist the participant in acquiring, retaining and improving the self-care, adaptive and leisure skills needed to reside successfully in a shared home setting within the community. Services are chosen by the participant and developed in accordance with his/her goals and wishes with regard to compatibility, interests, age and privacy in the shared living setting.

1. A shared living services provider delivers supports which include:

a. 24-hour staff availability;
b. assistance with activities of daily living included in the participant's POC;

- c. a daily schedule;
- d. health and welfare needs;
- e. transportation;
- f. any non-residential ROW services delivered by the Shared Living services provider; and
- g. other responsibilities as required in each participant's POC.

2. - 3. Repealed.

B. An ICF/DD may elect to permanently relinquish its ICF/DD license and all of its Medicaid Facility Need Review approved beds from the total number of Certificate of Need (CON) beds for that home and convert it into a shared living waiver home or in combination with other ROW residential options as deemed appropriate in the approved conversion agreement.

1. In order to convert, provider request must be approved by the department and by OCDD.

2. ICF/DD residents who choose transition to a shared living waiver home must also agree to conversion of their residence.

3. If choosing ROW services, persons may select any ROW services and provider(s) based upon freedom of choice.

C. Shared Living Options

1. Shared Living Conversion Option. The shared living conversion option is only allowed for providers of homes which were previously licensed and Medicaid certified as an ICF/DD for up to a maximum of eight licensed and Medicaid-funded beds on October 1, 2009.

a. The number of participants for the shared living conversion option shall not exceed the licensed and Medicaid-funded bed capacity of the ICF/DD on October 1, 2009, or up to six individuals, whichever is less.

b. The ICF/DD used for the shared living conversion option must meet the department's operational, programming and quality assurances of health and safety for all participants.

c. The provider of shared living services is responsible for the overall assurances of health and safety for all participants.

d. The provider of shared living conversion option may provide nursing services and professional services to participants utilizing this residential services option.

2. Shared Living Non-Conversion (New) Option. The shared living non-conversion option is allowed only for new or existing ICF/DD providers to establish a shared living waiver home for up to a maximum of three individuals.

a. The shared living waiver home must be located separate and apart from any ICF/DD.

b. The shared living waiver home must be either a home owned or leased by the waiver participants or a home owned or leased and operated by a licensed shared living provider.

c. The shared living waiver home must meet department's operational, programming and quality assurances for home and community-based services.

d. The shared living provider is responsible for the overall assurances of health and safety for all participants.

D. Service Exclusions

1. ...

2. Payments shall not be made for environmental accessibility adaptations when the provider owns or leases the residence.

3. Participants may receive one-time transitional services only if the participant owns or leases the home and the service provider is not the owner or landlord of the home.

a. - d. Repealed.

4. MFP participants cannot participate in ROW shared living services which serve more than four persons in a single residence.

5. Transportation-community access services cannot be billed or provided for participants receiving shared living services, as this is a component of shared living services.

6. The following services are not available to participants receiving shared services:

- a. community living services;
- b. respite care services;
- c. companion care;
- d. host home; or
- e. personal emergency response system.

E. Provider Qualifications. Providers must be approved by the department and have a current, valid license as a Supervised Independent Living agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 38:

§16331. Specialized Medical Equipment and Supplies

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 for Citizens with Developmental Disabilities, LR 33:2452 (November 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16333. Support Coordination

A. Support Coordination services are provided to all ROW participants to assist them in gaining access to needed waiver services, Medicaid State Plan services, as well as needed medical, social, educational and other services, regardless of the funding source for the services. Support coordinators provide information and assistance to waiver participants by directing and managing their services in compliance with the rules and regulations governing case management services.

1. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the participant's approved POC.

2. Support coordinators shall also participate in the evaluation and re-evaluation of the participant's POC.

B. Support coordinators are responsible for providing assistance to participants who choose the self-direction option with their review of the Self-Direction Employer

Handbook and for being available to these participants for on-going support and help with carrying out their employer responsibilities.

C. Provider Qualifications. Providers must have a current, valid license as a case management agency and meet all other requirements for targeted case management services as set forth in LAC 50:XV.Chapter 105 and the Medicaid Targeted Case Management Manual.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16335. Supported Employment

A. Supported Employment provides assistance in an integrated work setting to assist in the achievement and attainment of work related skills and includes on-going support to maintain employment.

1. - 3. Repealed.

B. Supported Employment services include:

1. ...

2. services that assist a participant to develop and operate a micro-enterprise;

a. This service consists of:

i. assisting the participant to identify potential business opportunities;

ii. ...

iii. identification of the supports that are necessary in order for the participant to operate the business; and

iv. ...

3. enclave services which is an employment situation in competitive employment in which a group of eight or fewer workers with disabilities are working at a particular work setting. The workers with disabilities may be disbursed throughout the company and among workers without disabilities or congregated as a group in one part of the business;

4. mobile work crews which is a group of eight or fewer workers with disabilities who perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor); and

5. all transportation from the agency to all work sites related to provision of the service. The provider is responsible for furnishing the transportation.

C. Service Limits

1. The required minimum number of service hours per day per participant is as follows for:

a. individual placement services, the minimum is one hour;

b. services that assist a participant to develop and operate a micro-enterprise, the minimum is one hour;

c. an enclave, the minimum is 2.5 hours; and

d. a mobile work crew, the minimum is 2.5 hours.

2. Two half-day units may be billed if the participant spends a minimum of five hours at the service site.

3. Participants may receive more than one vocational or habilitative service per day as long as the service and billing requirements for each service are met.

4. Transportation to and from the service site is offered and billable as a component of the support

employment service; however, transportation is payable only when a supported employment service is provided on the same day.

D. Service Exclusions

1. ...

2. Any time less than one hour for individual placement and micro-enterprise is not billable or payable.

3. - 3.c. ...

4. Any time less than 2.5 hours for enclaves and mobile crews is not billable or payable.

5. ...

a. Travel training for the purpose of teaching the recipient how to use transportation services may be included in determining the total service numbers hours provided per day, but only for the period of time specified in the POC.

6. - 6.c. ...

7. Services are not available to individuals who are eligible to participate in programs funded under the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act.

8. No rounding up of hours is allowed.

E. Provider Qualifications. In order to enroll in the Medicaid Program, providers must have a compliance certificate from the Louisiana Rehabilitation Services as a Community Rehabilitation Program or a current, valid license as an Adult Day Care Center.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2453 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16337. Transportation-Community Access

A. Transportation-community access services enable participants to gain access to waiver and other community services, activities and resources. These services are necessary to increase independence, productivity, community inclusion and to support self-directed employees benefits as outlined in the participant's POC. Transportation-community access services shall be offered as documented in the participant's approved POC.

1. The participant must be present to receive this service.

2. Whenever possible, the participant must utilize the following resources for transportation:

a. - b. ...

B. Service Limits

1. Community access trips are limited to three per day and must be arranged for geographic efficiency.

2. Greater than three trips per day require approval from the department or its designee.

a. Repealed.

C. Service Exclusions

1. Transportation services offered through ROW shall not replace the medical transportation services covered under the Medicaid State Plan or transportation services provided as a means to get to and from school.

2. Separate payment will not be made for transportation-community access and the following services:

a. shared living services; or

b. community living services.

3. Transportation-community access will not be used to transport participants to day habilitation, pre-vocational, or supported employment services.

D. Provider Qualifications. Friends and family members who furnish transportation-community access services to waiver participants must be enrolled as Medicaid friends and family transportation providers.

1. In order to receive reimbursement for transporting Medicaid recipients to waiver services, family and friends must maintain:

- a. the state minimum automobile liability insurance coverage;
- b. a current state inspection sticker; and
- c. a current valid driver's license.

2. No special inspection by the Medicaid agency will be conducted.

a. - b. Repealed.

3. Documentation of compliance with the three listed requirements for this class of provider must be submitted when enrollment in the Medicaid agency is sought. Acceptable documentation shall be the signed statement of the individual enrolling for payment that all three requirements are met.

a. The statement must also have the signature of two witnesses.

4. Family and friends transportation providers are limited to transporting up to three specific waiver participants.

E. Vehicle Requirements. All vehicles utilized by for profit and non-profit transportation services providers for transporting waiver recipients must comply with all of the applicable state laws and regulations and are subject to inspection by the department or its designee.

1. - G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2454 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

Chapter 165. Self-Direction Initiative

§16501. Self-Direction Service Option

A. The self-direction initiative is a voluntary, self-determination option which allows the waiver participant to coordinate the delivery of designated ROW services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the recipient utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Recipient Responsibilities. Waiver participants choosing the self-direction service option must understand the rights, risks and responsibilities of managing their own care and individual budget. If the participant is unable to make decisions independently, he must have an authorized representative who understands the rights, risks and responsibilities of managing his care and supports within his individual budget. Responsibilities of the participant or authorized representative include:

1. - 2. ...

a. Participants must adhere to the health and welfare safeguards identified by the support team, including:

i. ...

ii. compliance with the requirement that employees under this option must have criminal background checks prior to working with waiver participants;

3. ...

a. This annual budget is determined by the recommended service hours listed in the participant's POC to meet his needs.

b. The participant's individual budget includes a potential amount of dollars within which the participant, or his authorized representative, exercises decision-making responsibility concerning the selection of services and service providers.

C. Termination of Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the POC, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary Termination. The waiver participant may choose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service option for a participant and require him to receive provider-managed services under the following circumstances:

a. the health or welfare of the participant is compromised by continued participation in the self-direction service option;

b. the participant is no longer able to direct his own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the participant or the authorized representative; or

d. over three payment cycles in the period of a year, the participant or authorized representative:

i. ...

ii. fails to follow the personal purchasing plan and the POC;

C.2.d.iii. - D. ...

E. Relief coverage for scheduled or unscheduled absences, which are not classified as respite care services, can be covered by other participant-directed providers and the terms can be part of the agreement between the participant and the primary companion care 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 for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

Chapter 167. Provider Participation

§16701. General Provisions

A. ...

1. meet all of the requirements for licensure and the standards for participation in the Medicaid Program as a home and community-based services provider in accordance with state laws and the rules promulgated by the department;

2. comply with the regulations and requirements specified in LAC 50:XXI, Subparts 1 and 13 and the ROW provider manual;

3. comply with all of the state laws and regulations for conducting business in Louisiana, and when applicable, with the state requirements for designation as a non-profit organization; and

4. comply with all of the training requirements for providers of waiver services.

B. Providers must maintain adequate documentation to support service delivery and compliance with the approved POC and provide said documentation upon the department's request.

C. In order for a provider to bill for services, the waiver participant and the direct service worker or professional services practitioner rendering service must be present at the time the service is rendered.

1. Exception. The following services may be provided when the participant is not present:

a. - c. ...

2. All services must be documented in service notes which describe the services rendered and progress towards the participant's personal outcomes and his/her POC.

D. If transportation is provided as part of a waiver service, the provider must comply with all of the state laws and regulations applicable to vehicles and drivers.

E. All services rendered shall be prior approved and in accordance with the POC.

F. Providers, including direct care staff, cannot live in the same residence as the participant, except host home contractors and companion care workers.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2455 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16703. Staffing Restrictions and Requirements

A. Payments shall not be made to persons who are legally responsible for the care of the waiver participants which include:

1. parents of minor children;

2. spouses for each other;

3. legal guardians for adults or children with developmental disabilities; or

4. parents for their adult child with developmental disabilities, regardless of the legal status of the adult child.

B. In order to receive payment, relatives must meet the criteria for the provision of the service and the same provider qualifications specified for the service as other providers not related to the participant.

1. Relatives must also comply with the following requirements:

a. become an employee of the participant's chosen waiver provider agency;

b. become a Medicaid enrolled provider agency; or

c. if the self-direction option is selected, relatives must:

i. become an employee of the self-direction participant; and

ii. have a Medicaid provider agreement executed by the fiscal agent as authorized by the Medicaid agency.

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 39:

Chapter 169. Reimbursement

§16901. Reimbursement Methodology

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

1. - 3.e. ...

f. registered dietician;

4. support coordination; or

5. supported employment:

a. individual placement; and

b. micro-enterprise.

6. Repealed.

B. The following services are reimbursed at the cost of the adaptation device, equipment or supply item:

1. environmental accessibility adaptations; and

a. upon completion of the environmental accessibility adaptations and prior to submission of a claim for reimbursement, the provider shall give the participant a certificate of warranty for all labor and installation work and supply the participant with all manufacturers' warranty certificates.

2. assistive technology/specialized medical equipment and supplies.

3. Repealed.

C. The following services are reimbursed at a per diem rate:

1. ...

2. companion cares; and

3. shared living services;

a. Per diem rates are established based on the number of individuals sharing the living service module for both shared living non-conversion and shared living conversion services.

D. The following services are reimbursed at a per one-half-day unit of service based on a minimum of 2.5 hours spent on-site by the participant:

1. day habilitation;

2. pre-vocational; and

3. supported employment:

a. mobile crew; and

b. enclave.

E. ...

F. Nursing services are reimbursed at either an hourly or per visit rate for the allowable procedure codes.

G. ...

H. Transition expenses from an ICF/DD or nursing facility to a community living setting are reimbursed at the cost of the service(s) up to a lifetime maximum rate of \$3,000.

I. - J. ...

K. Effective for dates of service on or after August 1, 2010, the reimbursement for Residential Options Waiver

services shall be reduced by 2 percent of the rates in effect on July 31, 2010.

1. The following services shall be excluded from the rate reduction:

- a. personal emergency response services;
- b. environmental accessibility adaptation services;
- c. specialized medical equipment and supplies; and
- d. support coordination services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:

§16903. Direct Support Staff Wages

A. In order to maximize staffing stability and minimize turnover among direct support staff, providers of the following services furnished under the Residential Options Waiver are required to pay direct support workers an hourly wage that is at least 29 percent (\$1.50) more than the federal minimum wage in effect as of July 23, 2007 or the current federal minimum wage, whichever is higher:

1. community living supports;
2. respite services-out of home;
3. shared living;
4. day habilitation;
5. prevocational services; and
6. supported employment.
7. 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 for Citizens with Developmental Disabilities, LR 33:2456 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 38:

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

Bruce D. Greenstein
Secretary

1212#097

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Free-Standing Psychiatric Hospitals
Low Income and Needy Care Collaboration
(LAC 50:V.959)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.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 or until adoption of the final Rule, whichever occurs first.

Due to a continuing budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals, including free-standing psychiatric hospitals (*Louisiana Register*, Volume 37, Number 7).

The department promulgated an Emergency Rule which amended the provisions of the July 2011 final Rule in order to provide for a supplemental Medicaid payment to non-rural, non-state free-standing psychiatric hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 37, Number 12). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2012 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program.

Effective December 29, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by non-rural, non-state free-standing psychiatric hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§959. Inpatient Psychiatric Hospital Services

A. – J. ...

K. Low Income and Needy Care Collaboration. Effective for dates of service on or after January 1, 2012, quarterly supplemental payments shall be issued to qualifying non-rural, non-state free-standing psychiatric hospitals for inpatient services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state free-standing psychiatric hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state free-standing psychiatric hospital is defined as a free-standing psychiatric hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for the purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered

during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for covered inpatient psychiatric services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of 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 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November, 2010), LR 37:2162 (July 2011), LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Center for 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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1212#098

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Low Income and Needy Care Collaboration
(LAC 50:V.953)

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

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates and to provide for a supplemental Medicaid payment to hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare

services to low income and needy patients (*Louisiana Register*, Volume 36, Number 11).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to revise the participation requirements for the Low Income and Needy Care Collaboration (*Louisiana Register*, Volume 37, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 1, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program.

Effective December 27, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for 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. - N.2.b. ...

3. Effective for dates of service on or after January 1, 2011, all parties that participate in supplemental payments under this Section, either as a qualifying hospital by receipt of supplemental payments or as a state or local governmental entity funding supplemental payments, must meet the following conditions during the period of their participation:

a. Each participant must comply with the prospective conditions of participation in the Louisiana Private Hospital Upper Payment Limit Supplemental Reimbursement Program.

b. A participating hospital may not make a cash or in-kind transfer to their affiliated governmental entity that has a direct or indirect relationship to Medicaid payments and would violate federal law.

c. A participating governmental entity may not condition the amount it funds the Medicaid Program on a specified or required minimum amount of low income and needy care.

d. A participating governmental entity may not assign any of its contractual or statutory obligations to an affiliated hospital.

e. A participating governmental entity may not recoup funds from an affiliated hospital that has not adequately performed under the Low Income and Needy Care Collaboration Agreement.

f. A participating hospital may not return any of the supplemental payments it receives under this Section to the governmental entity that provides the non-federal share of the supplemental payments.

g. A participating governmental entity may not receive any portion of the supplemental payments made to a participating hospital under this Section.

4. Each participant must certify that it complies with the requirements of §953.N.3 by executing the appropriate certification form designated by the department for this purpose. The completed form must be submitted to the

Department of Health and Hospitals, Bureau of Health Services Financing.

5. Each qualifying hospital must submit a copy of its Low Income and Needy Care Collaboration Agreement to the department.

6. The supplemental payments authorized in this Section shall not be considered as interim Medicaid inpatient payments in the determination of cost settlement amounts for inpatient hospital services rendered by children's specialty hospitals.

O. – Q.1. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Center for 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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1212#099

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Medicaid Eligibility—Medically Needy Program Behavioral Health Services (LAC 50:III.2313)

The Department of Health and Hospitals, Bureau of Health Services Financing hereby repeals and replaces all of the Rules governing the Medically Needy Program, and adopts LAC 50:III.2313 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 promulgated a Rule in order to reinstate the Title XIX Medically Needy Program (MNP) and to establish coverage restrictions (*Louisiana Register*, Volume 24, Number 5). All Behavioral health services are restricted from coverage under the Medically Needy Program.

In February 2012, the department adopted provisions in the Medicaid Program to restructure the existing behavioral health services delivery system into a comprehensive service delivery model called the Louisiana Behavioral Health Partnership (LBHP). Certain recipients enrolled in the Medically Needy Program, whose Medicaid eligibility is based solely on the provisions of §1915(i) of Title XIX of the Social Security Act, are eligible to only receive behavioral health services. These recipients have difficulties accessing behavioral health services through the LBHP due to the service restrictions currently in place in the Medically Needy Program.

Therefore, the department now proposes to revise the provisions governing the Medically Needy Program in order to include behavioral health coverage for MNP recipients that qualify for the program under the provisions of §1915(i) of Title XIX of the Social Security Act. This Emergency Rule will also repeal and replace all of the Rules governing the Medically Needy Program in order to repromulgate these provisions in a clear and concise manner for inclusion in the *Louisiana Administrative Code* in a codified format.

This action is being taken to promote the health and welfare of MNP recipients who are in need of behavioral health services, and to assure their continued access to these services. It is estimated that implementation of this Emergency Rule will have no fiscal impact to the Medicaid Program in state fiscal year 2013-2014.

Effective December 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing repeals and replaces the provisions governing the Medically Needy Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 3. Eligibility Groups and Factors

Chapter 23. Eligibility Groups and Medicaid Programs

§2313. Medically Needy Program

A. The Medically Needy Program (MNP) provides Medicaid coverage when an individual's or family's income and/or resources are sufficient to meet basic needs in a categorical assistance program, but not sufficient to meet medical needs according to the MNP standards.

1. The income standard used in the MNP is the federal Medically Needy Income Eligibility Standard (MNIES).

2. Resources are not applicable to child (C) related MNP cases.

3. MNP eligibility cannot be considered prior to establishing income ineligibility in a categorically related assistance group.

B. MNP Eligibility Groups

1. Regular Medically Needy

a. Children and parents who meet all of the low-income with families and children (LIFC) related categorical requirements and whose income is at or below the MNIES are eligible to receive regular MNP benefits. Regular medically needy coverage is only applicable to individuals included in the C-related category of assistance.

b. Individuals in the aged (A), blind (B), or disability (D) related categorical assistance groups cannot receive regular MNP.

c. The certification period for Regular MNP cannot exceed six months.

2. Spend-Down Medically Needy

a. Spend-down MNP is considered after establishing financial ineligibility in Regular MNP or other categorically related Medicaid programs and excess income remains. Allowable medical bills/expenses incurred by the income unit are used to reduce (spend-down) the income to the allowable MNP limits.

b. The following individuals may be considered for spend-down MNP:

i. individuals or families who meet all of the LIFC related categorical requirements;

ii. non-institutionalized individuals (A-, B-, or D-related categories); and

iii. institutionalized individuals or couples (A-, B-, or D-related categories) with Medicare co-insurance whose income has been spent down to the MNIES.

c. The certification period for spend-down MNP begins no earlier than the spend-down date and shall not exceed three months.

3. Long Term Care (LTC) Spend-Down MNP

a. Individuals or couples residing in Medicaid LTC facilities, not on Medicare-coinsurance with resources within the limits, but whose income exceeds the special income limits (three times the current federal benefit rate), are eligible for LTC spend-down MNP.

4. C-Related Caretaker Relative MNP

a. A qualified relative may be included in a C-related MNP certification as a caretaker relative. There must be at least one minor child applying for or enrolled in Medicaid. A caretaker relative for MNP purposes is an adult who:

i. is in the LIFC income unit with a minor child;

ii. is a qualified relative of a child who is eligible for Supplemental Security Income (SSI), Prohibited AFDC Provisions (PAP), or Child Health and Maternity Program (CHAMP); and

iii. is not eligible for inclusion in the Medicaid certification of a sibling(s) because of income.

b. An essential person may be included with a qualified relative in an MNP caretaker relative certification, but there can be no essential person if there is no qualified relative certified in C-related MNP.

i. Stepparents or individuals who do not meet the above LIFC essential person criteria must qualify for Medicaid as individuals under the A, B, or D categorical assistance groups.

5. Louisiana Behavioral Health Partnership (LBHP) 1915(i) MNP

a. The LBHP Medically Needy Program is considered only for the individuals who meet the level of need requirements of §1915 of Title XIX of the Social Security Act, and who have been determined to be ineligible for other full Medicaid programs, including the Regular MNP and Spend-Down MNP.

b. LBHP 1915(i) MNP recipients are only eligible to receive behavioral health services through the LBHP. They do not qualify for other Medicaid covered services.

c. The certification period for LBHP 1915(i) Regular MNP recipients cannot exceed six months. For the

LBHP 1915(i) Spend-Down MNP, the certification period begins no earlier than the spend-down date and shall not exceed three months.

C. Covered Services. The following services are covered in the Medically Needy Program:

1. inpatient and outpatient hospital services;

2. intermediate care facilities for persons with developmental disabilities (ICF/DD) services;

3. intermediate care and skilled nursing facility (ICF and SNF) services;

4. physician services, including medical/surgical services by a dentist;

5. nurse midwife services;

6. certified registered nurse anesthetist (CRNA) and anesthesiologist services;

7. laboratory and x-ray services;

8. prescription drugs;

9. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services;

10. rural health clinic services;

11. hemodialysis clinic services;

12. ambulatory surgical center services;

13. prenatal clinic services;

14. federally qualified health center services;

15. family planning services;

16. durable medical equipment;

17. rehabilitation services (physical therapy, occupational therapy, speech therapy);

18. nurse practitioner services;

19. medical transportation services (emergency and non-emergency);

20. home health services for individuals needing skilled nursing services;

21. chiropractic services;

22. optometry services;

23. podiatry services;

24. radiation therapy; and

25. behavioral health services only for LBHP 1915(i) MNP recipients. Recipients in a Regular or Spend-Down MNP (non-LBHP) certification are not eligible to receive behavioral health services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1212#090

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities—Reimbursement Rate Reduction: Per
Act 13 of the 2012 Regular Session of the Louisiana
Legislature (LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20005 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 13 of the 2012 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, cost sharing, 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 amended the provisions governing the reimbursement methodology for nursing facilities to reduce the per diem rates paid to non-state nursing facilities in order to remove the rebased amount and sunset the 2011-2012 nursing facility rate rebasing (*Louisiana Register*, Volume 38, Number 5).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated Emergency Rules which amended the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7). In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state’s disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-state nursing facilities to further reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 8). This Emergency Rule is being promulgated to continue the provisions of the September 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective December 31, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology §20005. Rate Determination [Formerly LAC 50:VII.1305]

A. - L. ...

M. Effective for dates of service on or after September 1, 2012, the average daily rates for non-state nursing facilities shall be reduced by \$13.69 per day of the average daily rate on file as of August 31, 2012 before the state fiscal year 2013 rebase which will occur on September 1, 2012.

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 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), amended LR 37:902 (March 2011), LR 37:1174 (April 2011), amended LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 38:

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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1212#101

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities—Reimbursement Rate Reduction: Per
House Bill 1 of the 2012 Regular Session of the Louisiana
Legislature (LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20005 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 House Bill 1 of the 2012 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, cost sharing, 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 amended the provisions governing the reimbursement methodology for nursing facilities to reduce the per diem rates paid to non-state nursing facilities in order to remove the rebased amount and sunset the 2011-2012 nursing facility rate rebasing (*Louisiana Register*, Volume 38, Number 5).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated Emergency Rules which amended the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7). In anticipation of a budgetary shortfall in state fiscal year 2013 as a result of the reduction in the state’s disaster recovery Federal Medical Assistance Percentage (FMAP) rate, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-state nursing facilities to further reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 8). This Emergency Rule is being promulgated to continue the provisions of the September 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective December 31, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20005. Rate Determination

[Formerly LAC 50:VII.1305]

A. – M. ...

N. Effective for dates of service on or after September 1, 2012, the average daily rates for non-state nursing facilities shall be reduced by \$1.91 per day of the average daily rate on file as of August 31, 2012 after the state fiscal year 2013 rebase which will occur on September 1, 2012.

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 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325

(February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), amended LR 37:902 (March 2011), LR 37:1174 (April 2011), amended LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 38:

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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1212#100

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program
Fluoride Varnish Applications
(LAC 50:IX.901-905 and 15105)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:IX.901-905 and §15105 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the Professional Services Program in order to establish Medicaid reimbursement for fluoride varnish application services rendered by qualified providers in a physician office setting (*Louisiana Register*, Volume 37, Number 11). The department anticipates that coverage of this service will reduce and/or prevent future oral health problems that could have a negative effect on the overall health of children and may reduce the Medicaid cost associated with the treatment of such oral health conditions.

The department promulgated an Emergency Rule which amended the December 1, 2011 Emergency Rule to clarify the general provisions and scope of services governing fluoride varnish applications (*Louisiana Register*, Volume 38, Number 1). This Emergency Rule is being promulgated to continue the provisions of the January 20, 2012 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients.

Effective January 17, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Professional Services Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 1. General Provisions

Chapter 9. Fluoride Varnish Application Services

§901. General Provisions

A. Effective for dates of service on or after December 1, 2011, the department shall provide Medicaid coverage of fluoride varnish application services to recipients from six months through five years of age.

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 38:

§903. Scope of Services

A. Fluoride varnish application services performed in a physician office setting shall be reimbursed by the Medicaid Program when rendered by the appropriate professional services providers.

B. Fluoride varnish applications may be covered once every six months per Medicaid recipient.

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 38:

§905. Provider Participation

A. The entity seeking reimbursement for fluoride varnish application services must be an enrolled Medicaid provider in the Professional Services Program. The following Medicaid enrolled providers may receive reimbursement for fluoride varnish applications:

1. physicians;
2. nurse practitioners; and
3. physician assistants.

B. The following providers who have been deemed as competent to perform the service by the certified physician may perform fluoride varnish application services in a physician office setting:

1. the appropriate dental providers;
2. physicians;
3. physician assistants;
4. nurse practitioners;
5. registered nurses; or
6. licensed practical nurses.

C. Professional service providers shall review the Smiles for Life training module for fluoride varnish and successfully pass the post assessment.

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 38:

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter A. General Provisions

§15105. Fluoride Varnish Application Services

A. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall provide reimbursement for fluoride varnish application services rendered by qualified health care professionals in a physician office setting.

B. Reimbursement for fluoride varnish application services shall be a flat fee based on the appropriate HCPCS code.

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 38:

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

Bruce D. Greenstein
Secretary

1212#102

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Rural Health Clinics
Fluoride Varnish Applications
(LAC 50:XI.16301 and 16701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.16301 and §16701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing rural health clinics (RHCs) to provide Medicaid reimbursement for diabetes self-management training services and to reorganize the existing provisions governing provider participation and services in a more clear and concise manner in the *Louisiana Administrative Code (Louisiana Register, Volume 37, Number 9)*. The department promulgated an Emergency Rule which amended the September 20, 2011 Rule to adopt provisions for the coverage of fluoride varnish application services rendered to Medicaid recipients (*Louisiana Register, Volume 37, Number 11*). The department promulgated an Emergency Rule which amended the December 1, 2011 Emergency Rule to clarify the provisions governing the scope of services for fluoride varnish applications (*Louisiana Register, Volume 38, Number 1*). This Emergency Rule is being promulgated to continue the provisions of the January 20, 2012 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients.

Effective January 17, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing rural health clinics.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 15. Rural Health Clinics

Chapter 163. Services

§16301. Scope of Services

A. - B.1....

C. Effective December 1, 2011, the department shall provide coverage for fluoride varnish applications performed in the RHC. This service shall be limited to recipients from six months through five years of age. Fluoride varnish applications may be covered once every six months per Medicaid recipient.

1. Fluoride varnish applications shall be reimbursed when performed in the RHC by:

- a. the appropriate dental providers;
- b. physicians;
- c. physician assistants;
- d. nurse practitioners;
- e. registered nurses; or
- f. licensed practical nurses.

2. All participating staff shall review the *Smiles for Life* training module for fluoride varnish and successfully pass the post assessment. All staff involved in the varnish application must be deemed as competent to perform the service by the RHC.

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 32:1904 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2631 (September 2011), LR 38:

Chapter 167. Reimbursement Methodology **§16701. Prospective Payment System**

A. - B.3.a. ...

4. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall include coverage for fluoride varnish applications in the RHC encounter rate.

a. Fluoride varnish applications shall only be reimbursed to the RHC when performed on the same date of service as an office visit or preventative screening. Separate encounters for fluoride varnish services are not permitted and the application of fluoride varnish does not constitute an encounter visit.

C. - D. ...

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 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2632 (September 2011), LR 38:

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

Bruce D. Greenstein
Secretary

1212#103

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

State Children's Health Insurance Program
LaCHIP Affordable Plan Benefits Administration
(LAC 50:III.20501, 20505 and 20507)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:III.20501 and §§20505-20507 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XXI 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 implement phase five of the Louisiana Children's Health Insurance Program (LaCHIP) as a stand-alone program under Title XXI provisions to provide coverage to uninsured children whose family income is from 200 percent up to 250 percent of the Federal Poverty Level (*Louisiana Register*, Volume 34, Number 4).

The Department of Health and Hospitals, Bureau of Health Services Financing now proposes to amend the April 2008 Rule in order to transfer the administration of health care services covered under the LaCHIP Affordable Plan (Phase 5) to the health plans participating in the BAYOU HEALTH Program, and the administration of behavioral health services to the Statewide Management Organization in the Louisiana Behavioral Health Partnership. LaCHIP Affordable Plan benefits, including behavioral health services, are currently administered by the Office of Group Benefits.

This Emergency Rule will also revise the cost sharing provisions in order to remove the co-payment, co-insurance, and deductible requirements since they will no longer be attributable to the LaCHIP Affordable Plan Program. Only the monthly premium per household shall apply.

This action is being taken to avoid a budget deficit in the medical assistance programs, and to promote the health and welfare of LaCHIP Affordable Plan recipients. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$122,491 for state fiscal year 2012-2013.

Effective January 1, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the LaCHIP Affordable Plan in order to transfer the administration of these services to the BAYOU HEALTH Program and the Louisiana Behavioral Health Partnership.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 11. State Children’s Health Insurance Program

Chapter 205. Louisiana Children’s Health Insurance Program (LaCHIP)—Phase V

§20501. General Provisions

A. ...

B. The Department retains the oversight and management of this LaCHIP expansion with health care benefits provided through the BAYOU HEALTH Program and behavioral health services provided through the Louisiana Behavioral Health Partnership (LBHP).

C. Phase five is a cost-sharing program. Families who are enrolled in phase five of LaCHIP will be responsible for paying premiums.

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

HISTORICAL NOTE: Repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:660 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§20505. Covered Services

A. Children covered in phase five of the LaCHIP expansion shall receive health care benefits through an array of covered services offered by health plans participating in the BAYOU HEALTH Program, and behavioral health services administered by the Statewide Management Organization under the LBHP. The following services shall be included:

1. - 8. ...

9. inpatient and outpatient behavioral health services other than those listed in any other provisions of §20503:

9.a. - 10. ...

11. nursing care services;

a. Repealed.

12. ...

13. inpatient substance abuse treatment services, including residential substance abuse treatment services:

a. Inpatient admissions must be pre-certified.

Emergency services are covered if, upon review, presentation is determined to be life-threatening, resulting in admission to inpatient, partial hospital or intensive outpatient level of care;

b. ...

14. outpatient substance abuse treatment services:

a. All services must be pre-certified;

b. ...

15. case management services;

a. Repealed.

16. – 16.a. ...

17. hospice care:

a. Repealed.

18. medical transportation; and

a. Repealed.

19. ...

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

HISTORICAL NOTE: Repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:660 (April 2008), amended by the

Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§20507. Cost Sharing

A. Phase five of LaCHIP is a cost-sharing program with premiums limited to no more than 5 percent of the family’s annual income.

B. The following cost-sharing criteria shall apply.

1. - 1.a. ...

2. - 3.e. Repealed.

C. Non-payment of premiums may result in disenrollment from LaCHIP. Recipients shall be allowed a 60-day grace period prior to disenrollment for non-payment.

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

HISTORICAL NOTE: Repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:661 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein
Secretary

1212#091

DECLARATION OF EMERGENCY

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

2012-2013 Oyster Season Closure for Hackberry Bay

In accordance with the emergency provisions of Louisiana Revised Statutes (R.S.) 49:953, under the authority of R.S. 56:433, and under the authority of a Declaration of Emergency passed by the Wildlife and Fisheries Commission on August 2, 2012 which authorized the secretary of the Department of Wildlife and Fisheries to take emergency action if oyster resources and/or reefs are being adversely impacted, notice is hereby given that the Secretary of Wildlife and Fisheries hereby declares that the 2012-2013 oyster season in the Hackberry Bay Public Oyster Seed Reservation shall close at one-half hour after sunset on Sunday, November 18, 2012.

Harvest pressure during the season has significantly reduced an already small oyster stock size and continued commercial harvest may threaten the long-term sustainability of remaining oyster resources in these areas. Protection of these remaining oyster reef resources from injury is in the best interest of the public oyster areas.

Notice of any opening, delaying, or closing of a season will be provided 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. Barham
Secretary

1212#019

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Partial Closure of State Outside Waters to Shrimping

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and under the authority of R.S.56:497, which provides that the Wildlife and Fisheries Commission shall have the authority to open or close state outside waters to shrimping by zone each year as it deems appropriate, the Wildlife and Fisheries Commission hereby orders a closure to shrimping in that portion of state outside waters, south of the inside/outside shrimp line as described in R.S. 56:495 seaward a distance of three nautical miles, from the northwest shore of Caillou Boca at 90 degrees 50 minutes 27 seconds west longitude westward to the Atchafalaya River ship channel at Eugene Island as delineated by the channel red buoy line, effective at official sunset, Tuesday, December 18, 2012, and a closure to shrimping in that portion of state outside waters, south of the inside/outside shrimp line, as described in R.S. 56:495, seaward a distance of three nautical miles from the Atchafalaya River ship channel at Eugene Island as delineated by the channel red buoy line westward to the western shore of Freshwater Bayou Canal at 92 degrees 18 minutes 33 seconds west longitude, effective at official sunset, Monday, January 7, 2013.

R.S. 56:498 provides that the possession count on saltwater white shrimp for each cargo lot shall average no more than 100 (whole specimens) count per pound except during the time period from October fifteenth through the third Monday in December. Current biological sampling conducted by the Department of Wildlife and Fisheries has indicated that average white shrimp size in certain portions of these state outside waters is slightly larger than 100 count per pound; however, historical data indicate that significant numbers of smaller size white shrimp occupying coastal lakes and bays migrate into these waters as water temperatures drop in conjunction with the onset of winter. This action is being taken to protect these small white shrimp and provide them the opportunity to grow to a larger and more valuable size.

The Wildlife and Fisheries Commission authorizes the secretary of the Department of Wildlife and Fisheries to delay the closing date, if marketable quantities of shrimp are available for harvest, and to close to shrimping, if necessary to protect small white shrimp, in any part of state waters, if biological and technical data indicate the need to do so or if enforcement problems develop, and to reopen any area closed to shrimping when the closure is no longer necessary following notification to the chairman of the Wildlife and Fisheries Commission; and hereby authorizes the secretary of the Department of Wildlife and Fisheries to open and

close special shrimp seasons in any portion of state inside waters where such a season would not detrimentally impact developing brown shrimp populations following notification to the chairman of the Wildlife and Fisheries Commission.

Ann L. Taylor
Chairman

1212#073

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Shark Harvest Regulations—Non-Sandbar Large Coastal Sharks Commercial Possession Limit

The shark fisheries in the Gulf of Mexico are cooperatively managed by the Louisiana Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S.

Previously promulgated rules, 50 CFR 635.24(a)(2), by NMFS restricting the possession limit of commercially harvested sharks from the non-sandbar large coastal sharks group (great hammerhead, scalloped hammerhead, smooth hammerhead, nurse, blacktip, bull, lemon, silky, spinner and tiger sharks) from 36 to 33 sharks in the Gulf of Mexico will expire effective January 1, 2013. NMFS typically requests consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In order to enact regulations in a timely manner so as to have compatible regulations in place in Louisiana waters to coincide with the regulation set forth by NMFS, it is necessary that emergency rules be enacted.

In accordance with the emergency provisions of R.S. 49:953 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:6(25)(a) and R.S. 56:326.3, which provides that the Wildlife and Fisheries Commission may set possession limits, seasons, and daily take limits based upon biological and technical data for saltwater finfish taken or possessed in Louisiana waters, the Wildlife and Fisheries Commission hereby declares:

Persons possessing a commercial state shark permit but no federal shark permit shall not possess on any one day, or on any trip, or land from any trip, or sell, barter, trade, or exchange in excess of 36 sharks per vessel from the non-sandbar large coastal species group (great hammerhead, scalloped hammerhead, smooth hammerhead, nurse, blacktip, bull, lemon, silky, spinner and tiger sharks), taken from Louisiana state waters during the 2013 season for the commercial harvest of large coastal sharks. Persons possessing a commercial state shark permit shall not possess any sandbar sharks unless they also have in their name and in possession a valid federal shark research permit under 50 CFR 635.32(1). Those persons possessing a federal commercial directed or incidental limited access shark permit or federal shark research permit issued by the National Marine Fisheries Service under the Federal Fishery

Management Plan for Atlantic Sharks are limited to daily take, trip and possession limits as specified in that federal permit.

This Declaration of Emergency is effective with the opening of the 2013 season for the commercial harvest of large coastal sharks in Louisiana state waters.

The commission also hereby grants authority to the secretary of the Department of Wildlife and Fisheries to modify any provisions pursuant to this declaration of emergency when notified by NOAA Fisheries that changes have been made regarding the possession of non-sandbar

large coastal sharks in the federal waters of the Gulf of Mexico, or as needed to effectively implement the provisions herein upon notification to the chairman of the Wildlife and Fisheries Commission. Such authority shall extend through January 31, 2014.

Ann L. Taylor
Chairman

1212#074

Rules

RULE

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Definition for the Advisory
Commission on Pesticides (LAC 7:XXIII.103)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:3203, the commissioner of agriculture and forestry amends these regulations regarding pesticides to restore the definition of "application". The definition was originally published in the *Louisiana Register*, Volume 35, No. 04, April 20, 2009 and subsequently inadvertently removed from the rules in December 2011.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 1. Authority, Pesticide Declarations, Definitions

§103. Definitions

A. - B. ...

* * *

Application—the activities directly related to the administering of a pesticide, including activities leading up to the actual administration of the pesticide (pre-application activities), the actual administering of the pesticide (application activities), and those occurring after the administering of the pesticide (post-application activities). Application activities include those such as the actual administering of the pesticide by any method, such as spraying or topical use.

a. Pre-application activities include those such as: arranging for the application; mixing and loading the pesticide; transporting or storing the pesticides; and necessary preparations for the application of the pesticide such as employee notification, workers and handlers training, decontamination, use and care of personal protective equipment, emergency information, and heat stress management.

b. Post-application activities include those such as: restricted-entry intervals; responsibilities related to worker training, notification, and decontamination; providing emergency assistance; transporting or storing the pesticides; and disposing of any excess pesticides, spray mix, equipment wash waters, pesticide containers, and other materials containing the pesticide.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3202 and 3:3203.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:171 (April 1983), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), LR 27:2085 (December 2001), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, Advisory Commission on Pesticides, LR 35:626 (April

2009), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3466 (December 2011), LR 38:3103 (December 2012).

Mike Strain, DVM
Commissioner

1212#056

RULE

Department of Children and Family Services Division of Programs Economic Stability Section

Child Care Assistance Program (CCAP)—Reducing the
Income Limit for Eligibility (LAC 67:III.5103 and 5109)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Department of Children and Family Services (DCFS) has amended LAC 67:III, Subpart 12, Chapter 51, Child Care Assistance Program, Sections 5103 and 5109. Amendment is pursuant to the authority granted to the department by the Child Care and Development Fund (CCDF).

Section 5103 has been amended to reduce the maximum income limit for Child Care Assistance Program (CCAP) eligibility. The income limit is based on a percentage of the state median income (SMI), which is being reduced from 65 percent SMI to 55 percent SMI.

Section 5109 has been amended to allow the department to reduce the number of children's absences paid to CCAP providers who care for CCAP children that are authorized for full-time care.

The department considers this amendment necessary to provide core services to the most vulnerable families who are in dire need of these vital services while continuing to operate with the funding available for CCAP.

This Rule was made active by an Emergency Rule effective August 1, 2012.

Title 67

SOCIAL SERVICES

Part III. Economic Stability

Subpart 12. Child Care Assistance Program

Chapter 51. Child Care Assistance Program

Subchapter A. Administration, Conditions of Eligibility, and Funding

§5103. Conditions of Eligibility

A. - B.4.c. ...

d. Exception: a household in which all of the members described in Paragraph B.4 of this Section meet the disability criteria is not eligible for child care assistance unless one of those members meets, effective June 1, 2011 the required minimum average of 30 activity hours per week.

5. Household income does not exceed 55 percent of the state median income for a household of the same size. *Income* is defined as:

B..5.a. - G. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193, Act 58 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1106 (July 2003), LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005), LR 32:1464 (August 2006), LR 33:506 (March 2007), LR 34:692 (April 2008), LR 36:1278 (June 2010), repromulgated LR 136:1767 (August 2010), LR 37:1374 (May 2011), amended by the Department of Children and Family Services, Division of Programs, Economic Stability Section, LR 38:3103 (December 2012).

Subchapter B. Child Care Providers

§5109. Payment

A. - D. ...

E. Payment will not be made for absences of more than two days by a child in any calendar month or for an extended closure by a provider of more than two consecutive days in any calendar month. A day of closure, on a normal operating day for the provider, is counted as an absent day for the child(ren) in the provider's care. If a child authorized for full-time care attends child care less than four hours in one day, this will be counted as a half day absent and half the daily rate will be paid to the provider. No absences will be authorized for part-time care. Exception: in cases of a federal/state/locally declared emergency situation, or other special circumstances, the department may at the discretion of the deputy secretary of programs waive this absence policy.

F. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), repromulgated LR 30:2078 (September 2004), amended LR 31:2265 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:555 (March 2010), LR 36:847 (April 2010), LR 36:1279 (June 2010), LR 37:3491(December 2011, amended by the Department of Children and Family Services, Division of Programs, Economic Stability Section, LR 38:3104 December 2012).

Suzy Sonnier
Secretary

1212#067

RULE

**Department of Children and Family Services
Division of Programs
Licensing Section**

Juvenile Detention Facilities Licensure
Effective Date (LAC 67:V.7507)

The Department of Children and Family Services (DCFS), Division of Programs, Licensing Section, in accordance with provisions of the Administrative Procedure Act, R.S. 49:953(A), has amended LAC 67:V, Subpart 8, Chapter 75, Juvenile Detention Facilities, §7507, to change the effective date of the licensing standards for juvenile detention facilities.

Section 7507, Licensing Requirements, has been amended in accordance with Act 366 of the 2012 Legislative Session. Act 366 amended and reenacted R.S. 15:110(E) by changing the effective date for the licensure of all juvenile detention facilities from on or before January 1, 2013, to on or before July 1, 2013. This includes facilities owned or operated by any governmental, profit, nonprofit, private, or public agency.

This Rule was made active by an Emergency Rule effective August 2, 2012.

Title 67

SOCIAL SERVICES

Part V. Child Welfare

Subpart 8. Residential Licensing

Chapter 75. Juvenile Detention Facilities

§7507. Licensing Requirements

A. General Provisions

1.a. All providers meeting the criteria of Section 7507.A.1.b shall obtain a license on or before July 1, 2013 in accordance with R.S. 15:1110(E) in order to continue operating.

b. All providers in operation prior to July 1, 2013 may continue to operate without a license if timely application for a license has been made to DCFS. Providers shall make application to the department within 90 days of the effective date of this Rule. All requirements herein shall be met, unless otherwise expressly stated in writing by the department prior to the issuance of a license.

2. Effective July 1, 2013, it is mandatory to obtain a license from the department prior to beginning operation.

A.3. - I.7....

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:1561 (July 2012), amended LR 38:3104 (December 2012).

Suzy Sonnier
Secretary

1212#068

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School,
District and State Accountability System
(LAC 28:LXXXIII.Chapters 3-51)

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*: §301. School Performance Score Component, §302. 9-12 Transition from 2010 to 2012, §303. Calculating the SPS Component, §307. Incentive Points, §405. Calculating a K-8 Assessment Index, §409. Calculating a 9-12 Assessment Index, §411. Attendance Index Calculations, §413. Dropout Index Calculations, §515. State Assessments and Accountability, §517. Inclusion of Students, §519. Inclusion of Schools, §521. Pairing/Sharing of Schools with Insufficient Test Data, §523. Growth Targets, §601. Defining a Graduation Index, §603. Determining a Cohort for a Graduation, §611. Documenting a Graduation Index, §613. Calculating a Graduation Index, §703. Inclusion of Students in the Subgroup Component, §707. Safe Harbor, §708. Using a Graduation Rate in the Subgroup Component, §709. Failing the Subgroup Component, §903. Growth Targets and Labels, §1101. Letter Grades, §1103. Honor Rolls, §1105. Turnaround Schools, §1301. Reward Eligibility, §1303. Correction of Data, §1401. Levels of Academic Assistance, §1403. Entry into Academic Assistance, §1405. Movement in Academic Assistance, §1601. Entry into Academically Unacceptable School Status, §1603. Requirements for Academically Unacceptable Schools, §1607. Requirements for Schools Identified as Failing the Subgroup Component for Two Consecutive Years, §1609. Order of Priority for Remedies, §1901. District Level Tasks, §1903. District Support at Each Level, §2001. Pilot Program, Timeframe, and Transition, §2003. Academically Unacceptable Schools, §2005. Subgroup Component Failure Category Determinations, §2007. Requirements for Schools in Subgroup Component Failure, §2101. State Support at Each Level, §2301. Schools Requiring Reconstitution/Alternate Governance Plans, §2501. Schools Requiring Choice, §2503. Student Eligibility, §2507. School Choice Policy, §2901. State Annual Reporting, §3101. Appeals/Waivers and Data Certification Processes, §3105. General Guidelines—Parent/School-Level Requests, §3107. General Guidelines—Local Board of Education-Level Requests, §3109. Criteria for Appeal, §3111. Criteria for Waiver, §3301. Inclusion of New Schools, §3303. Reconfigured Schools, §3701. Special Consideration of Lab and Charter Schools, §3901. Assessment of Students with Disabilities, §3905. Inclusion of Alternate Assessment Results, §4001. Proficient in English, §4101. Valid Data Considerations, §4103. NRT and CRT Data, §4104. Attendance and Dropout/Exit Data, §4301. Inclusion of All Districts, §4303. Indicator 1—Summer School, §4305. Indicator 2—The Change in SPS for All Schools Relative to Growth Targets, §4307. Indicator 3—The Change in LEAP 21 First-Time Passing Rate from One Year to the Next, §4309. Indicator 4—Classes Taught by Certified Teachers, §4311. District Letter Grades, §4313. Corrective Actions, §4315. Progress Report, §4509.

Assessment Index Calculations with Displaced Students for Limited Impact Schools, §4527. Disaster Considerations for the School and District Subgroup Component, §5101. Definition of a Distinguished Educator, and §5103. Role of the Distinguished Educator. The policy revisions will reflect new policy as a result of the ESEA Flexibility Request that was approved for implementation by the United States Department of Education.

Title 28 EDUCATION

Part LXXXIII. Bulletin 111—The Louisiana School, District and State Accountability System

Chapter 3. School Performance Score Component

§301. School Performance Score Goal

A. A school performance score (SPS) shall be calculated for each school. This score shall range from 0.0 to 150.

B. ...

C. Preliminary school performance scores shall be released in the summer for schools that receive a letter grade of F. Final accountability results shall be issued by the fall semester of each year and all accountability reports will reflect the configuration of the school as it existed the prior spring semester.

1. For K-6 schools, the school performance score will consist entirely of one index based on assessments listed in the table below.

2. For K-8 schools, the school performance score will consist of an assessment index and a dropout/credit accumulation index.

K-8 School Performance Score Indices and Weights		
LEAP, iLEAP, LAA 1 and LAA 2	Grades K-6 Grades K-8	100 percent 95 percent
Dropout/Credit Accumulation Index	Grades 7 and/or 8	5 percent

3. For schools with a grade 12, the school performance scores will include four indicators weighted equally as outlined in the table below:

High School Performance Score Indices and Weights		
End of Course Tests, LAA 1, LAA 2	Grades 9-12	25 percent
ACT*	Grade 11	25 percent
Graduation Index*	Grade 12	25 percent
Graduation Rate	Grade 12	25 percent

*When calculating a school's ACT score or graduation index score, students participating in the LAA 1 assessment shall not be included in the denominator of such calculations.

4. For schools with configurations that include grades 9 through 11, but do not have a grade 12, the school performance score will consist of the indices available.

a. For example, a school with grade configuration of grades 7-10 will receive an assessment index that includes iLEAP, LEAP, LAA 1, LAA 2, and end-of-course assessments as 95 percent of the SPS. The dropout/credit accumulation index for data from grades 7 and 8 will count as 5 percent.

b. A school with grades 9-11 will receive an SPS that includes the end-of-course and ACT assessments.

D. Bonus Points

1. The school performance score will also be affected by the bonus points earned from growth calculated for the

non-proficient student subgroup (i.e., super subgroup). To be eligible for bonus points, the school must have:

a. at least 10 students in the non-proficient subgroup, as identified for subgroup membership based on prior year assessment scores; and

b. a minimum of 30 percent of the students in the non-proficient subgroup meet or exceed their expected growth, as determined by the value-added model for students in grades K-8 and as determined by the ACT series for students in grades 9-12.

2. The assessments used to determine growth in the non-proficient subgroup include, as available:

a. LEAP and iLEAP scores for schools without a grade 11;

b. EXPLORE, PLAN and ACT scores for schools with grades 9-11;

c. for schools with LEAP, iLEAP, EXPLORE, PLAN and ACT data, all tests will be used to determine bonus points.

3. Schools can earn a maximum of 10 bonus points to be added to the SPS.

a. For combination schools that include both middle and high school grades (e.g., 6-12), the bonus shall be calculated by adding the points earned from each test group together. For sums that are greater than 10, a maximum of 10 points will be awarded as bonus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2737 (December 2003), amended LR 31:1512 (July 2005), LR 32:1017 (June 2006), LR 32:2034, 2035 (November 2006), LR 33:424 (March 2007), LR 33:2349 (November 2007), LR 33:2593 (December 2007), LR 34:430 (March 2008), LR 35:639 (April 2009), LR 36:1987 (September 2010), LR 38:3105 (December 2012).

§302. 9-12 Transition from 2010 to 2012

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2241 (October 2010), amended LR 37:857 (March 2011), LR 37:2118 (July 2011), repealed LR 38:3106 (December 2012).

§303. Calculating the SPS Component

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2738 (December 2003), amended LR31:763 (April 2004), LR 32:1020 (June 2006), LR 32:2034 (November 2006), LR 36:1988 (September 2010), repealed LR 38:3106 (December 2012).

§307. Incentive Points

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2739 (December 2003), amended LR 31:2422 (October 2005), LR 32:1021 (June 2006), LR 33:252 (February 2007), LR 36:1989 (September 2010), repealed LR 38:3106 (December 2012).

Chapter 4. Assessment and Dropout/Credit Accumulation Index Calculations

§405. Calculating a K-8 Assessment Index

A. For all grades 3-8 use the values from the following table.

iLEAP and LEAP Index Points	
Label	Subject-Test Index Points
Advanced =	150
Mastery (Exceeding the Standard) =	125
Basic (Meeting the Standard) =	100
Approaching Basic (Approaching the Standard) =	0
Unsatisfactory =	0

B. Weight each subject-test index score by the corresponding value from the table below.

Unit Weights for K-8 Assessment Index				
Grade	ELA	Math	Science	Social Studies
3rd	2	2	1	1
4th	2	2	1	1
5th	2	2	1	1
6th	2	2	1	1
7th	2	2	1	1
8th	2	2	1	1

C. Sum all weighted subject-test index scores.

D. Sum all weights applied to subject-test index scores from the table above (in Subsection B).

E. Divide the sum from Subsection D by the total scores.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006), amended LR 36:1989 (September 2010), LR 38:3106 (December 2012).

§409. Calculating a 9-12 Assessment Index

A. - A.1. ...

2. - 3. Repealed.

B. The ACT composite score will be used in the calculation of the ACT assessment index as described in the chart below. To the extent practicable, a student's highest earned score for any ACT administration up to the end of grade 11 shall be used in the calculation.

ACT Composite	Index Pts
0-17	0
18	100
19	102.8
20	105.6
21	108.4
22	111.2
23	114
24	116.8
25	119.6
26	122.4
27	125.2
28	128
29	130.8
30	133.6

ACT Composite	Index Pts
31	136.4
32	139.2
33	142
34	144.8
35	147.6
36	150.4

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006), amended LR 33:252 (February 2007), LR 36:1989 (September 2010), LR 37:2118 (July 2011), repromulgated LR 37:2382 (August 2011), LR 37:3200 (November 2011), LR 38:3106 (December 2012).

§411. Attendance Index Calculations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2740 (December 2003), amended LR 36:1990 (September 2010), repealed LR 38:3107 (December 2012).

§413. Dropout/Credit Accumulation Index Calculations

A. A dropout/credit accumulation index score for each school with a grade eight shall be calculated.

B. The following scale will be used to determine the dropout/credit accumulation index.

1. In order for students to be included in the calculations, they must:
 - a. have been considered full academic year during the year of last record at the middle school;
 - b. if earning Carnegie units, have been considered full academic year during the ninth grade year for the first ninth grade record.
2. Carnegie units earned in summer school will not be included.
3. Students who are considered dropouts based on SIS records shall be included in the calculation and earn zero points.
4. Students who are completing their third year in grade 8 shall be included in the calculation and earn zero points.

Number of Carnegie Units	Index Point Award
6 or more	150
5.5	125
5	100
4.5	75
4	50
3.5	25
3 or less	0
3rd year 8th grade student	0
Dropout	0

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 36:1990 (September 2010), LR 38:3107 (December 2012).

Chapter 5. Inclusion in Accountability

§515. State Assessments and Accountability

A. Louisiana students in grades 3-8 will participate in at least one of the following state assessments on an annual basis:

1. LEAP; or
2. iLEAP; or
3. LEAP Alternate Assessment Level 1 (LAA 1); or
4. LEAP Alternate Assessment Level 2 (LAA 2).

a. Some LAA 2 students will participate in a combination of regular assessment (LEAP, iLEAP, GEE, EOC) and LAA 2 if the IEP requires this.

b. These students can take only one test in each subject at any single test administration (e.g., LAA 2 in ELA and LEAP in mathematics, science, and social studies).

B. Louisiana students in grades 9, 10 and 11 will participate in at least one of the following state assessments on an annual basis:

1. EOC (when they are enrolled in the course for which a test is available);
2. GEE (only for repeating testers);
3. LEAP Alternate Assessment Level 1 (LAA 1); or
4. LEAP Alternate Assessment Level 2 (LAA 2);
5. EXPLORE in grade 9;
6. PLAN in grade 10;
7. ACT in grade 11.

C. All LEP students shall take the English language development assessment (ELDA) annually, as well as the appropriate state assessment for their enrolled grade.

D. EOC scores for repeaters (in any subject) shall not be included in high school SPS calculations except for middle school students who earn a score of needs improvement and repeat the course in the 9th or 10th grade.

E. Scores shall not be included in school performance score calculations for LEP students who have not been enrolled in a school in the United States for one full school year.

F. Scores earned by any student during an academic year who transferred into the LEA after October 1 of the same academic year shall not be included in the school performance score (SPS) or subgroup performance score.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 31:2422 (October 2005), LR 32:1022 (June 2006), LR 33:253 (February 2007), LR 36:1990 (September 2010), LR 37:2119 (July 2011), LR 38:3107 (December 2012).

§517. Inclusion of Students

A. The test score of every student who is enrolled in any school in a LEA on October 1 of the academic year and who is eligible to take a test at a given school within the same LEA shall be included in that school's performance score regardless of how long that student has been enrolled in that school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 31:1512 (July 2005), LR 31:2422 (October 2005), LR 31:2764 (November 2005), LR 33:2594 (December 2007), LR 38:3107 (December 2012).

§519. Inclusion of Schools

A. All K-8 schools shall have a minimum of 40 testing units in any combination of LEAP, iLEAP, LAA 1, or LAA 2 assessments.

B. All 9-12 and combination schools shall have a minimum number of 40 units in any combination of graduation cohort membership and LEAP, iLEAP, LAA 1, LAA 2, or EOC assessments.

C. Each member of a cohort used to calculate a graduation index shall be counted as 4 units when determining the minimum number of units required calculating an SPS.

D. A school must have ten students in the graduation cohort to receive a cohort graduation index.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 31:1512 (July 2005), LR 32:1022 (June 2006), LR 34:431 (March 2008), LR 36:1991 (September 2010), LR 38:3108 (December 2012).

§521. Pairing/Sharing of Schools with Insufficient Test Data

A. Any school with at least one testing grade (3-11) will receive its SPS based only on its own student data provided it meets the requirements of §519.

B. Any K-2 school with insufficient testing data will be awarded an SPS based on "shared" 3rd grade testing data from another school.

C. Any school enrolling only 12th grade students will be awarded an SPS based on "shared" data from a school or schools containing grades 9-11 that send it the majority of its students. This sharing relationship is to define the cohort that will provide the starting roster on which its graduation index will be based.

D. Any K-2, 9-12 configuration shall receive an SPS based solely on the 9-12 data.

E. A district must identify the school where each of its non-standard schools shall be "paired" in order to facilitate the proper "sharing" of data for reporting purposes, as described above. The "paired" school must be the one that receives by promotion the largest percentage of students from the non-standard school. In other words, the "paired" school must be the school into which the largest percentage of students "feed." If two schools receive an identical percentage of students from a non-standard school, or when there is no distinct feeder pattern, the district shall select the "paired" school.

F. Requirements for the number of test/graduation index units shall be the sum of the units used to calculate the school's SPS (see §519).

G. Once the identification of "paired" schools has been made, this decision is binding for at least one accountability cycle.

H. When a paired/shared school acquires a sufficient number of testing units, the pair/share relationship will be broken, and the school will be treated as a stand-alone school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 30:1445 (July 2004), LR 32:1023 (June 2006), LR 36:1991 (September 2010), LR 38:3108 (December 2012).

§523. Growth Targets

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2742 (December 2003), amended LR 32:1023 (June 2006), repealed LR 38:3108 (December 2012).

Chapter 6. Graduation Cohort, Index, and Rate

§601. Defining a Graduation Index

A. The Louisiana Department of Education (LDE) will calculate a graduation index based on a cohort of students for use in the school performance score of each school with students in grade 12.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006), amended LR 38:3108 (December 2012).

§603. Determining a Cohort for a Graduation

A. - B. ...

C. Students who exit Louisiana's Student Information System (SIS) system in fewer than four years for legitimate reasons shall not be included in the cohort's graduation index calculations.

1. - 3. ...

a. The only acceptable documentation for transfers to other diploma awarding schools or programs is a request for student records from the qualifying school or program, or a letter from an official in the receiving school or program acknowledging the students enrollment. The documentation must be clearly dated before October 1 following the student's exit from the Louisiana Student Information System (SIS). The LDE can, during data certification and audits, require proof that the school or program is recognized as a "diploma awarding" by the state in which it is located.

C.3.b. - F.2. ...

G. Students who graduate or complete high school in fewer than four years will be included in the cohort in which they started 9th grade.

H. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006), amended LR 33:424 (March 2007), LR 33:2031 (October 2007), LR 35:2312 (November 2009), LR 36:2242 (October 2010), LR 36:2840 (December 2010), LR 38:3108 (December 2012).

§611. Documenting a Graduation Index

A. Beginning with academic year 2005-2006, all schools are required to maintain the following documentation if the corresponding exit code is used.

Exit Code Documentation		
Code	Descriptions	Required Documentation
01	Expelled	Due process documentation supporting expulsion. Students must be enrolled on October 1 of the following year.
03	Illness	Letter from a physician stating the student's date(s) of care written on the doctor office's letterhead with the doctor's original signature. Students must be enrolled on October 1 of the following year.
04	Graduate with Diploma	Official transcript showing successful completion of requirements along with records supporting any academic or career/technical endorsements.
05	GED only	LDE confirmation document and entry/exit in SIS.
06	Certificate of Achievement (Special Education)	Official transcript showing successful completion of requirements
07	Death (of student) or permanent incapacitation	Letter from parent or obituary.
08	Transferred to another public school within district	SIS (Student Information System) record indicating transfer.
09	Transferred to another public school within Louisiana	SIS record indicating transfer.
10	Transferred out of state or country	Request for records from the receiving school (out of state). Request for records or a statement signed by the parent. Documentation proving a student was a foreign exchange student.
12	Transferred to Correctional Institution	SIS record indicating transfer.
13	Transferred to Vocational Technical School	SIS record indicating transfer.
14	Transferred to non-public school (must award high school diplomas)	Request for records from the receiving school
15	Exit from grade for reassignment to another grade	Test results, summer school grades or similar forms located in the student's cumulative records supporting the grade change
16	Transferred to home study/in-school Private Schooling	LDE Approval letter
17	Completed all Carnegie unit requirements but not the GEE	STS (Student Transcript System) record
20	Transferred to Early College Admissions Program	School withdrawal form and request for records from the College or University and proof of full-time enrollment in an academic program
22	Options Program Completer: GED and Industry Based Certificate	STS and/or CATE (Career and Technical Education) record
23	Options Program Completer: GED and Locally Designed Skills Certificate	STS and/or CATE record
24	Options Program Completer: Industry Based Certification	STS and/or CATE record

Exit Code Documentation		
Code	Descriptions	Required Documentation
25	Options Program Completer: Local Skills Certificate Only	STS and/or CATE record
27	Exit under SBESE Academic School Choice Policy	SIS record indicating transfer.
28	Exit under SBESE Unsafe School Choice Policy	SIS record indicating transfer.
34	Correctional Institution/State Custody (ages 17 and above)*	SIS record indicating transfer.
35	Transferred to LEA monitored Adult Education to pursue GED	SIS record indicating transfer.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006), amended LR 35:639 (April 2009), LR 35:2312 (November 2009), LR 36:2242 (October 2010), LR 36:2841 (December 2010), LR 38:3108 (December 2012).

§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.

Student Result	Points
HS Diploma plus AP score of at least 3 OR IB Score of at least 4	150
BESE Approved Industry Based Certification OR Dual Enrollment OR AP score of 1 or 2 OR IB score of 1, 2, or 3	110
Regular HS Diploma	100
GED	25
5th Year Graduates	75
Dropout	0

B. The graduation index of a school shall be the average number of points earned by cohort members.

C. For each student who graduates in the fifth year, 75 points shall be awarded to the graduation index.

1. 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 2012 must complete the assessment requirements before or during the 2014 summer test administration.

2. When related to awarding fifth year graduate points, the enrollment must be continuous and consist of at least 45 calendar days.

D. To ensure the accuracy of data used to calculate the graduation index, the calculation shall lag one year behind the collection of the data (the index earned by the graduating class of 2012 will be used for 2013 accountability calculations).

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), LR 36:1769 (August 2010), repromulgated LR 36:1994 (September 2010), LR 36:2243 (October 2010), LR 37:3201 (November 2011), LR 38:3109 (December 2012).

Chapter 7. Subgroup Component

§703. Inclusion of Students in the Subgroup Component

A. Students that meet the full academic year criteria, as described in §517 and as described in Paragraphs A.1-2 of this Section, shall be included in all subgroup component analyses for the AMO status test and reduction of non-proficient students (safe harbor test):

1. student is not exempted from testing due to medical illness, death of the student's family member(s), or the student being identified as LEP and in a-school in the United States for less than one full academic year;

2. student is a former LEP student for up to two years after no longer being considered LEP under state rules.

a. These students will not count toward the minimum n for the LEP subgroup.

B. - C.1.a.ii. ...

b. districts that exceed the 2 percent cap may do so without penalty if the sum of LAA 1 and LAA 2 students labeled "proficient" does not exceed three percent of all students tested within the district unless:

i. - ii. ...

c. when calculating the 1 percent, 2 percent, and 3 percent caps for alternate assessment purposes, all decimals in results shall be rounded to the next highest whole number.

i. 1.0 percent of 628 students is 6.28 students.

The 1.0 percent cap, in this instance, is 7 students.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2743 (December 2003), amended LR 30:1619 (August 2004), repromulgated LR 30:1996 (September 2004), amended LR 30:2256 (October 2004), amended LR 30:2445 (November 2004), LR 31:912 (April 2005), LR 31:2762 (November 2005), LR 33:253 (February 2007), LR 34:428 (March 2008), LR 34:867 (May 2008), LR 36:1991 (September 2010), LR 37:2119 (July 2011), LR 38:3110 (December 2012).

§707. Safe Harbor

A. - B.2. ...

a. achieves a 90 percent attendance rate (for schools without a 12th grade) (A 99 percent confidence interval is applied to the 90 percent attendance rate.); or

b. makes at least 0.1 percent improvement in attendance rate

C. For schools with a grade 12, a graduation rate will be calculated as described in §708.

D. Subgroups passing the participation rate test and achieving safe harbor shall be considered as having passed the subgroup component.

E. English language arts and mathematics test results from grades 3-8 and 10 LEAP, GEE, iLEAP, LAA 1, and LAA 2 will be used to calculate the reduction of non-proficient students in safe harbor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2743 (December 2003), amended LR 32:1025 (June 2006), LR 33:253 (February 2007), LR 33:2594 (December 2007), LR 38:3110 (December 2012).

§708. Using a Graduation Rate in the Subgroup Component

A. - G. ...

H. All subgroups and the whole school shall be evaluated using the steps delineated in this Section regardless of safe harbor considerations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1026 (June 2006), amended LR 33:424 (March 2007), LR 36:2243 (October 2010), LR 37:1122 (April 2011), LR 38:3110 (December 2012).

§709. Failing the Subgroup Component

A. - B. ...

1. achieved a 90 percent attendance rate (for schools without a 12th grade)/65 percent graduation rate, beginning in 2007 (for schools with a 12th grade) (A 99 percent confidence interval is applied to the 90 percent attendance rate; or

2. made at least 0.1 percent improvement in attendance rate (for schools without a 12th grade);

3. beginning in fall 2011 using 2010 graduation data met one of the 5 criteria in §708.F, above for the whole school and each subgroup within the school with sufficient data for a valid and reliable decision.

NOTE: If a school in which all subgroups have passed the subgroup component does not pass the additional academic indicator, it shall not pass the subgroup component.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December 2003), amended LR 30:2256 (October 2004), LR 32:1026 (June 2006), LR 33:2594 (December 2007), LR 37:1123 (April 2011), LR 38:3110 (December 2012).

Chapter 9. Evaluating Improvement

§903. Growth Targets and Labels

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December 2003), amended LR 33:2595 (December 2007), LR 36:1992 (September 2010), repealed LR 38:3110 (December 2012).

Chapter 11. School Performance Categories

§1101. Letter Grades

A. Beginning with the release of 2012-2013 school accountability data, schools will receive letter grades based on the school performance score (SPS).

Letter Grade	SPS Range
A	100.0-150
B	85.0-99.9
C	70.0-84.9
D	50.0-69.9
F	0-49.9

B. In addition to the letter grade, the LDE shall award schools the following labels:

1. if a school declines, it shall be labeled as “declining,” and

2. if a school qualifies as a reward school (described in §1301), it shall be labeled as a “top gains” school.

C. The LDE shall identify all schools that have selective, non-traditional academic admissions requirements.

D. The LDE shall identify all schools that are classified as alternative schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:2121 (July 2011), LR 38:3110 (December 2012).

§1103. Honor Rolls

A. Beginning with the release of 2010-2011 school accountability data, the LDE shall produce a letter grade honor roll to recognize all schools that earn a letter grade of A or B.

B. Beginning with the release of 2010-2011 school accountability data, the LDE shall produce a graduation rate honor roll to recognize all schools with a graduation rate greater than or equal to the state average.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:2121 (July 2011), amended LR 38:3111 (December 2012).

§1105. Turnaround Schools

A. If a turnaround operator takes over an entire school that was labeled “F” in the previous school year, including all previous grade levels and all former students of the “F” school, then the school’s grade shall be reported as “T” for the first two years of operation.

B. However, all other metrics of the school performance report shall still be reported (e.g., SPS, subgroup performance).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3111 (December 2012).

Chapter 13. Rewards/Recognition

§1301. Reward Eligibility

A. A school shall be labeled a “reward school” if it meets the following growth goals.

1. For schools labeled an “A” for the previous academic year, such schools shall improve their SPS by five points (including status SPS growth, as well as any SPS bonus awarded for super subgroup growth). If an “A” school is within five points of the total possible points (i.e., 150), then the school shall need to reach an overall score of 150.

2. For schools labeled “B,” “C,” “D,” or “F,” such schools shall improve their SPS by 10 points (including status SPS growth, as well as any SPS bonus awarded for super subgroup growth).

B. Schools labeled as “reward schools” shall be eligible for financial rewards, as funds are available and as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December

2003), amended LR 30:1446 (July 2004), LR 31:1513 (July 2005), LR 33:1334 (July 2007), LR 33:2595 (December 2007), LR 38:3111 (December 2012).

§1303. Correction of Data

A. Districts and the LDE shall evaluate any instance of irregular or unusual data in the following respects for determining the allocation of rewards:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2745 (December 2003), amended LR 38:3111 (December 2012).

Chapter 14. Academic Assistance (formerly School Improvement 1)

§1401. Levels of Academic Assistance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1513 (July 2005), amended LR 32:1026 (June 2006), repealed LR 38:3111 (December 2012).

§1403. Entry into Academic Assistance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1513 (July 2005), amended LR 33:2349 (November 2007), amended LR 35:641 (April 2009), repealed LR 38:3111 (December 2012).

§1405. Movement in Academic Assistance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1513 (July 2005), amended LR 33:2349 (November 2007), repealed LR 38:3111 (December 2012).

Chapter 16. Academically Unacceptable Schools and Subgroup Component Failure

§1601. Entry into Academically Unacceptable School Status

A. For the 2011-2012 accountability release, schools with SPS of less than 75.0 out of 200 shall be labeled “academically unacceptable schools” (AUS). Beginning with the 2012-2013 accountability release, schools with SPS less than 50.0 out of 150 shall be labeled “AUS.” All AUS schools shall implement remedies from the “academically unacceptable schools” table (below).

1. BESE may, during times of transition in the accountability system, waive schools meeting certain conditions from receiving the AUS label and/or from implementing certain remedies and sanctions.

B. A school shall enter AUS Level 1 when identified as AUS if the school was not labeled AUS the previous year, including schools that did not receive performance labels the previous year.

C. Schools progress to more serious levels of AUS based on the number of consecutive years a school has been labeled AUS.

D. Schools exit academically unacceptable school status when their SPSs are greater than or equal to 50.0.

E. Academically Unacceptable Schools

Academically Unacceptable Schools			
Level	Remedy	Title 1	Non-Title 1
AUS 1 (Year 1) (notified Aug. 1) - AUS 3 (Year 3)	School Choice	x	x
AUS 4+ (Year 4+)	Eligible for the RSD	x	x

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2595 (December 2007), amended LR 35:2312 (November 2009), LR 36:1770 (August 2010), LR 37:2121 (July 2011), LR 38:3111 (December 2012).

§1603. Requirements for Academically Unacceptable Schools

A. ...

B. Schools entering AUS Level 1 (AUS1)-AUS Level 3 (AUS3) must:

1. allow parents of students in academically unacceptable schools (AUS) to transfer their child to a higher performing public school as stated in Chapter 25;

2. supplemental education services (SES) are no longer a required remedy. However, if SES will be utilized in an “F” school, then the SES provider must be selected from a state-approved list of providers published annually by the LDE.

C. In compliance with R.S. 17:10.5, schools labeled AUS for four consecutive years are eligible for state takeover (other criteria may apply).

1. The means for this takeover occurring is a group submitting a proposal for a type 5 charter school and by BESE awarding a charter to the group.

2. Since multiple proposals may be submitted for one school, they are evaluated and the proposal most likely to succeed is most likely to receive the charter.

3. The LEA may also develop a proposal to keep and reconstitute its school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2596 (December 2007), amended LR 35:2313 (November 2009), LR 38:3112 (December 2012).

§1607. Requirements for Schools Identified as Failing the Subgroup Component for Two Consecutive Years

A. Schools identified as entering subgroup component failure shall enter school improvement level 1. Each year the school improvement level shall be updated to reflect the number of years of subgroup failure.

B. Schools identified as SII+ shall not qualify for “reward school” status or any of the benefits of such status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2597 (December 2007), amended LR 38:3112 (December 2012).

§1609. Order of Priority for Remedies

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2597 (December 2007), repealed LR 38:3112 (December 2012).

Chapter 19. School Improvement, Academically Unacceptable Schools and Subgroup Component Failure: District and State Level Tasks

§1901. District Level Tasks

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2748 (December 2003), amended LR 31:1515 (July 2005), LR 33:2598 (December 2007), LR 35:2313 (November 2009), repealed LR 38:3112 (December 2012).

§1903. District Support at Each Level

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2748 (December 2003), amended LR 30:2745 (December 2004), LR 31:1516 (July 2005), LR 35:2313 (November 2009), repealed LR 38:3112 (December 2012).

Chapter 20. Differentiated Accountability Pilot

§2001. Pilot Program, Timeframe, and Transition

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2745 (December 2009), repealed LR 38:3112 (December 2012).

§2003. Academically Unacceptable Schools

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2746 (December 2009), repealed LR 38:3112 (December 2012).

§2005. Subgroup Component Failure Category Determinations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2746 (December 2009), repealed LR 38:3112 (December 2012).

§2007. Requirements for Schools in Subgroup Component Failure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2746 (December 2009), repealed LR 38:3112 (December 2012).

Chapter 21. State-Level School Improvement, Academically Unacceptable Schools and Subgroup Component Failure Tasks

§2101. State Support at Each Level

A. State's responsibilities to districts with schools in school improvement, and schools labeled AUS or for

subgroup component failure as aligned with Chapter 16 levels of remedies and sanctions, include:

1. providing a diagnostic process for schools through the network structure;
2. providing support and training through the network structure; and
3. providing an approved list of supplemental educational service providers should schools or districts wish to utilize supplemental educational services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2748 (December 2003), amended LR 30:2745 (December 2004), LR 31:1516 (July 2005), LR 32:1027 (June 2006), LR 33:2598 (December 2007), LR 35:2313 (November 2009), LR 38:3112 (December 2012).

Chapter 23. Reconstitution/Alternate Governance Plans

§2301. Schools Requiring Reconstitution/Alternate Governance Plans

A. Districts shall notify SBESE of all school closures and reconstitutions by December 31 of the previous academic year. Notice shall include requests for site code changes, grade reconfigurations, and attendance zone changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2749 (December 2003), amended LR 31:1516 (July 2005), LR 31:2765 (November 2005), LR 33:2599 (December 2007), LR 38:3113 (December 2012).

Chapter 25. School Choice

§2501. Schools Requiring Choice

A. An LEA must develop a school choice policy for schools that are academically unacceptable.

A.1. - B. Repealed.

C. Beginning with the 2003-04 school year, an LEA shall notify parents of their school choice options not later than the first day of the school year for the schools that must offer choice.

1. An LEA must offer more than one choice to eligible students, if more than one school is eligible to receive students.

2. The LEA must take into account the parents' preferences among the choices offered, or the LEA may allow parents to make the final decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2749 (December 2003), amended LR 33:2599 (December 2007), LR 38:3113 (December 2012).

§2503. Student Eligibility

A. An LEA must offer choice to all students in an eligible school until the school is no longer identified as AUS except:

1. if an eligible student exercises the option to transfer to another public school, an LEA must permit the student to remain in that school until he or she has completed the highest grade in the school and shall provide transportation to the student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2749 (December 2003), amended LR 33:2599 (December 2007), LR 38:3113 (December 2012).

§2507. School Choice Policy

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2750 (December 2003), repealed LR 38:3113 (December 2012).

Chapter 29. Progress Report

§2901. State Annual Reporting

A. The SBESE shall report annually on the state's progress in reaching Louisiana's 2014 goal. The Louisiana Department of Education shall publish individual school reports to provide information on every school's performance. The school reports shall include the following information: school performance scores, percent proficient scores, and school progress in reaching growth targets. The LDE shall report subgroup performance to schools for the following subgroups:

1. African American;
2. American Indian/Alaskan Native;
3. Asian;
4. Hispanic;
5. white;
6. two or more races;
7. economically disadvantaged;
8. limited English proficient;
9. students with disabilities; and
10. all students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2751 (December 2003), amended LR 38:3113 (December 2012).

Chapter 31. Data Correction and Appeals/Waivers Procedure

§3101. Appeals/Waivers and Data Certification Processes

A. - A.1. ...

a. The LDE shall provide a period (or periods) of not less than 30 calendar days for final review, correction, and verification of accountability data.

b. All cohort graduation data must be corrected during the year following its collection.

c. The LDE will provide training to district level staff on an annual basis.

2. All data correction must occur during the designated data certification period.

3. Each LEA must collect supporting documentation for every data element that is corrected and maintain the documentation on file for at least seven years.

4. Each school district shall create and implement a district data certification procedure that requires the site-based administrator at each accountable school to review all accountability data during the data certification period.

B. - C.1. ...

2. The LDE shall review appeal/waiver requests and make recommendations to the SBESE during first regularly scheduled BESE sessions following the close of the appeal/waiver period. Within this interval, the LDE shall notify LEAs of its recommendations and allow them to

respond in writing. The LDE's recommendations and LEA responses will be forwarded to SBESE for final disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2751 (December 2003), amended LR 30:1620 (August 2004), repromulgated LR 30:1996 (September 2004), amended LR 30:2257 (October 2004), LR 31:2422 (October 2005), LR 35:2313 (November 2009), LR 38:3113 (December 2012).

§3105. General Guidelines—Parent/School-Level Requests

A. Parents or individual schools seeking an appeal or waiver on issues relating to Louisiana's District and School Accountability System shall file their requests, regardless of the type, through the local superintendent, charter school leader, or appointed representative as authorized by the local governing board of education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2752 (December 2003), amended LR 35:2314 (November 2009), LR 38:3114 (December 2012).

§3107. General Guidelines—Local Board of Education-Level Requests

A. The local superintendent, charter school leader, or official representative of each local governing board of education shall complete the LDE's appeals/waivers request form and provide supporting documentation to the Division of Assessments and Accountability no later than 15 working days after the official release of the fall accountability results.

B. ...

1. Requests concerning either the inclusion or exclusion of special education student scores in accountability calculations, except as outlined in Bulletin 111, shall not be considered by the LDE.

C. Supporting documentation for appeal/waiver requests should clearly outline the unforeseen and unusual factors that generate the requests. The local school system shall be responsible for supplying the LDE with information necessary for recalculating accountability components per applicable policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2752 (December 2003), amended LR 30:2258 (October 2004), LR 31:1516 (July 2005), LR 35:2314 (November 2009), LR 38:3114 (December 2012).

§3109. Criteria for Appeal

A. LEA superintendents or charter school leaders shall notify the LDE in writing of any changes to existing school configurations and newly opened schools no later than the 15 day appeal/waiver window during the first year of the reconfiguration and school opening. All school closures must be reported at the end of the schools' last academic year of operation.

B. LEAs may petition the SBESE in instances not addressed by policy or in instances when the policy is unclear.

C. An appeal shall be filed by the LEA in order to receive monetary rewards for any eligible closed school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2752 (December 2003), amended LR30:1620 (August 2004), repromulgated LR 30:1997 (September 2004), amended LR 31:1517 (July 2005), LR 31:2423 (October 2005), LR 35:2314 (November 2009), LR 38:3114 (December 2012).

§3111. Criteria for Waiver

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2752 (December 2003), amended LR 31:1517 (July 2005), LR 31:2423 (October 2005), LR 35:2315 (November 2009), repealed LR 38:3114 (December 2012).

Chapter 33. New Schools and/or Significantly Reconfigured Schools

§3301. Inclusion of New Schools

A. - B. ...

C. New K-8 schools (in existing LEAs) with one year of test data shall be included in accountability. For dropout/credit accumulation data, the district average for elementary schools will be used.

D. The new high school in an existing LEA shall enter accountability using its first year of assessment data.

1. This adjusted assessment index shall be used as a first year SPS to assign letter grades.

2. The graduation index calculated from the school's first graduating class shall be included as a SPS indicator.

E. Schools with the same first three digits of their six digit site codes are in the same district/LEA when district averages must be used for accountability purposes.

F. Schools that do not align with the patterns described in this section will be included in accountability as soon as the required data is available.

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 31:2765 (November 2005), LR 33:2599 (December 2007), LR 36:1992 (September 2010), LR 37:3201 (November 2011), LR 38:3114 (December 2012).

§3303. Reconfigured Schools

A. - E. ...

F. A district with a K-8 school with a greater than 50 percent change in student enrollment, excluding expected grade progression, may request that the school receive a SPS using the first year of assessment data under the new configuration and a district average for dropout/credit accumulation data.

G. ...

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 31:2765 (November 2005), LR 33:2600 (December 2007), LR 36:1993 (September 2010), LR 37:3201 (November 2011), LR 38:3114 (December 2012).

Chapter 37. Inclusion of Lab Schools and Charter Schools

§3701. Special Consideration of Lab and Charter Schools

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2754 (December 2003), amended LR 33:2600 (December 2007), LR 36:1993 (September 2010), repealed LR 38:3115 (December 2012).

Chapter 39. Inclusion of Students with Disabilities

§3901. Assessment of Students with Disabilities

A. All students, including those with disabilities, shall participate in Louisiana's testing program. The scores of all students who are eligible to take the LEAP, iLEAP, EOC assessments, ACT, PLAN, EXPLORE, LAA 1, or LAA 2 shall be included in the calculation of the SPS. Most students with disabilities shall take the assessments with accommodations, if required by their individualized education program (IEP).

1. Only students with significant cognitive disabilities are eligible to participate in LEAP Alternate Assessment Level 1 (LAA 1) as defined by the LEAP Alternate Assessment Level 1 Participation Criteria.

2. Students with disabilities in grades 4 through 11, who are functioning significantly below enrolled grade level are eligible to participate in LEAP Alternate Assessment Level 2 (LAA 2) as defined by the LEAP Alternate Assessment Level 2 Participation Criteria. However, LAA 2 assessments will be phased out and no longer administered by 2014-15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2754 (December 2003), amended LR 31:2763 (November 2005), LR 36:1994 (September 2010), LR 38:3115 (December 2012).

§3905. Inclusion of Alternate Assessment Results

A. All SPS shall include LAA1 scores.

B. Each LAA 1 exam will be assigned one of three performance levels (exceeds standard, meets standard, working toward standard) and each performance level will be assigned points for use in assessment index calculations as follows.

LAA 1 Performance Level	Assessment Points
Exceeds Standard	150
Meets Standard	100
Working Toward Standard	0

1. - 2. ...

C. LAA 2 shall be given in grades 4-11.

1. Each LAA 2 exam will be assigned one of four performance levels (basic, approaching basic, foundational, and pre-foundational) and each performance level will be assigned points for use in assessment index calculations as follows.

LAA 2 Performance Level	Assessment Points
Basic	150
Approaching Basic	100
Foundational	0
Pre-Foundational	0

C.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2754 (December 2003), amended LR 30:767 (April 2004), LR 31:2763 (November 2005), LR 33:254 (February 2007), LR 35:2031 (October 2008), LR 35:640 (April 2009), LR 35:641 (April 2009), LR 38:3115 (December 2012).

Chapter 40. Definitions Related to English Proficiency

§4001. Proficient in English

A. - A.1.a. ...

b. at composite level V on ELDA and at grade-level/benchmark/low-risk on a standardized reading assessment, such as DIBELS Next.

2. For grades 3-8:

a. composite level V on ELDA; or, in the same year;

b. at composite level 4 IV on ELDA and at proficient on the ELA or English language arts state content assessment.

3. For grades 9-12:

a. composite level V on the ELDA: or, in the same year;

b. at composite level IV on the ELDA and at proficient on ELA or English state content assessment in the most recent academic year.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:767 (April 2004), amended LR 33:254 (February 2007), LR 34:2552 (December 2008), LR 36:2243 (October 2010), LR 38:3115 (December 2012).

Chapter 41. Data Collection and Data Verification

§4101. Valid Data Considerations

A. *Unusual Data Result (UDR)*—any CRT, NRT, attendance, dropout/credit accumulation, and graduation data that exceeds a parameter or a range of parameters, which shall be determined by the LDE and approved by the SBESE.

1. *Irregular Data*—any data, which appears to contradict results, which are otherwise expected; unrealistic information; or data generated as a result of defective data collection or processing.

B. - D. ...

1. For example, if four students in fall 2011 are coded as "out-of-state" transfers, it is determined in August 2012 that no documentation exists to support this exit code, and the students are not found enrolled in another Louisiana school; these four students will be changed to dropouts and counted as such in the 2012 accountability results, and if applicable, in the appropriate cohort for any graduation index calculations beginning in 2013.

D.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2754 (December 2003), amended LR 30:2446 (November 2004), LR 32:1028 (June 2006), LR 38:3115 (December 2012).

§4103. NRT and CRT Data

A. - A.2.

a. if the test data are determined to be inaccurate, invalid, and/or undocumented the LDE shall void or correct the data as described in §4101;

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2755 (December 2003), amended LR 32:1029 (June 2006), LR 38:3115 (December 2012).

§4104. Dropout/Exit Data

A. - A.3. ...

B. If there is insufficient documentation to validate the use of any student exit codes, the LDE shall void or correct the data as described in §4101.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1029 (June 2006), amended LR 38:3116 (December 2012).

Chapter 43. District Accountability

§4301. Inclusion of All Districts

A. - C.2. ...

D. Subgroup Component. District AYP shall be determined by evaluating the aggregate performance of subgroups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2755 (December 2003), amended LR 30:1446 (July 2004), LR 32:543 (April 2006), LR 37:2119 (July 2011), LR 38:3116 (December 2012).

§4303. Indicator 1—Summer School

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2755 (December 2003), amended LR 31:1256 (July 2005), repealed LR 38:3116 (December 2012).

§4305. Indicator 2—The Change in SPS for All Schools Relative to Growth Targets

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2756 (December 2003), repealed LR 38:3116 (December 2012).

§4307. Indicator 3—The Change in LEAP 21 First-Time Passing Rate from One Year to the Next

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2756 (December 2003), amended LR 31:913 (April 2005), repealed LR 38:3116 (December 2012).

§4309. Indicator 4—Classes Taught by Certified Teachers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2756 (December 2003), amended LR 30:1447 (July 2004), repealed LR 38:3116 (December 2012).

§4311. District Letter Grades

A. The Louisiana Department of Education shall report district scores and labels on every school district. Districts shall be assigned a district letter grade using their district performance score as follows.

Letter Grade	Scale
A	100.0-150.0
B	85.0-99.9
C	70.0-84.9
D	50.0-69.9
F	0-49.9

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:2120 (July 2011), amended LR 38:3116 (December 2012).

§4313. Corrective Actions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 31:424 (February 2005), LR 31:635 (March 2005), LR 31:1256 (July 2005), LR 33:1334 (July 2007), LR 33:1612 (August 2007), LR 33:2032 (October 2007), LR 34:429 (March 2008), LR 37:2120 (July 2011), LR 37:3203 (November 2011), repealed LR 38:3116 (December 2012).

§4315. Progress Report

A. The Louisiana Department of Education shall publish a district accountability report. The report shall contain the labels for the DPS. The report shall also contain the percent poverty, poverty ranking, and percentage of students enrolled in public education for the district, as well as data from the subgroup component.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:1449 (July 2004), LR 33:635 (April 2007), LR 38:3116 (December 2012).

Chapter 45. Disaster Considerations for School and District Accountability

§4509. Assessment Index Calculations with Displaced Students for Limited Impact Schools

A. When student mobility occurs prior to October 1 of a given academic year as a result of a disaster, the data collected during that academic year for calculating the assessment index (for use in the SPS) shall be evaluated in two ways:

1. - 2. ...

B. Letter grades shall be assigned and SPS reported using the lower of the two assessment indices, except:

1. when using the higher of the two prevents a school from being labeled academically unacceptable, the higher assessment index shall be used.

RULE

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools (LAC 28:CXXXIX. 307, 503, 512, 513, 515, 701, 1101, 1301, 1303, 1502, 1503, 1701, 1903, 2501, 2705, 2709, 2901, and 2903)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 126—Charter Schools*: §307. Local School Board Duties, §503. Eligibility to Apply for a Type 2 Charter School, §512. Application Process for Locally Authorized Charter Schools, §513. Stages of Application Cycle for BESE-Authorized Charter Schools, §515. Charter School Application Components, §701. Charter School Contract with BESE, §1101. Charter School Evaluation, §1301. Initial Charter, §1303. Extension Review, §1502. BESE Processes for Charter Renewal, §1503. Charter Renewal Process and Timeline, §1701. Reasons for Revocation, §1903. Material Amendments for BESE-Authorized Charter Schools, §2501. Qualified and Competent Business Professional, §2705. Admission Requirements, §2709. Enrollment of Students, Lottery, and Waitlist, and §2901. Employment of Staff. The policy revision will ensure alignment with Act 2 of the 2012 legislative session.

Title 28

EDUCATION

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 3. Charter School Authorizers

§307. Local School Board Duties

A. - A.4. ...

5. if requested by a charter school, provide transportation services to a charter school student pursuant to R.S. 17:158.

a. The charter school shall reimburse the local school board for the actual cost of providing such transportation unless an amount less than the actual cost is agreed upon by both parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3982, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1359 (July 2008), amended LR 37:868 (March 2011), LR 38:3117 (December 2012).

Chapter 5. Charter School Application and Approval Process

§503. Eligibility to Apply for a Type 2 Charter School

A. - A.4. ...

5. except as provided in Subsection B or C of this Section, has submitted a proposal for a Type 1 or Type 3 charter school to the local school board in whose jurisdiction the charter school is proposed to be located which:

5.a. - 6. ...

B. Applicants applying to operate a charter school which is to be located in a local school system in academic crisis are not required to submit a Type 1 charter application to such local school system and may submit a proposal for a Type 2 charter school directly to BESE.

C. The lower of the two assessment indices shall be used the following academic year in the SPS for reporting and assigning letter grades, except:

1. when using the higher of the two prevents a school from being labeled academically unacceptable, the higher assessment index shall be used.

D. If large numbers of displaced students impact a school's performance due to intra-district transfers, the district may appeal during the established appeal/waiver period following the official fall release of accountability results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1413 (August 2006), amended LR 37:2120 (July 2011), LR 38:3116 (December 2012).

§4527. Disaster Considerations for the School and District Subgroup Component

A.1. - A.2. ...

B. For the subgroup component and for all schools not excluded in Subsection A (above), displaced students shall comprise a separate subgroup and be excluded from all other subgroups.

1. - 2.a. ...

3. Due to the one year lag in attendance and dropout/graduation data, and as required by the U.S. Department of Education, the displaced students subgroup attendance and dropout/graduation data shall be used in the appropriate subgroups, not as displaced students. District should make extra effort during the clean-up period to verify that any exit and attendance data is accurate.

4. All students in the displaced students subgroup that did not score proficient in ELA and/or math at the spring test administration must receive remediation in the following academic year.

5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1414 (August 2006), amended LR 32:2035 (November 2006), LR 33:254 (February 2007), LR 38:3117 (December 2012).

Chapter 51. Distinguished Educator Program

§5101. Definition of a Distinguished Educator

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:1770 (August 2010), repealed LR 38:3117 (December 2012).

§5103. Role of the Distinguished Educator

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:1770 (August 2010), repealed LR 38:3117 (December 2012).

Heather Cope
Executive Director

C. If the local school system in which a charter group intends to apply to operate a Type 1 or Type 3 charter school has received a letter grade designation of “D” or “F” or any variation thereof, then a proposal for a Type 2 charter school may be made to the state board.

D. The eligibility criteria set forth in this section shall be the minimum criteria necessary to apply for a Type 2 charter, but shall in no way limit the information required in §513.C., Eligibility Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3981, R.S. 17:3982, R.S. 17:3983, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1360 (July 2008), amended LR 37:868 (March 2011), LR 38:3117 (December 2012).

§512. Application Process for Locally Authorized Charter Schools

A. - A.2. ...

3. Prior to the consideration of a charter school proposal by any local school board, each charter applicant shall be afforded the opportunity to provide a written response to the independent evaluation of the application. Such response shall be available to the independent reviewers for consideration prior to issuing a final recommendation to the chartering authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:869 (March 2011), amended LR 38:750 (March 2012), LR 38:3118 (December 2012).

§513. Stages of Application Cycle for BESE- Authorized Charter Schools

A. - G. ...

H. Prior to the consideration of a charter school proposal by BESE, each charter applicant shall be afforded the opportunity to provide a written response to the independent evaluation of the application. Such response shall be available to the independent reviewers for consideration prior to issuing a final recommendation to BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1361 (July 2008), amended LR 37:869 (March 2011), LR 38:750 (March 2012), LR 38:1392 (June 2012), amended LR 38:3118 (December 2012).

§515. Charter School Application Components

A. ...

B. A framework of all BESE requests for applications, which shall include an assurance that all required sections are or will be included in the final request for applications, must be submitted to the state board by the Department prior to the release of the request. In cases of a Type 5 charter operator voluntarily relinquishing its charter, the state superintendent of education may issue an emergency request for applications and BESE shall be notified of such action within two business days.

C. - H.11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1362 (July 2008), amended LR 37:869 (March 2011), LR 37:2383 (August 2011), LR

38:38 (January 2012), LR 38:750 (March 2012), repromulgated LR 38:1392 (June 2012), LR 38:1583 (July 2012), repromulgated LR 38:1393 (June 2012), amended LR 38:3118 (December 2012).

Chapter 7. Charter School Performance Contract §701. Charter School Contract with BESE

A. - D.2. ...

E. Contracts between charter operators and management organizations may be reviewed by the Department to ensure compliance with the provisions of paragraph D of this section. Any contracts entered into between charter operators for the provision of services shall require an assurance statement signed by the presidents of the charter operators' board of directors to be submitted to the Department. The assurance statement shall indicate that both parties have complied with the provisions of paragraph D of this section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:2385 (August 2011), LR 38:751 (March 2012), LR 38:3118 (December 2012).

Chapter 11. Ongoing Review of Charter Schools §1101. Charter School Evaluation

A. - D.7.a.i.(d). ...

b. Repealed.

D.8. -F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:871 (March 2011), repromulgated LR 37:1124 (April 2011), amended LR 37:2385 (August 2011), LR 38:751 (March 2012), repromulgated LR 38:1393 (June 2012), amended LR 38:3118 (December 2012).

Chapter 13. Charter Term

§1301. Initial Charter

A. An approved charter shall be valid for an initial term of four years.

B. A charter operator shall have a right to operate a charter school during its initial four year term unless the charter is revoked or surrendered.

C. A charter operator's right to operate a charter school shall cease upon the expiration of the initial four year term, unless the charter operator is granted an extension to operate for a fifth year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1366 (July 2008), amended LR 38:3118 (December 2012).

§1303. Extension Review

A. Each charter school shall be reviewed by its chartering authority after the completion of the third year of operation. If the charter school is achieving its stated goals and objectives pursuant to its approved charter, then the chartering authority shall extend the duration of the charter for a maximum initial term of five years. If the charter school is not achieving its stated goals and objectives pursuant to its approved charter, then the chartering authority shall not extend the duration of the charter, and the charter shall expire at the end of the school's fourth year.

B. Each Type 2, Type 4, and Type 5 charter school's Extension Review shall be used to determine if the school will receive a one-year extension, as follows.

1. Contract Extension

a. Each charter school shall be reviewed based on academic, financial, and legal and contractual performance data collected by the Office of Parental Options or the recovery school district. If such performance data reveal that the charter school is achieving the following goals and objectives, the board shall extend the duration of the charter for a maximum initial term of five years.

1.a.i. - 1.a.iii.c. ...

b. Repealed.

2. - 2.a.i. ...

ii. allow the charter to expire at the end of the school's fourth year of operation

3. Probationary Extension

a. A charter school granted a probationary extension shall:

a.i. - b.i. ...

ii. If, upon consideration for initial renewal, a charter school placed on probationary extension has not resolved all of the issues related to its probation status, the State Superintendent may recommend that the board deny the charter school's request for renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008), amended LR 37:2387 (August 2011), LR 38:751 (March 2012), repromulgated LR 38:1393 (June 2012), amended LR 38:3118 (December 2012).

Chapter 15. Charter Renewal

§1502. BESE Processes for Charter Renewal

A. For BESE-authorized charters, the State Superintendent shall make a recommendation to BESE as to whether a charter renewal application should be approved.

B. ...

C. The process for renewing a school charter shall be based on a thorough review of the charter school's operations, student academic performance, and compliance with charter requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008), amended LR 37:871 (March 2011), LR 38:3119 (December 2012).

§1503. Charter Renewal Process and Timeline

A. - B.2. ...

* * *

3. A charter school in its initial term where fewer than 50 percent of its enrolled grades are testable under state accountability will be eligible for a renewal term of three years.

4. A BESE-authorized charter school receiving an academically unacceptable performance label based on performance on the state's assessment and accountability program based on year four test data (or the year prior to the submission of a renewal application for subsequent renewals) will not be eligible for renewal, unless one of these conditions are met:

a. a charter school that by contract serves a unique student population where an alternate evaluation tool has

been established between the charter operator and the Board may be renewed for a term not to exceed five years;

b. a charter school in its initial term that is in AUS status, but which met its growth target at the end of year four or which has a growth performance score of above AUS may be renewed for a term not to exceed three years;

c. a charter school in its initial term that is in AUS status, but where fewer than 30 percent of its enrolled grades are testable under state accountability, may be renewed for a term not to exceed three years;

d. if, in the superintendent's judgment, the non-renewal of an AUS status charter school in its initial charter term would likely require many students to attend lower performing schools, and the superintendent recommends its renewal, the charter may be renewed for a term not to exceed three years. Prior to recommending such renewal, the superintendent must demonstrate that efforts to find a new, high-quality operator for the school were unsuccessful;

e. the school has made 20 points of assessment index growth from its pre-assessment index.

C. - C.3. ...

4. BESE Standards for Financial Performance. BESE may reduce the renewal term by a year for any charter school that has been found to require "monitoring" or "dialogue" as part of their most recent fiscal risk assessment. No term shall be less than three years.

C.5. - E. ...

1. The department will establish a process by which each charter school shall be required to indicate whether it will be seeking initial renewal.

2. Not later than January of the charter school's fifth year, the state superintendent of education will make a recommendation to BESE about the disposition of any school seeking renewal. The basis for the recommendation will be the charter school's student, financial, and legal and contractual performance during years one through four of the charter contract.

3. - 3.c. ...

4. The State Superintendent of Education may recommend a corrective action plan as a condition for renewal for any charter school that qualifies for renewal, but fails to fully meet any performance standards. The board may make the execution of the renewal charter contract contingent upon the completion of all or some of the actions required by the corrective action plan. The board may also direct the department to include all or some of the actions required by the corrective action plan to be incorporated into the charter contract so that failure to complete corrective actions may serve as grounds for revocation.

E.5. - F. ...

1. The department will establish a process by which each charter school shall be required to indicate whether it will be seeking a subsequent renewal.

2. Not later than January of the charter school's final contract year, the state superintendent of education will make a recommendation to BESE about the disposition of any school seeking renewal. The basis for the recommendation will be the charter school's student, financial, legal and contractual performance during its current charter contract.

3. Based on the school's academic, financial, and legal and contractual performance over the current charter

contract term, the superintendent may recommend one of the following actions:

a. renewal for the maximum term identified in the School Performance Labels and Maximum Charter Renewal Terms table, with the addition of one year to the charter term for every year that the school's growth target was met, not to exceed a maximum term of ten years;

b. renewal for a shorter term (based on deficiencies in financial and/or legal/contract performance); or

c. non-renewal.

4. A recommendation for non-renewal may also include a recommendation that a new charter provider operate the school.

G - G.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:479 (March 2010), amended LR 37:871 (March 2011), LR 37:2388 (August 2011), LR 38:752 (March 2012), repromulgated LR 38:1394 (June 2012), amended LR 38:3119 (December 2012).

Chapter 17. Revocation

§1701. Reasons for Revocation

A. - B.1. ...

2. any other reasons for revocation listed as such in a charter school's charter contract.

3. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1368 (July 2008), amended LR 37:872 (March 2011), LR 38:3120 (December 2012).

Chapter 19. Amendments to BESE-Authorized Charters

§1903. Material Amendments for BESE-Authorized Charter Schools

A. - A.3. ...

4. changes in student enrollment which result in enrollment in excess of 120 percent of the total number of students set forth in the school's charter, applicable;

a. The Superintendent of the Recovery School District is authorized to amend the charter of any Type 5 charter school participating in a unified enrollment system administered by the Recovery School District for the purpose of adjusting student enrollment limitations.

A.5 - E.3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1369 (July 2008), amended LR 37:873 (March 2011), LR 37:2389 (August 2011), LR 38:752 (March 2012), repromulgated LR 38:1394 (June 2012), amended LR 38:3120 (December 2012).

Chapter 25. Charter School Fiscal Responsibilities

§2501. Qualified and Competent Business Professional

A. Each Type 2 and Type 5 charter operator shall retain a qualified and competent business professional who shall produce all financial and accounting information and reporting required by its charter contract, state law, and BESE policy, except as otherwise provided herein.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3991, and R.S. 17:3995.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1373 (July 2008), amended LR 38:3120 (December 2012).

Chapter 27. Charter School Recruitment and Enrollment

§2705. Admission Requirements

A. ...

B. Admission requirements imposed by a school must be set forth in the charter school's approved charter and shall be specific and shall include a system for admission decisions which precludes exclusion of pupils based on race, religion, gender, ethnicity, national origin, intelligence level as ascertained by an intelligence quotient examination, or identification as a child with an exceptionality as defined in R.S. 17:1942(B). Such admission requirements may include, however, specific requirements related to a school's mission such as auditions for schools with a performing arts mission or proficiency in a foreign language for schools with a language immersion mission. Any charter school which began operation prior to July 1, 2012, and which incorporated achievement of a certain academic record as part of its admissions requirements may continue to utilize such admission requirements. No charter school beginning operation on or after July 1, 2012 may incorporate the achievement of a certain academic record as part of its admission requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 37:875 (March 2011), LR 38:3120 (December 2012).

§2709. Enrollment of Students, Lottery, and Waitlist

A. - I. ...

J. Type 5 charter schools transferred to the recovery school district pursuant to R.S. 17:10.5 and R.S. 17:10.7 shall comply with any unified enrollment system established by the recovery school district for the parish or region where the charter school is located. Other charter schools located within parishes where the recovery school district has established a unified enrollment system may participate in the unified enrollment system upon approval by their charter boards. The recovery school district may create any policies and procedures to implement a unified enrollment system not prohibited by this chapter, and may conduct one or more central lotteries to enroll students at participating schools, and enroll students applying or requesting transfers after the application period has ended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 38:753 (March 2012), repromulgated LR 38:1395 (June 2012), amended LR 38:3120 (December 2012).

Chapter 29. Charter School Staff

§2901. Employment of Staff

A. Each charter operator may employ faculty and staff members as it deems necessary. Each member of the instructional staff of each charter school shall have at least a baccalaureate degree. For the purposes of this section, "instructional staff" refers to any individual teaching a course in a charter school for which he or she would otherwise be required to be certified under Bulletin 746,

except for those individuals who would otherwise be eligible for ancillary certification as defined in Bulletin 746.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) R.S. 17:3973, R.S. 17:3981, and R.S. 17:3997.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), amended LR 38:3120 (December 2012).

§2903. Certification

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), repealed LR 38:3121 (December 2012).

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1212#008

RULE

Board of Elementary and Secondary Education

Bulletin 129—The Recovery School District
Parent Petitions (LAC 28:CXLV.502)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 129—The Recovery School District: §502. Parent Petition*. The policy revision will create a parent petition process to transfer schools that have earned a letter grade of “D” or “F” to the Recovery School District as required by Act 2 of the 2012 Regular Legislative Session.

Title 28 EDUCATION

Part CXLV. Bulletin 129—The Recovery School District Chapter 5. Failed Schools

§502. Parent Petitions

A. Pursuant to R.S. 17:10.5, a public school that has received a letter grade of “D” or “F,” or any variation thereof, for three consecutive years shall be removed from the jurisdiction of the city, parish, or local public school board, or other public entity and transferred to the jurisdiction of the Recovery School District (RSD) if parents or legal guardians representing at least a majority of the students attending the school sign a petition requesting that the school be transferred to the RSD, and such transfer is approved by the State Board of Elementary and Secondary Education, in accordance with the requirements and procedures below. The effective date of transfer to the RSD shall be July 1st following the approval of such transfer.

B. Eligibility and Notification

1. The department shall make available on the LDE website information related to parent petitions, including, but not limited to, a list of schools eligible for the parent petition process, parent petition samples or forms, procedures and deadlines for completing and submitting parent petitions, and notification of receipt of parent petitions by the department.

2. On an annual basis, after completion of each year’s state accountability assessment cycle, the department shall release a list of schools for which the department will accept parent petitions for that year’s parent petition cycle. An eligible school is any public school that is not currently under the jurisdiction of the RSD and that has received a letter grade of “D” or “F,” or any variation thereof, for three consecutive years.

a. For the purposes of this section:

i. A 2010 school performance score (SPS) of 60.0 to 79.9 will equate to a “D” letter grade;

ii. A 2010 school performance score (SPS) below 60.0 will equate to an “F” letter grade.

3. With the release of the list of eligible schools, the department shall release a standard parent petition and an estimate of the minimum number of parent or legal guardian signatures required for each eligible school. The minimum number of required parent or legal guardian signatures will be 50 percent plus one signature of the total number of students attending the school. The estimated minimum number of required parent or legal guardian signatures shall be based on the official student enrollment count from October 1st of the previous school year. In cases where there has been a significant change in the number of students attending the school since that time, for example, due to a change in grade configuration at the school, the department will determine an estimated number to reflect these changes. The final minimum number of required parent or legal guardian signatures will be based on the official student enrollment count from October 1st of the current school year.

C. Completing Parent Petitions

1. The standard parent petition released by the department shall be used to complete parent petitions for eligible schools. No other form or type of parent petition will be accepted by the department. Signatures may not be collected prior to the date of the annual release of the list of eligible schools by the department.

2. Parent petitions may only be signed by a parent or legal guardian of a student currently attending the eligible school.

3. Each student may be signed for by his parents or legal guardians only once on any given petition, such that each student equals one signature.

4. The standard parent petition may request the following information to be completed by parents or legal guardians of students: printed name of student; relationship of signatory to student; printed name of signatory; signature of parent or legal guardian; date of signature; parent or legal guardian contact information; a consent statement for purposes of sharing the petition as a public record; and the identification of “lead petitioners” to assist and facilitate communication between the parents and legal guardians who have signed the petition and the department; and any other information deemed necessary by the department.

5. The standard petition shall also clearly state all rules and procedures for completing and submitting a parent petition.

D. Prohibited Practices

1. Parents or legal guardians shall be free from harassment, threats, and intimidation related to circulation of or signing a petition. No person shall knowingly, willfully, or intentionally:

a. intimidate, deceive, or misinform, directly or indirectly, any parent or legal guardian in matters concerning the circulation of or signing a petition;

b. intimidate a person by the use of violence, force, or threats with the intent to influence that person's decision to sign or not sign the parent petition, or to impede such person's ingress or egress from accessing the parent petition;

c. without lawful authority, obstruct, hinder, or delay any parent or legal guardian on his way to or while returning home from any gathering or information session related to the circulation of or signing a parent petition, or while returning home from such place.

2. No person shall give or offer to give, directly or indirectly, any money, or anything of apparent present or prospective value to any parent or legal guardian with the intent to influence the parent or legal guardian in relation to the circulation or signing of a parent petition.

3. No person shall:

a. sign the parent petition, knowing that he is not qualified, or influence or attempt to influence another to sign the parent petition, knowing such person to be unqualified to sign or the signature to be fraudulent;

b. forge the signature of another or sign the parent petition using an assumed or fictitious name; or

c. forge, alter, add to, deface, take, destroy, or remove from any parent or legal guardian a parent petition that such parent or legal guardian is attempting to circulate or sign.

4. Any signature determined by the department to have been made as a result of prohibited practices may be deemed invalid.

5. Any person harassing, threatening, or intimidating parents or legal guardians related to the circulation of signing a parent petition may be subject to criminal prosecution under the laws of this state, including, but not limited to R.S. 14:122.1, 14:285, or 14:329.1.

6. Employees of any public school or school district, or members or employees of any city, parish, or local public school board, or other public entity governing a public school shall not utilize school or district resources to support or oppose any effort by petitioning parents or legal guardians to gather signatures and submit a petition.

E. Submission of Petitions

1. Petitions must be submitted to the department, in accordance with the processes and procedures specified by the department, no later than ninety calendar days following the release of the list of eligible schools and the standard petition by the department.

2. Petitioners may not submit a petition until they reach or exceed the required minimum number of signatures specified by the department.

F. Review of Petitions

1. Upon timely receipt of a submitted parent petition, the department will review the petition to ensure that the petition has the minimum number of required signatures.

a. Only one signature per student will be counted.

b. Only original signatures will be counted. Photocopied signatures will not be counted.

2. If the department finds that the number of valid signatures is fewer than the minimum number of required signatures, parents or legal guardians shall have thirty calendar days, commencing with a date specified by the department, to resolve such discrepancies and collect the additional signatures.

3. Once the department has determined the parent petition has the minimum number of signatures required, the department shall post a notification on its website. The notification shall include information identifying the school that is the subject of the completed parent petition, procedures for requesting a copy of the parent petition through a public records request, and procedures and deadlines for challenging the validity of a signature on the parent petition. The department shall also send this information, via certified mail, to the superintendent and city, parish, or local public school board, or other public entity governing the school which is the subject of the parent petition on the same day the notification is published online.

4. The department shall create a signature review and verification process that meets the following requirements:

a. The signatures on the parent petition will be assumed valid unless challenged or there is reasonable doubt of their validity.

b. The department's website will clearly explain the procedures for challenging the validity of a signature on the parent petition.

c. The department shall accept challenges to the validity of signatures on a parent petition at a minimum, for 15 business days after publishing the online notification of the completed parent petition. The department shall respond to all public records requests for copies of the parent petition within three business days of receipt of the request.

d. The department shall determine acceptable challenges to the validity of a signature as follows:

i. Acceptable challenges to the validity of a signature shall include, but not be limited to: the student identified in the parent petition was not enrolled in the school on the date of the parent or legal guardian's signature; the person signing the petition is not the identified student's parent or legal guardian; the signature is a forgery; the signature was made as a result of harassment, threat, or intimidation; or the signature was made in exchange for a gift of, or offer to give, directly or indirectly, any money, or anything of apparent present or prospective value.

ii. Unacceptable challenges to the validity of a signature shall include, but not be limited to: incorrect dates on the parent petition; the name of student, parent, or legal guardian is misspelled, or does not match student, parent, or legal guardian records on file at the school; or a parent or legal guardian wishes to revoke their valid signature.

e. Notwithstanding the above, signatures shall not be discounted over technicalities if the clear intent of the parent or legal guardian was to support the petition.

f. If validity is challenged or doubted for a number of signatures that, if invalidated, would bring the number of signatures on the parent petition below the majority required,

the department shall review and verify the signatures within 45 calendar days.

g. The school and the city, parish, or other local public school board, or other public entity that is the subject of the parent petition shall provide assistance requested by the department for the purpose of verifying signatures.

5. The department shall maintain records regarding the contents and outcomes of the petition.

G. Outcome of Petitions

1. After the department has verified signatures, as necessary, and has determined that the number of valid signatures on the parent petition meets the minimum number of required signatures, authority is hereby delegated to the state superintendent to approve the transfer of the school to the jurisdiction of the RSD no later than March 31st preceding the effective date of the transfer. Approval of such transfer shall be reported to the State Board of Elementary and Secondary Education (BESE) at the next scheduled BESE meeting.

a. The state superintendent shall approve transfers to the Recovery School District under this section for all parent petitions that have been completed successfully and appropriately, in accordance with the policies and procedures in this section, subject to the capacity of the RSD and availability of funds and resources necessary to complete the transfer and manage or oversee the operation of the school, as determined by the state superintendent.

b. BESE reserves the right to limit the number of schools that may be approved by the state superintendent each year for transfer to the RSD under this section.

c. The department shall provide notice of the approval of the transfer to the RSD by posting on the department's website, sending written notice via certified mail to the city, parish, or local school board, or other public entity from which the school shall be transferred, and contacting the lead petitioners identified on the parent petition. The date of such notification on the department's website shall serve as the date the transfer to the RSD is officially approved.

2. For each parent petition received by the department, the state superintendent shall submit a written report to BESE which shall include, at a minimum, the following: dates the petition was received by the department; number of total signatures on the parent petition; number of valid signatures on the parent petition; summary of the department's signature verification process, specific actions taken by the department in response to challenges made to signatures on the petition, as applicable, and whether the state superintendent approved the transfer of the school to the jurisdiction of the RSD.

3. The president of BESE may appoint a subcommittee of BESE members to serve in an advisory capacity and review the parent petition and report to ensure that the petition was completed successfully and that the procedures outlined in this section have been properly followed. The membership of the subcommittee shall include the BESE member representing the district in which the school that is the subject of the parent petition is located.

H. Transfer to the Recovery School District

1. A school transferred to the jurisdiction of the RSD pursuant to this section may be directly operated by the RSD or operated as a Type 5 charter school by an approved charter operator.

2. Upon transfer of a school to the RSD under this section, the RSD shall engage in community outreach with parents, legal guardians, and members of the community in which the school is located to consult regarding school model and other operational decisions.

I. Student Enrollment

1. The city, parish, local public school board, or other public entity from which a school is transferred to the RSD under this section shall create enrollment policies allowing students who choose not to remain enrolled at the school as a result of the school's transfer to the RSD to transfer to another school operated by the city, parish, local public school board, or other public entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7; R.S. 17.10.5

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3121 (December 2012).

Heather Cope
Executive Director

1212#007

RULE

Board of Elementary and Secondary Education

Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel—Measures of Growth in Student Learning—Value-Added Model (LAC 28:CXLVII.303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel*: §303. Measures of Growth in Student Learning-Value-Added Model. The policy revision will require that the value-added model not be used in any cases where there are fewer than 10 students with value-added results assigned to an educator.

Title 28

EDUCATION

Part CXLVII. Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel

Chapter 3. Personnel Evaluations

§303. Measures of Growth in Student Learning—Value-Added Model

A. ...

B. The value-added model shall be applied to grades and subjects that participate in state-wide standardized tests and for which appropriate prior testing data is available. The value-added model shall not be applied for the purposes of evaluation in any cases in which there are fewer than 10 students with value-added results assigned to an educator.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.1, R.S. 17:391.10, R.S. 17:3881-3886, R.S. 17:3901-3904, and R.S. 17:3997.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1216 (May 2012), amended LR 38:3123 (December 2012).

Heather Cope
Executive Director

1212#003

RULE

Board of Elementary and Secondary Education

Bulletin 132—Louisiana Course Choice Program
(LAC 28:CLI.101, 103, 105, 301, 303, 501,
503, 505, 507, 701, 703, 901, 1101, and 1301)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has adopted *Bulletin 132—Louisiana Course Choice Program*: §101. Purpose, Scope, and Effect, §103. Definitions, §105. Purpose of Content, §301. Course Choice Program Authorization, §303. BESE Duties Relating to Course Choice Program, §501. General Provisions, §503. Course Provider Curriculum, §505. Course Provider Instructional Staff, §507. Online Course Providers, §701. Local Education Authority (LEA) Duties, §703. Local Education Authority Procedures for Student Enrollment, §901. Parental/Guardian Duties, §1101. Program Funding, and §1301. Provider Evaluation. The policy provides rules to govern the implementation of the Louisiana Course Choice Program in accordance with R.S. 17:4002.1-4002.6. The policy establishes the requirements for participating in the Course Choice Program, the principles and requirements of authorizing a course provider, the student funding structure, and the implementation of and enactment of regulatory requirements that must be met in the operation of the Course Choice Program. The policy establishes procedures for monitoring and evaluating course providers, and amending, renewing, and revoking course providers approved by the Board of Elementary and Secondary Education.

Title 28

EDUCATION

Part CLI. Bulletin 132—Louisiana

Course Choice Program

Chapter 1. General Provisions

§101. Purpose, Scope, and Effect

A. The purpose of this bulletin is to provide rules to govern the implementation of R.S. 17:4002 et seq., the "course providers" (hereafter, the "Course Choice Program").

B. This bulletin is established to set forth the requirements for participating in the Course Choice Program, the principles and requirements of authorizing a course provider, the student funding structure, and the implementation of and enactment of regulatory requirements that must be met in the operation of the Course Choice Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17.4002.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3124 (December 2012).

§103. Definitions

Course Provider—an entity that offers individual courses in person or online, including but not limited to online or virtual education providers, postsecondary education institutions, including any postsecondary institution under the management of the Board of Supervisors of Community and Technical Colleges, educational entrepreneurs (teachers or groups of teachers) with proven track records of successful instruction, and business and industry that offer vocational or technical course work in their fields, and have been authorized to provide such courses by the state board.

Eligible Funded Student—any student who resides in Louisiana and meets one of the following criteria:

1. is attending a public school that received a letter grade of "C," "D," or "F," or any variation thereof, according to the Louisiana School and District Accountability System;
2. is attending a public school that does not offer the course in which the student desires to enroll, as determined by the state board; or
3. is a scholarship recipient pursuant to R.S. 17:4013 and attends a participating school in accordance with R.S. 17:4011-4025.

Eligible Participating Student—any student who resides in Louisiana and meets one of the following criteria:

1. is attending a public school that has received a letter grade of "A" or "B," or any variation thereof, according to the School and District Accountability system;
2. is attending a nonpublic school that is approved, provisionally approved, or probationally approved by the state board pursuant to R.S. 17:11; or
3. is enrolled in a home study program approved by the state board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S.17.4002.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3124 (December 2012).

§105. Purpose of Course Choice Program

A. The Course Choice Program was enacted by the Louisiana Legislature so that all Louisiana school children have access to the type and format of education that best meets the needs of the individual student. Each student has different needs that merit a variety of course choices on the individual student level, and that the state has the right, responsibility, duty and obligation to accomplish the objective of a quality, individualized education for all Louisiana children.

B. Course providers can offer a quality, individualized education to students, and it is in the public interest to offer students the means of accessing the educational opportunities offered by course providers by providing students with the public funds allocated to them from local and state sources to enroll in such courses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17.4002.2-4002.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3124 (December 2012).

Chapter 3. Course Choice Authorizers

§301. Course Choice Program Authorization

A. The state Board of Elementary and Secondary Education (BESE) shall authorize the operation and eligibility of providers to participate in the Course Choice Program. BESE shall determine:

1. whether each proposed course provider complies with the applicable law and rules;
2. whether a proposal is valid, complete, financially well-structured, and educationally sound;
3. whether a proposal provides a plan for collecting data in accordance with R.S. 17:3911; and
4. whether a proposal offers potential for increased learning opportunities and access to quality education for all Louisiana students.

B. BESE shall provide for an independent evaluation of course choice provider proposals by a third party with educational, organizational, legal, and financial expertise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 4002.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3125 (December 2012).

§303. BESE Duties Relating to Course Choice Program

A. BESE, as the authorizer of the Course Choice Program, shall implement a comprehensive application for course providers that will include, at a minimum, the following:

1. a plan for the administration of state assessments as required by the school and district accountability system, except to students as defined by R.S. 17:4002.3(2)(c);
2. the parishes or local education authority (LEA) in which the course provider will operate;
3. proposed courses offered, alignment of the courses by the course provider with the requirements of R.S. 17:24.4, and the designated length of each course offered within a window established by the Department of Education;
4. alignment of the courses offered by the course provider with any type of approved Louisiana diploma, including the college and career diploma, the career diploma, and diplomas from approved nonpublic schools and home school programs;
 - a. BESE will focus the selection process on the following:
 - i. core academic subject offerings;
 - ii. career and technical education (CTE) course offerings, including internships and apprenticeships, that tie directly to current and future workforce needs of Louisiana as defined by the Louisiana Workforce Commission in its most recent jobs forecast and lead to industry-based certifications; and
 - iii. college credit course offerings (either Advanced Placement/IB credit or “dual enrollment” college credit);
5. alignment of CTE courses, offered by the course provider, to work-based learning required standards as outlined in Bulletin 741, LAC 28:CXV.3113;
6. assurances that the course provider shall, to the best of its ability, collaborate and coordinate with the LEA in which an eligible funded student or eligible participating student is enrolled full time;

B. BESE shall maintain a course catalogue for all courses offered by parish.

C. BESE shall provide for common course numbering of all courses listed in the course catalogue and for determining whether courses are in compliance with R.S. 17:24.4. For courses offered by postsecondary education institutions that are authorized course providers, the state board shall consult with the Board of Regents.

D. BESE shall provide for a reciprocal instructor certification process for instructors who reside in other states but who are employed by authorized course providers and teach virtual education courses to satisfy the state certification requirements pursuant to R.S. 17:7.1.

E. BESE shall monitor and evaluate the course provider in accordance with BESE-established performance expectations. Student achievement shall be the predominant criterion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 4002.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3125 (December 2012).

Chapter 5. Course Providers

§501. General Provisions

A. Any entity who wishes to become a course provider must apply through the course choice authorization process and adhere to all standards outlined in a signed agreement between the state board and the provider.

B. All course providers must be in compliance with all applicable state and federal laws, rules, and regulations in regards to the proposed curriculum, and have the ability to serve students with disabilities, students who are English language learners, students who are academically behind, and gifted students.

C. The characteristics of a quality course provider include:

1. understanding Louisiana’s standards for required course content (structure, materials, evaluation / accountability components, etc.) and reflecting this understanding in their application package and proposed course materials;
2. understanding and embracing Louisiana’s commitment to educate all its children, including special needs children, and reflecting this understanding by including special education components in their application packages and proposed course materials;
3. maintaining the financial strength and human capital depth to offer properly staffed and properly designed course offerings, making them available to the broadest possible cross-section of Louisiana students;
4. recognizing and addressing the varied educational challenges Louisiana faces, with course offerings that effectively address one or more of the Course Choice Program goals;
5. emphasizing a commitment to accountability through:
 - a. rigorous, clear and measurable standards for student achievement in each course;
 - b. effective and timely reporting on student performance levels;
 - c. utilizing standard state, regional or national academic assessment systems or industry certifications; and

d. clear standards for measuring and reporting on their own course performance;

6. maintaining a commitment to the long-term vision driving the Course Choice Program—preparing Louisiana’s students to obtain post-secondary degrees and high-quality, high-paying twenty-first century jobs.

D. All Course Choice Program providers must agree to and have a plan to service students with special needs through instruction, materials, and/or technology. All eligible participating students with an individual education plan (IEP) will be entitled to Special Education services through the school in which he/she is enrolled including, but not limited to, assisting course providers in implementing the accommodations within the IEP.

E. Students will be added and dropped as outlined in the student’s LEA pupil progression plan, or official policy.

F. All Course Choice Program providers will adhere to the uniform grading policy established in Bulletin 741, LAC 28: CXV.2302 for students enrolled in all grades K-12 for which letter grades are used. Business and industry providers will provide for credits for students seeking to obtain the career diploma.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 4002.2-4002.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3125 (December 2012).

§503. Course Provider Curriculum

A. All course providers shall:

1. support the state content standards, common core state standards, and CTE course guidelines as applicable;

2. supply course content that is designed to meet the following criteria:

a. based on current perspectives of learning theories and curriculum standards;

b. systematic in design, clearly written and revised based on student performance and feedback;

c. uses appropriate presentation methods, media and pedagogy;

d. engages students in a variety of learning activities based on various learning styles; and

e. accommodates individual differences, including student disabilities;

3. ensure that all course content complies with copyright fair use laws;

4. ensure all students enrolled in a course are provided the necessary course materials related to the course content by the provider;

5. ensure that all courses offered for dual enrollment post-secondary credit meet the standards and grade-level expectations of the high school course for which the student is receiving credit and meet the standards for college credit as established by the Louisiana Board of Regents;

6. ensure that middle school students who are taking high school courses for Carnegie credit meet the standards outline in Bulletin 741, LAC 28: CXV.2321, Carnegie Credit for Middle School Students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7, R.S. 17:24.4, and R.S. 17:4002.2-4002.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3126 (December 2012).

§505. Course Provider Instructional Staff

A. All course provider instructional staff must meet the minimum requirements in *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, or be in compliance with the reciprocal instructor certification policy for instructors who reside in other states but who are employed by authorized course providers to satisfy the state certification requirements pursuant to R.S. 17:7.1.

B. All instructional staff will deliver the courses as approved through the course authorization process and outlined in the approved RFA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7, R.S.17.1, and R.S. 17:4002.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3126 (December 2012).

§507. Online Course Providers

A. The online course provider will follow the International Association for K-12 Online Learning (iNACOL) *National Standards for Quality Online Courses*.

B. The course provider will ensure that all instructors are evaluated and delivering instruction in accordance with the iNACOL *National Standards for Quality Online Teaching*.

C. The online course provider will maintain a program that is in alignment with the International Association for K-12 Online Learning (iNACOL) *National Standards for Quality Online Programs*.

D. The provider must have a staff/instructor acceptable use policy for technology that complies with R.S. 17:3996(21).

E. The provider must provide an electronic communication policy that complies with the federal Child Internet Protection Act and R.S. 17:100.7, including information on internet safety practices and policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:4002.2-4002.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3126 (December 2012).

Chapter 7. Local Educational Authority Duties

§701. Local Educational Authority (LEA) Duties

A. Each LEA shall establish policies and procedures whereby for each student identified in R.S. 17:4002.3(2)(a) and (b) and (3)(a) the following shall apply.

1. Credits earned through the course provider shall appear on each such student’s official transcript and count fully towards the requirements of any approved Louisiana diploma.

2. Tests required pursuant to R.S. 17:24.4 shall be administered to each such student attending a public school.

3. All services to which each such student attending public school would be entitled if attending the school in which he is enrolled full time for all courses, including but not limited to special education services pursuant to the student’s individual education plan, shall be provided.

4. Each LEA that provides transportation for students within their jurisdiction shall also provide students participating in course choice transportation services within the same jurisdiction.

B. Each LEA shall make available to all students the course catalogue as provided by the state board during the annual course enrollment process for that LEA.

C. No LEA shall actively discourage, intimidate, or threaten an eligible funded student or an eligible participating student during the course enrollment process or at any time for that LEA.

D. The aggregate test scores of students identified in R.S. 17:4002.3(2)(a)-(b) and (3)(a) who are enrolled in a course shall be counted in the school performance score for the school in which the student is enrolled full time. The test scores shall be reported to and published by the state Department of Education for each course provider in an easy to understand format and on the department's website.

E. Each student identified in R.S. 17:4002.3(2)(a) and (b) and (3)(a) shall enroll in at least one course at the school in which he/she is enrolled full time.

F. A student can earn an amount in excess of 6 Carnegie units through the Course Choice Program if the total cost for the courses taken do not exceed 5/6 of the 90 percent allocated by the Minimum Foundation Program.

G. Enrollment of children in course work offered by course providers is in compliance with the objectives of Louisiana's compulsory attendance law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7, R.S. 17:24.4, and R.S. 17:4002.2-4002.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3126 (December 2012).

§703. Local Education Authority Procedures for Student Enrollment

A. All schools must exercise flexibility in scheduling to accommodate course choice options.

B. If an eligible funded student enrolls in an online course where the course is administered at the school site, the school or LEA shall meet the following requirements related to the online course environment.

1. The school/LEA shall provide students enrolled in online courses technical access which meets specifications furnished by the course provider.

2. The school/LEA shall provide instructional and communication hardware which meets specifications furnished by the course provider.

3. The school/LEA shall provide timely and appropriate technical support.

4. The school/LEA shall award credit and grades for the online courses assigned by the course provider and instructor with no deviations.

5. The school/LEA shall ensure that a facilitator who is a Louisiana licensed teacher or LEA employed paraprofessional is assigned to students to act as a liaison between the provider and the school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S.17: 4002.5.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:3127 (December 2012).

Chapter 9. Parental/Guardian Duties

§901. Parental/Guardian Duties

A. All parents/guardians shall work in conjunction with the student's school in which they are enrolled to ensure that the student has the necessary course prerequisites for each course taken through the Course Choice Program. Parents/guardians shall also consult with the school to ensure that the student is taking the necessary courses

required to meet grade-level promotion or graduation requirements.

B. Parents/Guardians of an eligible participating student (i.e., non-funded students) as outlined in R.S. 17:4002.3(2)(a)(b)(c) are responsible for all tuition costs as determined by the course provider and outlined in R.S. 17:4002.6 (course provider funding).

C. If a student is taking an online course through the Course Choice Program and elects to take the course offsite, the parent/guardian must:

1. ensure that the student is actively engaged in his/her course on a daily basis;

2. monitor student progress in the course in conjunction with the course provider, and facilitate communication in regards to student progress in the online course;

3. adhere to course provider practices in regards to ethical and legal use of equipment and instructional resources;

4. provide the students enrolled in online courses with technical/Internet access that meet the specifications furnished by the course provider; and

5. provide all equipment necessary for the student in an online course, including, but not limited to, a computer, computer monitor, and printer, if a printer is necessary to participate in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17: 4002.2-4002.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3127 (December 2012).

Chapter 11. Course Choice Program Funding

§1101. Program Funding

A. The following guidelines shall be used to establish funding procedures for the Course Choice Program.

1. The course provider shall receive a course amount for each eligible funded student.

a. For a full Carnegie unit of credit, the provider will receive the amount prescribed in this Section.

b. For a 1/2 unit of credit, the provider will receive half of the amount prescribed in this Section.

c. For a course that results in more than one credit, the course provider tuition payment will be that same multiple of the tuition established for a full credit course (e.g. the course provider of a two credit course will receive two times the tuition payment established for a full credit course).

2. For purposes of this Part, the per course amount means an amount equal to the market rate as determined by the course provider and reported to the state Department of Education up to 1/6 of 90 percent of the per pupil amount each year as determined by the Minimum Foundation Program for the LEA in which the eligible funded student resides. Any remaining funds, except those specified in Paragraph A.3 of this Section, for that student shall be returned to the state or to the LEA according to the pro rata share for the per pupil amount each year as determined by the Minimum Foundation Program for the LEA in which the student resides. Transfers of course payments shall be made by the state Department of Education on behalf of the responsible city or parish school system in which the student resides to the authorized course provider.

3. For each student identified in R.S. 17:4002.3(2)(a) and (b), an amount equal to 10 percent of the per pupil amount according to the pro rata share as determined each year by the Minimum Foundation Program for the LEA in which such student resides shall remain with the LEA in which the eligible funded student is enrolled full time. These funds shall be used to finance any administrative or operational costs (e.g., transportation within LEA, test administration, IEP implementation) to support students enrolled in courses offered by course providers, as determined by BESE.

4. For students identified in R.S. 17:4002.3(2)(c), the course provider shall receive payment only for the courses in which the student is enrolled in accordance with Subsection C of this Section. The remaining funds for each of these students up to the maximum amount for the parish in which the participating student resides as determined each year by the Minimum Foundation Program or actual tuition and fees, as applicable, shall remain with the participating school in which the student is enrolled in accordance with R.S. 17:4011-4025.

B. The course provider may charge tuition to any eligible participating student in an amount equal to the amount determined by the course provider and reported to the state Department of Education in accordance with Paragraph A.2 of this Section. The course provider shall accept the amount specified in Paragraph A.2 of this Section as total tuition and fees for the eligible participating student.

C. The following guidelines shall be used in regards to the payments made to the course provider.

1. Fifty percent of the amount of tuition to be paid or transferred through the Minimum Foundation Program to the course provider shall be paid or transferred upon student enrollment in a course and fifty percent shall be paid or transferred upon course completion according to the published course length.

2. After the initial payment, if a student does not complete a course according to the published course length in which the course provider has received the first payment pursuant to Paragraph 1 of this Subsection, the provider shall receive forty percent of the course amount as defined in Paragraph A.2 of this Section only if the student completes the course and receives credit for the course prior to leaving school pursuant to R.S. 17:221 or graduating from high school pursuant to R.S. 17:24.4.

3. The remaining ten percent of the per pupil amount according to the pro rata share as determined each year by the Minimum Foundation Program for the local public school system in which the eligible funded student resides shall remain with the school in which the eligible funded student is enrolled full time. This shall be in addition to the ten percent specified in Paragraph A.3 of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:4002.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3127 (December 2012).

Chapter 13. Provider Evaluation

§1301. Provider Evaluation

A. BESE shall monitor and evaluate the course provider in a manner in which student achievement is the predominant criterion.

1. The initial authorization of the course provider shall be for a period of three years. After the second year of the initial authorization period, the state board shall conduct a thorough review of the course provider's activities and the academic performance of the students enrolled in courses offered by the course provider in accordance with the school and district accountability system. If the performance of the students enrolled in courses offered by the course provider pursuant to the school and district accountability system does not meet performance standards set by the state board, the state board shall place the course provider on probation.

2. After the initial three-year authorization period, the state board may reauthorize the course provider for additional periods of not less than three years nor more than five years after thorough review of the course provider's activities and the achievement of students enrolled in courses offered by the course provider.

3. Reauthorization and sustained participation in the program relative to student performance will be based on:

a. academic achievement—course providers demonstrate and sustain a proven track record of student success on exams (e.g. EOC, AP, etc.);

b. student career achievement—course providers who support students to achieve rigorous IBCs and/or job placement in their targeted occupation;

c. course pathways—course providers develop a series of thematically-linked course offerings that progressively help students achieve personal academic and/or career goals.

4. Providers must show positive student academic gain with proven assessment methods for each course offering.

Type of Course	Proven Assessment Methods
Core Academic	Standard Louisiana-approved EOC (end-of-course) exams, if available other end-of-course exams tied to applicable Louisiana-approved course guidelines
Career and Technical	Recognized state/ national IBCs (industry-based certifications) based on proven methods Example: NCCER (National Center for Construction Education and Research)
College Credit	Successful AP examination performance Approved assessment method using a proven college-level EOC exam/exercise

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:4002.6.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 38:3128 (December 2012).

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1212#004

RULE

Board of Elementary and Secondary Education

Bulletin 133—Scholarship Programs
(LAC 28: CLIII.101, 301, 303, 501, 701, 901, and 1101)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act the Board of Elementary and Secondary Education has adopted *Bulletin 133—Scholarship Programs*: §101. Definitions, §301. School Registration Process, §303. Student Enrollment Process, §501. Finance, §701. Required Participation in the State Testing Program, §901. Continued Eligibility, §1101. Reporting. The policy will give greater definition to Act 2 of the 2012 legislative session, which expanded the Student Scholarships for Educational Excellence Program's availability to students attending C, D, and F schools statewide.

Title 28

EDUCATION

Part CLIII. Bulletin 133—Scholarship Programs

Chapter 1. General Provisions

§101. Definitions

Department—the state Department of Education.

Eligible Nonpublic School—a non-public school that meets the following criteria:

1. is approved, provisionally approved, or probationally approved by the state Board of Elementary and Secondary Education pursuant to R.S. 17:11; and

2. is approved according to *Brumfield, et al. v. Dodd*, et al. 425 F. Supp. 528.

Eligible Public School—a public school with a letter grade of "A" or "B", or any variation thereof, for the most recent school year a letter grade is available, pursuant to the school and district accountability system.

Eligible Student—a student who resides in Louisiana, is a member of a family with a total income that does not exceed two hundred fifty percent of the current federal poverty guidelines as established by the federal office of management and budget, and who meets any one of the following criteria:

1. is entering kindergarten and has enrolled in the local school system in which the public school he/she would have otherwise attended is located or in a school under the jurisdiction of the Recovery School District; or

2. was enrolled in a public school in Louisiana on October first and on February first of the most recent school year pursuant to the definition of student membership established by the state board for purposes of the Minimum Foundation Program formula, and such school received a letter grade of "C", "D", or "F" or any variation thereof, for the most recent year a letter grade is available, pursuant to the school and district accountability system; or

3. received a scholarship pursuant to this Program in the previous school year.

Fees—standard educational fees that are charged to all students at a participating school.

Participating School—a school that meets program requirements and seeks to enroll scholarship recipients pursuant to this Chapter or a public school that meets program requirements and seeks to enroll scholarship recipients pursuant to this Chapter subject to any court-

ordered desegregation plan in effect for the school system in which the public school is located.

Program—the Student Scholarships for Educational Excellence Program.

Scholarship Recipient—an eligible student who is awarded a scholarship pursuant to this Program.

Transfer—a change in enrollment status resulting from the movement of an eligible student from one participating school to another participating school during the current school year.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:6 and R.S. 17:4025.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR: 38:3129 (December 2012).

Chapter 3. Registration

§301. School Registration Process

A. In administering the school registration process for the program, the department shall:

1. receive an annual notice of intent from eligible public and eligible nonpublic schools seeking to participate in the program;

2. establish and publish a timeline for the submission of notices of intent from eligible schools seeking to participate in the program; and

3. establish an internal review process for determining initial and continuing school eligibility, including assessment of whether a school meets the criteria for participation as determined by the department and, as needed, additional site visits, audits, and assessments of compliance with applicable health and safety regulations. Guidance on the criteria for participation shall be published annually by the department.

B. Participating schools shall:

1. submit an annual notice of intent with the following information:

a. the number of available seats per grade. Enrollment of scholarship recipients in a participating school that has been approved, provisionally approved, or probationally approved for less than two years shall not exceed 20 percent of the school's total student enrollment.

b. whether the school elects to offer an enrollment preference to a student based on the parish in which the student resides;

c. any other information requested by the department;

d. for eligible nonpublic schools:

i. if a nonpublic school elects to provide special education services, the school must provide information regarding special education services it is able to and shall provide, the services the local school system is able to and shall provide, and the services the local school system currently provides to children with special needs as defined in R.S. 17:1942;

ii. schools charging tuition must include the maximum amount of tuition, including all allowable fees;

iii. tuition and fees may not be higher than those charged to non-scholarship students;

e. for eligible public schools, the notice of intent must be submitted by the principal of the school with the approval of the local superintendent. The local school board shall delegate the authority to participate in the program to the local superintendent.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:6 and R.S. 17:4025.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3129 (December 2012).

§303. Student Enrollment Process

- A. In administering the program, the department shall:
1. determine student eligibility for scholarships;
 2. accept applications from parents or legal guardians of eligible students which indicate the parent or legal guardian's choice(s) of participating schools;
 3. process applications from students:
 - a. in the event there are more eligible students who submit applications than there are available seats at participating schools for any grade, the department shall conduct a random selection process to award scholarships that provides each eligible student an equal opportunity for selection based on students' indicated preferences;
 - b. only after each student who attended or otherwise would be attending a public school that received a letter grade of "D" or "F" or any variation thereof has been placed at a participating school which the parent or legal guardian indicated as a choice on the eligible student's application shall a student who attended a public school that received a letter grade of "C" or any variation thereof be entered into the random selection process. At such time, each student who attended or otherwise would be attending a public school that received a letter grade of "C" or any variation thereof shall be provided an equal opportunity for selection into that particular school;
 - c. the department may give preference to the following:
 - i. siblings of students already enrolled in the participating school;
 - ii. students enrolled in the Nonpublic School Early Childhood Development Program at the participating school;
 - iii. participating students transferring from an ineligible school; and
 - iv. students residing in the parishes as indicated pursuant to the notice of intent, if applicable;
 - d. for the purposes of the random selection process, twins, triplets, quadruplets, and other such multiple births shall constitute one individual;
 4. notify parents or legal guardians of eligible students who applied for scholarships whether they have been awarded a scholarship and placed at a particular participating school;
 5. notify participating schools of the roster of students assigned through the program;
 6. the department will remit scholarship payments to participating schools on behalf of a scholarship recipient. See Chapter 5 of this Bulletin for more details;

B. Parent/Legal Guardian Obligations

1. Once students are notified of their scholarship award to a participating school, their parents or legal guardians shall have fourteen days to notify the participating school of their intention to enroll their student.
2. If a scholarship recipient enrolled in a participating nonpublic school would have been entitled to receive special education services in the public school he would otherwise be attending, his parent or legal guardian shall acknowledge in writing, as part of the enrollment process that the parent

or legal guardian agrees to accept only such services as are available to all students enrolled in the nonpublic school.

3. Enrollment of a scholarship recipient in a participating school constitutes acceptance of any such rules, policies, and procedures of such school, including but not limited to academic policies, disciplinary rules, and procedures of the school.

C. LEA Obligations

1. Each local school system shall conduct its annual kindergarten enrollment process in accordance with the department's timeline and shall report such enrollment to the department prior to the program enrollment process.

2. Each local school system shall include and identify scholarship recipients in its student information system, as determined by the department.

D. Participating School Obligations

1. Participating schools shall:

a. not discriminate against a child with special educational needs during the program admissions process. However, a participating nonpublic school is required to offer only those services that it already provides or such services as necessary to assist students with special needs that it can provide with minor adjustments;

b. provide assistance with the student application process, as determined by the department;

c. provide an assurance to the department accepting responsibility for costs associated with any participating students enrolled who are found to be ineligible to participate in the program;

d. inform the parent or legal guardian of a scholarship recipient of any and all rules, policies, and procedures of such school, including but not limited to academic policies, disciplinary rules, and procedures of the school. Furthermore, the parent/legal guardian shall acknowledge, in writing, the policies, rules, and procedures that have been provided.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:6 and R.S. 17:4025.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3130 (December 2012).

Chapter 5. Finance

§501. Finance

A. The state board shall allocate annually from the minimum foundation program an amount per pupil to each participating school equal to the amount allocated per pupil to the local school system in which the scholarship recipient resides, considering all student characteristics.

1. This amount shall be counted toward the equitable allocation of funds appropriated to parish and city school systems as provided in Article VIII, Section 13(B) of the Constitution of Louisiana.

B. For a participating school that charges tuition, if the maximum amount of tuition plus incidental or supplementary fees that are charged to non-scholarship students enrolled in such school and any costs incurred in administering the tests required pursuant to R.S. 17:4023 is less than the amount allocated per pupil to the local school system in which the student resides, any remaining funds shall be returned to the state or to the local school system in which the scholarship recipient attended or otherwise would be attending public school for that year according to the pro rata share for the per pupil amount each year as determined

by the minimum foundation program for the local school system in which the scholarship recipient attended or otherwise would be attending public school for that year.

C. The maximum amount of tuition and fees to be paid for scholarship students including annual increases shall be determined as follows.

1. When tuition and fees for participating nonpublic schools are increased, payments for scholarship students shall be determined as follows:

a. if tuition and fees were at or above two-thirds of the MFP per pupil amount for the district in which the school is located, then the department shall not pay more than a 5 percent annual increase for participating scholarship students at the school; and

b. if tuition and fees were below two-thirds of the MFP per pupil amount for the district in which the school is located, then the department shall not pay more than two-thirds of the MFP per pupil amount for the district in which the school is located or a 5 percent annual increase for participating schools, whichever is higher;

c. once tuition and fees are equal to or greater than the MFP per pupil amount for the district in which the school is located, then the payment to the nonpublic school shall be no greater than the MFP per pupil for the district in which the school is located. The nonpublic school may continue to increase tuition and fees for privately-funded students.

D. Attendance of students in a participating school must be supported by appropriate documentation of daily attendance, either written or electronic, to include dates of absences.

E. The amount to be paid for a scholarship shall be divided into four equal payments to be made to each participating school in September, December, February, and May of each school year.

1. Payments shall be based on per pupil count dates as determined by the department. No refunds shall be made to the department or to the parent or legal guardian if the scholarship recipient withdraws from the program or is otherwise not enrolled prior to the next count date. The school in which the scholarship recipient is enrolled on the next count date shall receive the next payment.

2. The audit must be conducted after the February payment and transmitted to the department on or before May 1.

3. If the audit yields a finding regarding tuition and fees or attendance, payment adjustments will be made to the May payment.

F. If a participating nonpublic school charges a higher tuition for students receiving special education services and meets the criteria set forth below, the state shall allocate from the minimum foundation program an amount per pupil to each participating nonpublic school equal to a special education tuition amount based on the cost of providing special education services identified for that student to the participating nonpublic school. This amount shall be in addition to the participating nonpublic schools' maximum scholarship payment, but the total of the payment and the special education tuition shall not exceed the amount allocated for that student to the local school system if the student otherwise would be attending public school.

1. Only a participating non-public school meeting the criteria below shall be allowed to charge a higher tuition for scholarship recipients receiving special education services:

a. for at least two years, the participating non-public school has provided needed educational services to students with exceptionalities, as defined in R.S. 17:1942, excluding students deemed to be gifted or talented; and

b. the participating non-public school has provided needed services to students by teachers holding appropriate special education certification or other appropriate education and training as defined in Bulletin 1706; and

c. the participating non-public school provides services and instruction in accordance with a student's individual education plan and/or services plan.

G. A participating non-public school shall submit to the department an independent financial audit of the school conducted by a certified public accountant who has been approved by the legislative auditor.

1. Such audit shall be accompanied by the auditor's statement that the report is free of material misstatements and fairly presents the participating school's maximum tuition or actual cost of educating a student pursuant to R.S. 17:4016.

2. The audit shall be limited in scope to those records necessary for the department to make scholarship payments to the participating school and shall be submitted to the legislative auditor for review and investigation of any irregularities or audit findings.

3. The participating school shall return to the state any funds that the legislative auditor determines were expended in a manner inconsistent with state law or program regulations.

4. The participating school shall pay the cost of such audit unless funds are appropriated by the legislature for such purpose, in which case the department shall pay the cost of such audit.

H. The department shall receive independent financial audits from participating nonpublic schools as required in §501.E.

1. The department shall place any participating school that fails to comply with the audit provisions pursuant to R.S. 17:4022(3) on probation for a period of one year during which such school shall not be permitted to enroll additional scholarship recipients.

2. If such school is not in full compliance by the end of the one-year probationary period, the school shall be ineligible to participate in the program until such time as the department has determined that the school is in full compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:6 and R.S. 17:4025.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3130 (December 2012).

Chapter 7. Testing

§701. Required Participation in the State Testing Program

A. Scholarship recipients attending participating public schools shall participate in the state assessment program as outlined in Bulletin 118.

B. Nonpublic Schools

1. Participating nonpublic schools shall administer all state assessments that are subject to the Louisiana School and District Accountability System to their eligible student with nonpublic school staff in the school setting.

2. The participating nonpublic school will develop and submit to the department annually a test security policy in compliance with Bulletin 118, Chapter 3 approved by its board. After review of the test security policy by the department, the participating nonpublic school may be required to make revisions and resubmit.

3. Participating nonpublic schools shall follow BESE's test security policy as stated in Bulletin 118.

4. The participating nonpublic school shall name a school test coordinator for the school and provide contact information to the department.

a. The school test coordinator for the participating nonpublic school shall attend the pretest workshop designed for the participating nonpublic schools as well as any additional training required to administer the state tests.

b. All designated school test coordinators are required to provide the department with a valid work email address. Personal email addresses (Yahoo!, Hotmail, Google, etc.) will not be accepted.

c. When the school test coordinator changes, the participating nonpublic school shall provide the name and contact information of the new school test coordinator to the department on school letterhead within 15 days of the change in appointment.

5. The participating nonpublic school shall be responsible for all required accountability and demographic coding of testing documents.

6. The participating nonpublic school shall investigate and report any testing irregularities and/or violations of test security to the department. In addition, the department has the authority to conduct an investigation and void any scores deemed to be invalid.

7. The department staff shall have the authority to:

a. monitor the implementation of the state testing;

b. require changes to the testing plan as deemed necessary; and

c. conduct site visits during testing.

8. The department staff shall:

a. notify participating nonpublic schools of any new requirements in state testing; and

b. evaluate annually the testing plan to ensure full compliance with policies and procedures.

9. The local school district shall not test any students enrolled in participating nonpublic schools unless there is a written agreement between the local school district and the participating nonpublic school to this effect. No local school district shall ever be required to test students attending the participating nonpublic schools under the scholarship program.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:6 and R.S. 17:4025.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3131 (December 2012).

Chapter 9. Continued Eligibility

§901. Continued Eligibility

A. For continued eligibility in the scholarship program, participating schools must:

1. use an open admissions process in enrolling scholarship recipients in the program;

2. within ten business days of the first day of school as determined by the participating school, notify the department of scholarship recipients enrolled;

3. comply with all testing requirements listed in Chapter 7;

4. accept the scholarship amount as full payment of all educational costs, including all fees;

5. prior to enrollment, inform the parent or legal guardian of a scholarship recipient of any and all rules, policies, and procedures of the school, including but not limited to academic policies, disciplinary rules, and procedures of the school;

6. submit an annual independent financial audit as described in Chapter 5;

7. notify the department of any expulsion within two days; and

8. meet the criteria for participation as determined by the department and, as needed, additional site visits, audits, and assessments of compliance with applicable health and safety regulations.

B. If a school elects to withdraw from the scholarship program or to no longer accept new students, it shall notify the department on a timeline established by the department.

1. If a school notifies the department that it will no longer participate in the program after the established deadline for continuing school participation in the program, the department may disallow the school from participating in the program for up to five academic years.

2. Schools electing to no longer accept new students from the scholarship program may continue to receive scholarship payments for all continuing students.

C. If a school withdraws from or becomes ineligible to participate in the scholarship program in the middle of a school year, it shall allow all enrolled scholarship recipients to remain at the school for the remainder of the school year and shall pay for the educational services for those students.

D. The department shall assist any scholarship recipient attending a school that is ineligible to participate in the program in transferring to another participating school, provided such school has sufficient capacity at the appropriate grade level.

E. If enrolled in a participating school that fails to meet eligibility criteria established in this Bulletin, then scholarship recipients may transfer to another participating school for the succeeding school year without loss of eligibility, and such recipients shall be given preference for enrollment at other participating schools.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:6 and R.S. 17:4025.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3132 (December 2012).

Chapter 11. Reporting

§1101. Reporting

A. The department shall annually report to the Senate Committee on Education, the House Committee on Education, and the Joint Legislative Committee on the Budget regarding the implementation of the program, including:

1. the number of eligible students receiving scholarships;

2. a list of participating schools and the number of scholarship recipients each such school enrolled; and

3. aggregate test result data for the scholarship recipients enrolled in each participating school.

B. The department shall annually publish the following information for all schools participating in the program:

1. the most recent aggregate average proficiency rates on state assessments for scholarship recipients enrolled at each participating school;

2. a list of all public schools with a letter grade of "C", "D", or "F", or any variation thereof;

3. the rate at which scholarship recipients finish the highest grade level offered at a participating school, by entering cohort;

4. the retention rate for scholarship recipients;

5. the percentage of parents or legal guardians of scholarship recipients who are satisfied with the participating school; and

6. the rate at which all participating schools admit and serve students with special education needs.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:6 and R.S. 17:4025.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3132 (December 2012).

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1212#005

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Carnegie Credit for Middle School Students (LAC 28: CXV.2321)

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*: §2321. Credit Recovery. This revision removes the requirement that middle school students taking a high school course from a teacher who is not certified must pass a credit exam approved by the state department to earn Carnegie credit in the course. This change was recommended by some schools and districts because the current policy places a requirement on middle school students that is not required of high school students taking the same course.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2321. Carnegie Credit for Middle School Students

A. - B. ...

C. Middle school students may receive Carnegie credit for successfully completing the high school course provided that:

1. the time requirement for the awarding of Carnegie credit is met (§907);

2. the student has mastered the established high school course standards for the course taken.

D. - F.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 31:1293 (June 2005), amended LR 33:430 (March 2007), LR 33:2601 (December 2007), LR 34:609 (April 2008), LR 34:2031 (October 2008), LR 35:443 (March 2009), LR 35:2319 (November 2009), repromulgated LR 36:59 (January 2010), amended LR 36:2260 (October 2010), LR 37:2129 (July 2011), LR 37:3199 (November 2011), LR 38:3133 (December 2012).

Heather Cope
Executive Director

1212#009

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Connections Process (LAC 28: CXV.2907)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—The Louisiana Handbook for School Administrators*: §2907. Connection Process. *Connections* is a one year process for overage students to receive targeted instruction and accelerated remediation. The Connections Process will include the following elements: academic and behavioral interventions; mentoring; job skills training; TABE locator and battery assessments; committee reviews; parent meetings; individual prescriptions for instruction; individual graduation plans; and exiting pathways (High School Diploma via Accelerated Pathway; Core or Career Diploma; GED Pathway; State-approved Skills Certificate). Students on the High School Diploma and GED pathways may also work towards Industry Based Certification. This action is to revise *Bulletin 741—Louisiana Handbook for School Administrators*: §2907, in order to amend policy regarding the newly developed Connections Process. There is no federal regulation attached to this action.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 29. Alternative Schools and Programs **§2907. Connections Process**

A. The Connections Process replaces Louisiana's PreGED/Skills Option Program. Connections is a one year process for overage students to receive targeted instruction and accelerated remediation aimed at attaining a high school diploma, high school equivalency diploma (by passage of GED tests), or state-approved skills certificate. The process includes a connections profile to track the following

elements: academic and behavioral interventions; mentoring; job skills training; TABE locator and battery assessments; committee reviews; parent meetings; individual prescriptions for instruction; individual graduation plans; and exiting pathways. While in the Connections Process, students are 8th graders and therefore shall take required 8th grade courses per Bulletin 741. Students can move from any middle school grade into the Connections Process provided they meet the criteria below.

NOTE: Refer to high stakes testing policy in *Bulletin 1566—Pupil Progression Policies and Procedures*. Requirements differ for initial 8th grade students and students repeating the 8th grade (see Bulletin 741, §2321).

B. ...

1. Students shall be 15 years of age during the school year and two years behind their peers academically to enter the Connections Process.

B.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:100.5.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1308 (June 2005), amended LR 34:2032 (October 2008), LR 37:2131 (July 2011), LR 38:1000 (April 2012), LR 38:3133 (December 2012).

Heather Cope
Executive Director

1212#015

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Credit Recovery (LAC 28: CXV.2324)

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*: §2324. Credit Recovery. This revision removes the requirement that students earning credit through credit recovery must be taught using a state-approved credit recovery program or must pass a comprehensive exam approved by the department of education. This change will provide districts and schools with more flexibility and authority for selection and evaluation of curricular materials and the determination of student credit.

Title 28 EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2324. Credit Recovery

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

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 33:2352 (November 2007), amended LR 38:3134 (December 2012).

Heather Cope
Executive Director

1212#016

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Distance Education (LAC 28: CXV.2395)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—The Louisiana Handbook for School Administrators*: §2395. Distance Education. The policy revisions require course providers to align instruction and assessment to reflect Louisiana Core Standards and Common Core State Standards when applicable, and allow an “LEA employed paraprofessional” to serve as an online course facilitator. The revisions further remove the requirement that the provider furnish training and/or support in designing course content to fit the delivery methods for distance education courses.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2395. Distance Education

A. - A.3.g. ...

h. The provider shall ensure that teachers delivering instruction in distance education courses use a variety of methods to assess the mastery of the content as reflected in the Louisiana content standards and aligned with common core state standards where applicable.

3.i. - 4.a. ...

b. The receiving LEA or school shall ensure that a facilitator who is a Louisiana licensed teacher or LEA employed paraprofessional is assigned to and is actively engaged with each student participating in distance education courses.

4.c. - 5.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1302 (June 2005), amended LR 33:2051 (October 2007), LR 38:3134 (December 2012).

Heather Cope
Executive Director

1212#018

RULE

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, the Board of Elementary and Secondary Education has amended *Bulletin 741—The Louisiana Handbook for School Administrators*: §2377. General Career and Technical Education. The policy revisions reflect the

addition of courses that have been developed to address the needs of the local school systems, business, and industry and will enable districts to offer students a wider range of courses to enable students to complete a career pathway.

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
Assistive Technology for the Visually Impaired	9-12	1
Business Enterprises for the Visually Impaired	12	1
Braille I	9-12	1
Braille II	9-12	1
CTE Internship I	11-12	1
CTE Internship II	12	1
CTE Internship I	11-12	2
CTE Internship II	12	2
Consumer Finance and Banking	12	1
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
STAR I	11-12	1
STAR II	12	1
Entrepreneurship	11-12	1
Journey to Careers	9	1/2-1
Oracle Internet Academy		
Database Design and 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
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

Course Title(s)	Recommended Grade Level	Units
Computer Systems	11-12	1/2
Introduction to Programming	11-12	1/2
Digital Video	11-12	1/2

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7 and 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 35:1229 (July 2009), LR 35:2319 (November 2009), LR 35:2748 (December 2009), LR 36:1496 (July 2010), LR 36:1997 (September 2010), LR 38:3135 (December 2012).

Heather Cope
Executive Director

1212#014

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—School Food Service (LAC 28: CXV.2103)

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*: §2103. The policy amendment will update the bulletin language to properly reference state and federal laws, federal regulations and federal policies as the authority under which the Louisiana Child Nutrition Programs will operate.

**Title 28
EDUCATION**

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

**Chapter 21. Support Services
§2103. School Food Service**

A. ...

B. Reimbursement payment shall be made only to schools operating under an agreement between the LEA or other governing authority and the DOE.

1. Agreements shall be signed by the designated representative of each LEA or other governing authority.

C. Participating schools shall adhere to conditions of Agreement and all applicable federal and state laws and United States Department of Agriculture (USDA) regulations and policies governing the USDA Child Nutrition Programs under the DOE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17: 82; R.S. 17: 191 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1287 (June 2005), amended LR 38:3135 (December 2012).

Heather Cope
Executive Director

1212#012

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel (LAC 28:CXXXI.307, 343, 345, 346, 347, 504, 507, 509, 701, 703, 705, 707, 709, 710, 711, 723, 725, 803, 901, 908, and 910)

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*: §307. Type C Certificates, §343. Artist or Talented Certificate, §345. Nonpublic Montessori Teacher Certificate, §346. Family and Consumer Sciences (Occupational Programs), §347. Junior Reserve Officers Training Corps Instructor (ROTC), §504 Career and Technical Certificate Types Issued after July 1, 2006, §507. VTIE, CTTIE, and CTTIE-1 Certificate Renewal Guidelines, §509. CTTIE-2 Certificate Renewal Guidelines, §701. Overview, §703. Introduction, §705. Educational Leader Certificate Level 1 (EDL1), §707. Educational Leader Certificate Level 2 (EDL2), §709. Educational Leader Certificate Level 3 (EDL3), §710. Turnaround Specialists Certificate (TSC), §711. Teacher Leader Endorsement (Optional), §723. Out-of-State Principal Level 2 (OSP2), §725. Out-of-State Superintendent (OSS), §803. Appeal Process, §901. Overview, §908. Suspension and Revocation of Certificate/Endorsement Due to Facilitation of Cheating, and §910. Suspension and Non-Renewal of Certificate/Endorsement Due to Ineffectiveness. The policy revisions align the certification of school personnel with Act 54 of the 2010 Regular Legislative Session. The revisions will require that ancillary teachers, career trade and technical and industrial personnel, and educational leaders meet the standards of effectiveness mandated by Act 54 in order to obtain a higher level certificate or to renew a certificate. The revision in policy will also prohibit an individual who has not met the standards of effectiveness to appeal to the Teacher Certification Appeals Counsel for certification. This policy will also allow the suspension and revocation of a teaching certificate due to facilitation of cheating and will also allow the suspension of a certificate for a teacher who has received three years of ineffective teaching. During the 2010 Regular Legislative Session new regulations were passed for the evaluation of teachers in all public school systems.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 3. Teaching Authorizations and Certifications

Subchapter A. Standard Teaching Authorizations

§307. Type C Certificates

A. Effective July 1, 2002, Type C certificates are no longer issued for initial certification. The Type C certificate is valid for three years. Teachers who hold Type B and Type A lifetime certificates will continue to hold these certificates. Effective July 1, 2012, Type B and Type A lifetime certificates will no longer be issued to teachers holding Type C certificates applying for advanced certificates. Teachers holding a Type C certificate who wish to apply for more

advanced certification credentials will be granted a Level 2 certificate, upon meeting the standards of effectiveness for at least three years, pursuant to Bulletin 130 and R.S.17:3902.

B. Type C Certificate

B.1. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1798 (October 2006), amended LR 37:559 (February 2011), LR 38:3136 (December 2012).

Subchapter C. Ancillary Teaching Certificates

§343. Artist or Talented Certificate

A. ...

B. Artists Certificate (Art, Creative Writing, Drama, Dance, Music, Theatre, Visual Arts)

1. - 3.b. ...

4. Renewal Guidelines—valid for five years initially and may be renewed thereafter for a period of five years at the request of an LEA. For renewal of the Ancillary certificate, candidates must successfully meet the standards of effectiveness for at least three years during the initial certification or renewal period pursuant to Bulletin 130 and R.S.17:3902. If the holder of this certificate changes school systems, the LEA must request a change of job assignment.

5. The person holding such certification is not eligible for tenure.

C. Talented Certificate (Music, Theatre, or Visual Arts)

1. - 3.c. ...

4. Renewal Guidelines—valid for five years initially and may be renewed thereafter for a period of five years at the request of an LEA. For renewal of the Ancillary certificate, candidates must successfully meet the standards of effectiveness for at least three years during the initial certification or renewal period pursuant to Bulletin 130 and R.S.17:3902. If the holder of this certificate changes school systems, the LEA must request a change of job assignment.

5. ...

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 32:1805 (October 2006), amended LR 38:3136 (December 2010).

§345. Nonpublic Montessori Teacher Certificate

A. Nonpublic Montessori Teacher Certificate

B. - C.3.c.vii. ...

D. This certificate is valid for five years initially and may be renewed thereafter for a period of five years at the request of a LEA. For renewal of the ancillary certificate, candidates must successfully meet the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and R.S.17:3902.

E. The certificate lapses for disuse if the 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. To reinstate a lapsed certificate, the holder must present evidence that he/she earned six semester hours of credit in state-approved courses (see Chapter 13) during the five year period immediately preceding request for reinstatement.

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 32:1805 (October 2006), amended LR 38:3136 (December 2012).

§346. Family and Consumer Sciences (Occupational Programs)

A. - B.1.c. ...

2. Renewal Guidelines. Valid for five years initially and may be renewed thereafter for a period of five years at the request of an LEA. For renewal of the Ancillary certificate, candidates must successfully meet the standards of effectiveness for at least three years during initial or renewal period pursuant to Bulletin 130 and R.S.17:3902.

C. Qualified Certification—valid for five years.

1. Eligibility requirements:

a. completed requirements for provisional certification; and

b. three years of teaching experience in Family and Consumer Sciences occupational programs.

2. Renewal Guidelines. Valid for five years initially and may be renewed thereafter for a period of five years at the request of an LEA. For renewal of the Ancillary certificate, candidates must successfully meet the standards of effectiveness for at least three years during initial or renewal period pursuant to Bulletin 130 and R.S.17:3902.

3. Reinstatement Guidelines. Reinstatement of a lapsed certificate: If the certificate 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 (90 consecutive days), the certificate lapses for disuse. To reinstate a lapsed certificate, the holder must present evidence that he/she earned six semester hours of credit in state-approved courses during the five year period immediately preceding request for reinstatement (see Chapter 13).

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 32:1806 (October 2006), amended LR 38:3137 (December 2012).

§347. Junior Reserve Officers Training Corps Instructor (ROTC)

A. - A.1.b.

2. Renewal Guidelines—valid for five years initially and may be renewed thereafter for a period of five years at the request of an LEA. For renewal of the Ancillary certificate, candidates must successfully meet the standards of effectiveness for at least three years during initial or renewal period pursuant to Bulletin 130 and R.S.17:3902.

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 34:432 (March 2008), amended LR 34:1610 (August 2008), LR 38:3137 (December 2012).

Chapter 5. Standards for Secondary Career and Technical Trade and Industrial Education Personnel

§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. Candidates must successfully meet the standards of effectiveness for the renewal of this certificate pursuant to Bulletin 130 and R.S.17:3902.

2. CTTIE-2 Certificate—valid for five years initially and may be renewed thereafter for a period of five years at the request of an LEA. For renewal of the CTTIE-2 certificate, candidates must successfully meet the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and R.S.17:3902. 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 35:2752 (December 2009), amended LR 38:3137 (December 2012).

§507. VTIE, CTTIE, and CTTIE-1 Certificates Renewal Guidelines

A. - A.6. ...

a. Renewal Guidelines—valid for five years initially and may be renewed thereafter for a period of five years at the request of an LEA. For renewal of the CTTIE-2 certificate, candidates must successfully meet the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and R.S.17:3902.

B. - D. ...

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 35:2753 (December 2009), LR 36:2000 (September 2010), LR 38:3137 (December 2012).

§509. CTTIE-2 Certificates Renewal Guidelines

A. Renewal Guidelines—valid for five years initially and may be renewed thereafter for a period of five years at the request of an LEA. For renewal of the CTTIE-2 certificate, candidates must successfully meet the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and R.S.17:3902.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1814 (October 2006), amended LR 35:2754 (December 2009), LR 38:3137 (December 2012).

Chapter 7. Administrative and Supervisory Credentials

§701. Overview

A. An individual who serves as an administrator and/or supervisor in Louisiana schools is required to obtain the appropriate credential for the area of assignment. A teacher already certified in Louisiana can have an Educational Leader certificate issued to provide administrative or supervisory services in a Louisiana school system.

B. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1822 (October 2006), amended LR 38:3138 (December 2012).

Subchapter A. The Educational Leadership Certificate

§703. Introduction

A. The Educational Leadership Certification structure provides for four levels of leader certification: Teacher Leader; Educational Leader Level 1; Educational Leader Level 2; and Educational Leader Level 3. The Teacher Leader Certificate is an option for a teacher to be identified as a teacher leader; it is not a state required credential for a specific administrative position. The Educational Leader Level 1 certificate is an entry-level certificate for individuals seeking to qualify for school and/or district leadership positions (e.g., assistant principals, principals, parish or city supervisors of instruction, supervisors of child welfare and attendance, special education supervisors, or comparable school/district leader positions). An individual moves from a Level 1 to a Level 2 certificate after completion of the Educational Leader (District) Induction Program, successfully meeting standards of effectiveness for three years pursuant to Bulletin 130 and R.S.17:3902, and completing the required years of experience. The Level 3 certificate qualifies an individual for employment as a district superintendent.

B. Educational leadership preparation programs and induction programs are aligned with the following state and national standards:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1822 (October 2006), amended LR 33:819 (May 2007), LR 38:3138 (December 2012).

§705. Educational Leader Certificate Level 1 (EDL 1)

A. This is the certificate needed by those who fill school and district educational leadership positions (e.g., assistant principal, principal, parish or city supervisor of instruction, supervisor of child welfare and attendance, special education supervisor, or comparable school/district leader positions). This certificate is issued upon the request of the LEA once the individual is hired to serve as an Educational Leader. An Educational Leader Certificate Level 1 may be obtained through either a master's degree pathway or through one of three alternate pathways.

1. Master's Degree Pathway. To receive an entry-level EDL 1, the candidate must:

a. - c. ...

2. Alternate Pathway 1. The Alternate Pathway 1 is for persons who already hold a master's degree and are seeking to receive an EDL 1. The candidate must:

a - d. ...

3. Alternate Pathway 2. The Alternate Pathway 2 is for persons who already hold a master's degree in education and are seeking to receive an EDL 1. The candidate must:

a. - d. ...

4. Alternate Pathway 3. The Alternate Pathway 3 is for persons who already hold a baccalaureate degree from a regionally accredited institution of higher education and are seeking to receive an EDL 1 through a competency-based educational leader practitioner (residency) program (See Chapter 2, §240). The candidate must:

a. - d. ...

5. EDL 1 Extensions/Renewals

a. An EDL 1 is valid for three years initially and may be extended thereafter for a period of one year at the request of an LEA. EDL 1 certificates are limited to two such extensions.

b. Individuals who hold an Educational Leader add-on endorsement issued prior to July 1, 2012 and are employed in a leadership capacity will be required to meet the standards of effectiveness pursuant to Bulletin 130 and R.S.17:3902 for three years out of the five year renewal period in order to renew their endorsement.

6. Upon employment as a school/district educational leader, an individual with an EDL1 certificate must enroll in the state-approved Educational Leader Induction Program under the direction of the Louisiana Department of Education prior to July 1, 2011 or the district-administered educational leadership induction program after July 1, 2011. Once employed as a school/district educational leader, the individual has three years to complete the induction program.

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 32:1823 (October 2006), amended LR 33:819 (May 2007), LR 38:3138 (December 2012).

§707. Educational Leader Certificate Level 2 (EDL 2)

A. To receive an EDL 2, the individual must:

1. hold a valid EDL 1 certificate, Louisiana provisional principal certification, or comparable level out-of-state educational leader certificate;

2. have three years of teaching experience in his/her area(s) of certification;

3. have completed the Educational Leader Induction Program under the administration of the Louisiana Department of Education prior to July 1, 2011 or the district-administered educational leadership induction program after July 1, 2011:

a. the induction period begins immediately upon the candidate's first full-time administrative appointment (permanent or acting) as an assistant principal, principal, parish or city supervisor of instruction, supervisor of child welfare and attendance, or comparable school/district leader position;

b. the induction program must be completed within a three-year period;

4. meet the standards of effectiveness as an Educational Leader for three years pursuant to Bulletin 130 and R.S.17:3902.

B. **Renewal Requirements.** An EDL 2 is valid for five years initially and may be extended thereafter for a period of five years at the request of an LEA. For renewal of EDL 2 certificate, candidates must successfully meet the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and R.S.17:3902.

1. Individuals who hold an Educational Leader add-on endorsement issued prior to July 1, 2012 and are employed in a leadership capacity will be required to meet the standards of effectiveness pursuant to Bulletin 130 and R.S.17:3902 for three years out of the five year renewal period in order to renew their endorsement.

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 32:1823 (October 2006), amended LR 33:820 (May 2007), LR 38:3138 (December 2012).

§709. Educational Leader Certificate Level 3 (EDL 3)

A. This certificate is required in order to serve as a school system superintendent or assistant superintendent.

1. Eligibility requirements:

a. valid EDL 2 or one of the Louisiana administrative/supervisory certifications that preceded the Educational Leadership Certification structure;

b. - d. ...

2. **Renewal Requirements.** An EDL 3 is valid for five years initially and may be extended thereafter for a period of five years at the request of an LEA. For renewal of an EDL 3 certificate, candidates must successfully meet the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and R.S.17:3902.

3. Individuals who hold an Educational Leader add-on endorsement issued prior to July 1, 2012 and are employed in a leadership capacity will be required to meet the standards of effectiveness pursuant to Bulletin 130 and R.S.17:3902 for three years out of the five year renewal period in order to renew their endorsement.

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 32:1824 (October 2006), amended LR 38:3139 (December 2012).

§710. Turnaround Specialist Certificate (TSC)

A. The Louisiana School Turnaround Specialist Program (LSTS) is a leadership development program designed to strengthen the organizational and instructional leadership skills of currently certified and experienced principals to prepare them to lead low-performing schools to higher student achievement.

1. To receive a TSC the individual must meet all of the following requirements:

a. hold a valid Level 2, Level 3, Type B, Type A, or out-of-state (OS) teaching certificate with three years of teaching in the certified area and certification as an elementary/secondary principal, principal, or educational leader;

b. - c. ...

2. **Renewal Requirements.** A TSC is valid for five years initially and may be extended thereafter for a period of five years at the request of an LEA. For renewal of a TSC certificate, candidates must successfully meet the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and R.S.17:3902.

3. Individuals who hold an Educational Leader add-on endorsement issued prior to July 1, 2012 and are employed in a leadership capacity will be required to meet the standards of effectiveness pursuant to Bulletin 130 and R.S.17:3902 for three years out of the five year renewal period in order to renew their endorsement.

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 35:645 (April 2009), LR amended 38:3139 (December 2012).

§711. Teacher Leader Endorsement (Optional)

A. As part of the educational leader certification structure, there is an option for a teacher to become certified as a teacher leader. This optional endorsement allows principals the opportunity to afford leadership experiences to teachers at the school level and recruit potential educational leader candidates for their school districts. Teacher Leader is the certification authorization needed by those who fill school site leadership roles (e.g., serving as a school curriculum coordinator, chairperson or content teacher, serving as the School Improvement Team Chairperson, serving as the lead teacher in developing and scheduling a special activity at the school site, serving as the lead teacher in the school's preparation for a technical assistance visit etc.).

B. - B.2.d. ...

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 32:1824 (October 2006), amended LR 35:1232 (July 2009), LR 38:3139 (December 2012).

Subchapter B. Out-of-State Administrative Certification Structure

§723. Out-of-State Principal Level 2 (OSP2)

A. An Out-of-State Principal Level 2 (OSP2) is valid for five years initially and may be extended thereafter for a period of five years at the request of an LEA.

1. - 1.c....

d. successfully meeting the standards of effectiveness as an educational leader during the validity period of the OSP1 certificate.

2. **Renewal Requirements.** For renewal of OSP2 certificate, candidates must successfully meet the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and R.S.17:3902.

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, and R.S. 17:411

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1825 (October 2006), amended LR 35:2325 (November 2009), LR 36:882 (March 2011), LR 38:3139 (December 2012).

§725. Out-of-State Superintendent (OSS)

A. - A.1.e. ...

2. **Renewal Requirements.** For renewal of an OSS certificate, candidates must successfully meet the standards of effectiveness for at least three years during the five-year initial or renewal period pursuant to Bulletin 130 and R.S.17:3902.

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 32:1825 (October 2006), amended LR 38:3140 (December 2012)

Chapter 8. Certification Appeal Process

§803. Appeal Process

A. - A.3.g. ...

h. have not met the standards of effectiveness for three years pursuant to Bulletin 130 and R.S.17:3902.

4. Appeals relating to the issuance or renewal of certificates based on the standards of effectiveness must follow the grievance procedure through the LEA as identified in Bulletin 130.

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 32:1829 (October 2006), amended LR 36:487 (March 2010), LR 38:3140 (December 2012).

Chapter 9. Actions Related to the Suspension/Denial and Revocation of Louisiana Certificates

§901. Overview

A. Teaching certificates can be denied, suspended, or revoked for certain criminal offenses and/or for the submission of fraudulent documentation. Certificates shall also be suspended for individuals who have earned three years of ineffective evaluations within a certification renewal period pursuant to Bulletin 130 and R.S.17:3902 and individuals who have been dismissed by an LEA for facilitating cheating. This Chapter presents those circumstances plus the circumstances under which certificates can possibly be reinstated.

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 32:1830 (October 2006), amended LR 38:3140 (December 2012).

§908. Suspension and Revocation of Certificate/Endorsement Due to Facilitation of Cheating

A. A Louisiana teaching or educational leadership certificate shall be suspended and revoked if the individual holding the certificate has been dismissed by his/her employing LEA as a result of being found guilty of facilitating cheating, provided the LEA:

1. conducts an investigation into the allegations of cheating;
2. gathers sufficient evidence to confirm the cheating was facilitated by the employee;
3. dismisses the employee as a result of this offense;
4. notifies the department that the individual has been dismissed for this reason; and
5. provides evidence to justify the termination.

B. When the department is notified that any teacher has been dismissed by his/her employing LEA as a result of being found guilty of facilitating cheating, the following process shall take place:

1. Department staff shall attempt to contact the teacher/administrator to inform him/her that the department has information regarding his/her dismissal as a result of being found guilty of facilitating cheating and is proceeding under this policy to suspend the certificate.

2. The teacher/administrator shall have 10 working days from the date of notification to provide verification that he/she has not been dismissed as a result of being found guilty of facilitating cheating. This opportunity for response is intended as a check against mistaken identity or other incorrect information and the requested verification may be provided through a telephone conversation or written correspondence.

3. If the teacher/administrator cannot be reached, suspension of the certificate shall proceed, as will all other steps in the process outlined in this policy.

4. If the department determines that a teacher/administrator was dismissed by his/her employing LEA as a result of being found guilty of facilitating cheating, that teacher/administrator's certificate shall be suspended. The board, the teacher, and the employing school system shall be notified that the teacher's certificate has been suspended pending official board action.

5. The teacher/administrator shall be notified by certified mail and by any other appropriate means of notice that his/her certificate has been suspended and that the certificate will be revoked unless the teacher/administrator can provide documentation that he/she was not dismissed as a result of facilitating cheating.

6. If the LEA decision to dismiss the teacher is reversed, such action shall be communicated to the board through documentation provided by the LEA. The board may receive such information and order reinstatement of the teacher's 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 38:3140 (December 2012).

§910. Suspension and Non-Renewal of Certificate/Endorsement Due to Ineffectiveness

A. A Louisiana teaching or educational leadership certificate/endorsement shall be suspended if an individual has not successfully met the standards of effectiveness pursuant to Bulletin 130 and R.S.17:3902 for any three years within a certification or endorsement renewal period.

B. When the department determines that a teacher or administrator has not met the standards of effectiveness for any three years within a certification or endorsement renewal period, the following process shall take place.

1. Department staff shall attempt to contact the teacher/administrator to inform him/her that the department has information indicating he/she has received three years of Ineffective ratings within a certification or endorsement renewal period and is proceeding under this policy to suspend the certificate.

2. The teacher/administrator shall have 10 working days from the date of notification to provide verification that

his/her effectiveness ratings were mistakenly reported or since overturned by his/her employing LEA. This opportunity for response is intended as a check against mistaken identity or other incorrect information and the requested verification may be provided through a telephone conversation or written correspondence.

3. If the teacher/administrator cannot be reached, suspension of the certificate shall proceed, as will all other steps in the process outlined in this policy.

4. If the department determines that a teacher/administrator has not met the standards of effectiveness for three years within a certification or endorsement renewal period, that teacher/administrator's certificate/endorsement shall be suspended. The teacher/administrator and the employing LEA shall be notified that the teacher/administrator's certificate has been suspended.

5. The teacher/administrator shall be notified by certified mail and by any other appropriate means of notice that his/her certificate has been suspended and that the certificate will not be renewed unless the teacher/administrator can provide documentation that his/her effectiveness ratings were mistakenly reported or overturned by his/her employing LEA.

6. If the teacher/administrator's certificate remains suspended upon the culmination of his/her certification/endorsement renewal period, the department shall not renew the certification/endorsement.

7. If the LEA's Ineffective ratings for the teacher/administrator are reversed, such action shall be communicated to the board through documentation provided by the LEA. The board may receive such information and order reinstatement of the teacher/administrator's certificate/endorsement.

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 38:3140 (December 2012).

Heather Cope
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Board of Elementary and Secondary Education

Bulletin 921—Policy and Procedure Manual for the Louisiana Quality Education Support Fund 8(g)
(LAC 28:XCIII.Chapters 1-11)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 921—Policy and Procedure Manual for the Louisiana Quality Education Support Fund 8(g)*. Revisions incorporate current policy and procedures that have been updated since the bulletin was last approved. Upon final adoption, the revised bulletin will replace in its entirety any previously adopted versions.

Title 28 EDUCATION

Part XCIII. Bulletin 921—Policy and Procedure Manual for the Louisiana Quality Education Support Fund 8(g)

Chapter 1. Legislation and Purpose

§101. Introduction

A. The Louisiana Education Quality Trust Fund (Permanent Trust Fund) was established in September of 1986 by Louisiana Constitution Article VII, Section 10.1, R.S. 17:3801. The Permanent Trust Fund is to receive the bulk of the proceeds from an offshore oil revenue settlement with the federal government. A separate Louisiana Quality Education Support Fund (support fund) was created in the Louisiana State Treasury to receive and hold the interest earnings from the trust. Fifty percent of the earnings in the support fund are constitutionally mandated to be appropriated by the legislature and allocated by the Louisiana state Board of Elementary and Secondary Education (BESE) for the enhancement of elementary and secondary education programs. The remaining fifty percent will be allocated by the Louisiana Board of Regents. To accomplish the goal of enhancement, the Constitution establishes the following as the purposes for which the BESE can allocate funds:

1. to provide compensation to city or parish school board of professional instructional employees;

2. to insure an adequate supply of superior textbooks, library books, equipment, and other instructional materials;

3. to fund exemplary programs in elementary and secondary schools designed to improve elementary and secondary student academic achievement or vocational-technical skill;

4. to fund carefully defined research efforts, including pilot programs, designed to improve elementary and secondary student academic achievement;

5. to fund school remediation programs and preschool programs;

6. to fund the teaching of foreign languages in elementary and secondary schools;

7. to fund an adequate supply of teachers by providing scholarships or stipends to prospective teachers in academic or vocational-technical areas where there is a critical teacher shortage.

B. The constitution and statutory law provide that the BESE must annually submit a program and budget to the legislature and the governor at least 60 days prior to the regular session, the program and budget for the expenditures for which it will make allocations. The allocations must not displace, replace or supplant appropriations from the general fund for the purposes of implementing the Minimum Foundation Program.

C. Contained in this manual are the policies adopted by the BESE to govern activities for the allocation of monies from the 8(g) support fund under its control. From these funds, the BESE will make allocations to enhance elementary and secondary education programs in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 49:951 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3141 (December 2012).

§103. Definitions

A. As used in this document, the following terms shall have the meaning specified:

8(g) Advisory Council—an advisory council to the BESE which annually makes recommendations on the program, budget, and recommended projects for funding to be allocated by the BESE. The council shall operate in accordance with the BESE policy concerning the operation of advisory councils and shall serve without compensation, except for reasonable and necessary expenses for attending meetings and performing duties.

8(g) Program and Budget—consists of the broad categories of programs within constitutional categories and the total dollars the board proposed to fund in each category.

8(g) Support Fund (Louisiana Quality Education Support Fund)—a special fund in the Louisiana State Treasury, as specified in Article VII, Section 10.1 of the Louisiana Constitution and R.S. 17:3801. Fifty percent of the monies accruing to the support fund will be reimbursed by the treasurer on an annual basis in accordance with legislative appropriation for allocation by the Louisiana state Board of Elementary and Secondary Education (BESE) and the remaining 50 percent by the Louisiana Board of Regents.

Administrative Costs—no more than 3 percent of the average annual amount of actual expenditures by each board for the most recent three previous fiscal years for which actual expenditures are available shall be utilized for employment of personnel and associated travel and other benefits, the operation of the 8(g) Advisory Council activities, costs associated with monitoring and administration of funded activities, and the necessary evaluations, audits, and preparation of the annual program and budget for the allocation process.

Applicant—an eligible agency which submits a proposal for funding in response to a request for projects by the BESE.

Approved Nonpublic School—any nonpublic school which has been certified by the board to meet nonpublic school standards and is approved for state funding under Brumfield vs. Dodd.

Board—Louisiana state Board of Elementary and Secondary Education, also referred to as BESE and SBESE.

Budgets—a detailed monetary explanation for proposed expenditures for each project. These must be approved prior to the release of funds.

Equipment—equipment used for day-to-day, direct instruction of students. The term includes all items that are durable (sturdy) in nature and tend to last more than a year. The term does not include equipment used in any manner for administrative purposes, such as copiers, office file cabinets and/or office furniture, and so forth.

Exemplary Program—a model program or project which is worthy of imitation and which provided the following results:

- a. there was ample objective evidence of effectiveness;
- b. the stated objectives were obtained;
- c. the educational needs of the students were met; and
- d. there was a clear and attributable connection between treatment and effect.

Excess Costs—funds which may be assessed by an applicant to conduct the activities listed in a proposal for 8(g) funds. All assessments must relate directly to the proposed 8(g) activities and reflect costs to the applicant which are above and beyond costs for normal operating activities.

Fiscal Year (FY)—the fiscal year shall begin on July 1 and end June 30.

Foreign Language Instruction—academic instruction in any language other than English. The term does not include instruction in English as a second language.

Library Books—any books to be available for circulation among the general school population, or a specific component of the general school population, for research or enhancement.

Louisiana Education Quality Trust Fund (Permanent Trust Fund)—a fund in the Louisiana State Treasury which is derived from settlement with the federal government under 43 USC 1337(g), as specified in Article VII, Section 10.1 of the Louisiana Constitution and R.S. 17:3801. Earnings of the Permanent Trust Fund accrue to the Louisiana Quality Education Support Fund as specified by law.

Other Instructional Materials—any materials used in the direct instruction of students which are not included under the annual per-student allocation for "materials of instruction" through the Department of Education, but not limited to, computer software, art and music supplies, instructional films, records slides, and other materials of a similar nature.

Pilot Program—an educational program which will implement educational procedures, activities, objectives, standards, curricula, methodology, content, and so forth which do not presently exist in the school or school system seeking support funds for the program.

Pre-School Program—any educational program provided for children who have not attained their fifth birthday. The term includes any and all types of educational readiness activities.

Priorities—the areas of focus/need, as established by the BESE, which will be utilized in the determination of the program and budget. Examples of priorities might be programs of statewide impact, regional impact, local impact or reading, discipline, mathematics, foreign languages, textbooks, etc.

Project/Application—the document submitted by an applicant requesting support fund monies which meets the requirements established by the BESE.

Project/Application Deadline/Timeline—the date(s) by which an applicant must submit a project to be considered for funding by the BESE from support fund monies.

Projects—the specific design for activities to be awarded funds under each category in the program and budget. These must be approved prior to release of funds.

Project Year/Term—the project year/term shall be the time established by an applicant/recipient in the project for the accomplishment of activities.

Recipient—an applicant who is awarded funds based upon an approved project.

Remediation Program—program which teaches an educational skill which is normally taught at a lower grade level, such as basic education provided for teenagers or

adults, elementary grade level reading instruction provided at middle or secondary levels, and so forth. The term also includes social services provided in alternative school settings, special programs for high risk or potential drop-outs, and other ancillary support services designed to elevate any student or group of students to appropriate grade level performance.

Request for Projects—the document issued to elicit plans from applicants who intend to conduct an activity from 8(g) funds which meets the priorities and program and budget established by the BESE. The document will contain the mandatory components established by the BESE as a basis for funding eligibility, (i.e. project goals, objectives, activities, budget, projected project evaluation and project timelines).

Research—a procedure to investigate conditions existing within specific school populations which is structured in accordance with the accepted standards of the American Educational Research Association.

Scholarships—payment of a specific lump sum of money for a specified period of study at an institution of higher education within this state. The sum of money paid to scholarship recipients may be utilized by recipients to meet any expenses of the said study.

Stipends—payment of specific costs associated with specific course work at institutions of higher education within this state. The term also includes tuition reimbursements.

Superior Textbooks—textbooks approved by the board which are supplementary to regularly approved textbooks or used to enhance instruction.

Supplant/Displace/Replace—legally prohibited types of expenditures for 8(g) funds. For purpose of this policy, supplant, displace, and replace refer to the process whereby 8(g) funds would be utilized in lieu of funds available from a source other than 8(g) funds, or 8(g) funds would be utilized to fund activities previously funded by a source other than 8(g) funds. The prohibition specifically refers to State General Fund (SGF) monies utilized to fund the Minimum Foundation Program in elementary and secondary education and SGF funded activities in vocational-technical education. The terms shall apply to the two fiscal years prior to the effective date of funding.

Technology—any tool that can be used in the school with students to enhance academic achievement (such as local and remote computer-based information, multimedia, calculators, satellite and broadcast resources) or any course or program which employs the use of such technology as it relates to student academic achievement in any of the core curriculum areas undergoing standards reform.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3142 (December 2012).

Chapter 3. 8(g) Advisory Council

§301. Duties and Responsibilities of the 8(g) Advisory Council

A. The 8(g) Advisory Council shall have the following responsibilities:

1. to make recommendations with respect to the board's annual establishment of priorities;
2. to make recommendations concerning any support fund policies, procedures, and/or activities;
3. to participate in any public hearings conducted by the board relative to the support fund;
4. to undertake and perform such other responsibilities as may from time to time be delegated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3143 (December 2012).

§303. Composition of the 8(g) Advisory Council

A. Refer to LAC 28:I.503 (advisory councils) for the composition of membership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3143 (December 2012).

Chapter 5. Public Participation

§501. Public Participation in Establishment of Priorities for Expenditure of Support Fund Monies

A. The board shall conduct at least one hearing annually to receive public input, ideas, and suggestions for programs and objectives for the expenditure of support fund proceeds for elementary and secondary schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3143 (December 2012).

§503. Public Notice of Hearings

A. The board shall publish the date(s), time(s), and location(s) of such hearing(s) at least two weeks prior to each scheduled hearing in order to provide adequate notice to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3143 (December 2012).

§505. Deadline for Completion of Public Hearings

A. Public hearings, as authorized by Section 110 hereof, shall be completed by October 31 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3143 (December 2012).

§507. Compilation of Recommendations Made at Public Hearings

A. The recommendations tendered at any such public hearing(s) shall be compiled by the board staff for review by the board at its next meeting, and shall be available to the 8(g) Advisory Council and the public no later than December 31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3143 (December 2012).

Chapter 7. Annual 8(g) Program and Budget
Subchapter A. Establishment of Annual 8(g) Program and Budget

§701. Establishment of Annual 8(g) Program and Budget; Priorities

A. During every fiscal year, the board shall establish the 8(g) program and budget for the expenditure of support fund monies which are anticipated to become available in the subsequent fiscal year. In delineating the educational programs and objectives which shall constitute its 8(g) program, the board may establish one or more priorities. In developing the 8(g) budget, the board shall assign dollar amounts to each category program included in its proposed 8(g) program.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. VII, §10.1, R.S. 17:7.3, and R.S. 17:3801.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3144 (December 2012).

§703. Establishment of Priorities through the Allocation of Support Fund Monies within Constitutional Categories

A. The board shall establish its annual priorities for the expenditure of support fund monies by allocating a specific dollar amount and/or a specific percentage of the total support fund monies appropriated for any fiscal year to one or more of the categories of educational programs eligible to receive support fund monies, as follows:

1. to provide compensation to city or parish school board or postsecondary vocational-technical professional instructional employees;
2. to insure an adequate supply of superior textbooks, library books, equipment, and other instructional materials;
3. to fund exemplary programs in elementary, secondary, or vocational-technical schools designed to improve elementary, secondary, or vocational-technical student academic achievement or vocational-technical skills;
4. to fund carefully defined research efforts, including pilot programs, designed to improve elementary and secondary students academic achievement;
5. to fund school remediation programs and pre-school programs;
6. to fund the teaching of foreign languages in elementary and secondary schools; and
7. to fund an adequate supply of teachers by providing scholarships or stipends to prospective teachers in academic or vocational-technical areas where there is a critical teacher shortage.

B. In establishing annual priorities for the expenditure of support fund monies, the board may specify types of educational programs or projects which shall receive preference for funding. For example, the board may elect to give preference in the award of support fund monies, within the constitutional category of exemplary programs, to exemplary projects designed to reduce drop-outs.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. VII, § 10.1, R.S. 17:7.3, and R.S. 17:3801.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3144 (December 2012).

§705. Allocation of Support Fund Monies for Statewide Purposes

A. The board, in its sole discretion, may allot a specific amount or a percentage of support fund monies for expenditures necessary to implement specific statewide educational projects mandated by the board. For example, the board may elect to allot a specific percentage of the total support fund monies available in any given fiscal year to the implementation of foreign language instruction in the elementary grades, as previously mandated by the board. The board may issue general or specific requests for projects for the development and/or implementation of any statewide educational project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3144 (December 2012).

§707. Set-Aside for Administrative Purposes; Limitation on Amount; Purposes for which Set-Aside May Be Expended

A. The board shall determine the percentage of anticipated support fund revenues which shall be set aside to pay costs associated with the administration of the Program. Such administrative set-aside shall not exceed no more than 3 percent of the average annual amount of actual expenditures by each board for the most recent 3 previous fiscal years. The administrative set aside shall be used to pay costs including, but not limited to:

1. the salaries and related costs of 8(g) personnel;
2. the expenses of the 8(g) Advisory Council;
3. the costs of public hearings;
4. the expenses of review committees which may assist the board in necessary determinations as to eligibility of applicants and/or feasibility of projects;
5. necessary monitoring and evaluation of funded projects;
6. preparation and dissemination of annual reports; and
7. materials, supplies, furniture, and equipment.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. VII, § 10.1, R.S. 17:7.3, and R.S. 17:3801.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3144 (December 2012).

§709. Notice of Adoption of Annual 8(g) Program and Budget

A. The board shall publish a notice of its adoption of the annual 8(g) program and budget in the *Louisiana Register*. Such notice shall consist of a summary of the educational objectives and/or programs to receive budgetary priorities, including the proposed allocation. Such report shall include, but not be limited to, the following:

1. the amount set aside for administrative purposes;
2. an explanation of specific priority(ies), if any, established by the board, and the dollar amount allocated for each program; and
3. any additional information relative to board actions which has a direct bearing upon the eventual awarding of support fund monies to eligible recipients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3144 (December 2012).

§711. Allocations of the Board to be Reported to the Governor and the Legislature

A. The decisions of the board relative to the expenditure of support fund monies in the fiscal year next following establishment of the annual 8(g) program and budget shall be reported to the legislature and the governor not less than 60 days prior to each Regular Session of the Legislature.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. VII, § 10.1, R.S. 17:7.3, and R.S. 17:3801.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3145 (December 2012).

Subchapter B. Eligibility Criteria

§713. Eligibility Criteria

A. The following eligibility criteria apply to all applications for support fund monies.

1. The project to be funded must be within a category specified under Article VII, Section 10.1(D)(2) of the Louisiana Constitution and the annual program adopted by the board. (See §703 hereof for a verbatim listing of the categories of educational programs authorized in said provision.)

2. No project in an elementary or secondary school can be approved through the support fund if the project replaces a program funded through the Minimum Foundation Program or State General Fund unless there has been a lapse of at least two fiscal years.

3. All applicants must also comply with eligibility requirements, if any, established for each constitutional category. Program category requirements are set forth in the Sections of these regulations, relative to each constitutional category.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. VII, § 10.1, R.S. 17:7.3, and R.S. 17:3801.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3145 (December 2012).

§715. Eligible Applicants

A. The following are eligible to apply for an award of support fund monies:

1. any public or approved nonpublic elementary/secondary school system located within the state of Louisiana. Applications made on behalf of a specific classroom teacher, a department within a school, a group of schools, or on a system-wide basis shall be eligible for submission only through the approved recipient who shall serve as fiscal agent;

2. any approved elementary or secondary school located within the state of Louisiana that is not part of a school system, provided that the school has been certified by the state Board of Elementary and Secondary Education to meet all applicable standards and is approved for state funding under *Brumfield vs. Dodd*. Applications made on behalf of a specific classroom, teacher, or department, or an entire school shall be eligible for submission only through the approved recipient who shall serve as fiscal agent;

3. private organizations/individuals shall be eligible to submit only through an approved recipient who shall serve as fiscal agent;

4. state agencies shall be eligible for funding for noncompetitive statewide projects, as allocated by BESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3145 (December 2012).

Subchapter C. Application for Support Fund Monies

§717. Application for Support Fund Monies

A. It is required that eligible recipients desiring to apply for support fund monies in any constitutional category submit an application.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. VII, § 10.1, R.S. 17:7.3, and R.S. 17:3801.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3145 (December 2012).

§719. Period to be Covered by Application for Support Fund Monies

A. The maximum years eligible to receive funding for a continuing project is three years. It should be clearly understood by applicants, however, that no project will be funded for more than one fiscal year. Funding for subsequent years contained in the project proposal is subject to reconsideration by the board in each subsequent fiscal year. The award of support fund monies will, in all cases, be guaranteed for one fiscal year only.

B. Applications for support fund monies may be submitted by eligible applicants for varying periods of time, as follows:

1. for periods of less than one fiscal year;

2. for periods which correspond with the beginning and ending dates of one fiscal year. No projects will be funded for a period which begins in one fiscal year and ends in a different fiscal year;

3. For periods of two or more fiscal years. It should be clearly understood by applicants, however, that no project will be funded for more than one fiscal year. Funding for any subsequent years contained in the project proposal is subject to reconsideration by the board in each subsequent fiscal year. The award of support fund monies will, in all cases, be guaranteed for one fiscal year only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3145 (December 2012).

Subchapter D. Evaluation of Support Fund Applications

§721. Determination of Eligibility

A. An application for support funds must demonstrate that the project for which support funds are requested complies with the constitutional eligibility factors enumerated in Section 121 hereof, and that the project conforms to the priorities and objectives delineated in the annual 8(g) program and budget adopted by the board for that specific funding period.

B. All applications received in the board office shall be reviewed by a minimum of two employees of the board to determine compliance with the constitutional requirements established under Article VII, Section 10.1(D)(2) and enumerated at Section 121 hereof.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. VII, § 10.1, R.S. 17:7.3, and R.S. 17:3801.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3145 (December 2012).

§723. Award of Support Fund Grants

A. Funding determinations shall be finalized by the board for projects to be funded as of July 1.

B. The board staff shall notify all applicants of the disposition of their projects following board approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:3146 (December 2012).

§725. Provisions Relative to Superior Textbooks, Library Books, Equipment, and Other Instructional Materials

A. Projects which anticipate across-the-board increases in the per-student allocation for textbooks, library books, and other instructional materials for a single elementary/secondary school or school system are not eligible for funding in this category, since such allocations will be addressed by the board on a statewide basis. In the annual establishment of priorities for the expenditure of support fund monies, the board may allocate support funds for an across-the-board increase in the per-student allocation for textbooks, library books, and other instructional materials.

B. The following types of projects are eligible for support funds in this category:

1. textbooks:

a. projects which provide for the purchase of textbooks for a specific instructional program which is not offered to an entire student body, such as textbooks for advanced study in any scientific or mathematics field, or other programs of a similar nature at any grade level;

b. projects which will provide necessary textbooks for advanced Placement programs in any secondary school;

c. Projects which provide for the purchase of textbooks suitable to a program of independent study for an academically gifted student at any grade level, provided that evidence must be provided in the proposal of the academic standing of any student engaged in independent study for whom special materials will be acquired with support funds;

d. Projects which provide for the purchase of textbooks not included on the Textbook Adoption List, such as textbooks which are appropriate for handicapped students, provided that such textbooks must be listed in the proposal.

2. Library Books

a. Projects which provide for the purchase of current encyclopedias, world atlases, etc. where no similar resource materials are available within a given school;

b. Projects which will permit the acquisition of appropriate library resource materials to be used in any specific instructional program, such as texts in a foreign language offered in the school which will acquire the additional library volumes, additional volumes in a specific field of science or mathematics, and so forth;

3. Equipment

a. Projects which provide for the purchase of instructional equipment, provided that only equipment which

is used for the direct instruction of students on a daily basis is eligible for support funds in this category.

b. Equipment purchased with 8(g) funds should remain with the program as long as it is operating [with either 8(g) or other funding source]. If the equipment is more than four years old, is non-operational, or is obsolete, the equipment may be surplus or disposed of following the appropriate agency and State regulations and its disposition reported to the Board of Elementary and Secondary Education office.

c. When a program terminates, the equipment should be moved to another 8(g) program, and the disposition should be reported to the board.

4. Other Instructional Materials:

a. projects which provide for the purchase of instructional software programs marketed by commercial firms to be used in existing computer equipment;

b. projects which provide for the purchase of art or music supplies, such as oil paints, paint brushes, sheet music, records, etc.;

c. projects which provide for the purchase of instructional supplies such as saws, hammers, nails, etc., to be used in vocational training;

d. projects which provide for the purchase of foodstuffs to be used in family and consumer science instructional programs funded with 8(g) monies;

e. projects which provide for the purchase of instructional films and slides; and

f. projects which provide for the purchase of other recognized instructional materials which are not available under the annual per-student allocations for materials of instruction, provided that such other instructional materials must be fully described in the project.

C. The project must include the number and grade levels of students who will have access to the items purchased.

D. The project must contain the school site where items purchased will be housed.

E. The project must include the name and title of the school employee responsible for proper usage of the items purchased.

F. Whenever the purchases are for the use of a specific population within a school, such as advanced placement students, the project must name the specific population and must illustrate the reasons for selecting the specific population to receive support fund monies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3146 (December 2012).

§727. Provisions Relative to Exemplary Programs in Elementary and Secondary Schools

A. The program must clearly demonstrate that appropriate implementation will result in improved student achievement at the elementary/secondary level.

B. In the program, there must be a clear correlation between the activities to be implemented and the results to be achieved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3146 (December 2012).

§729. Provisions Relative to Research and Pilot Programs Designed to Improve Elementary and Secondary Student Academic Achievement

A. An eligible applicant may receive funding for a program which is limited to educational research. However, any applicant seeking funds for a "pilot program" must either:

1. incorporate a "research component within the pilot program in order to verify that program activities do, in fact, result in improved academic performance; or

2. must include documentation that legitimate research available in the literature already demonstrates that the activities to be implemented in the pilot program have resulted in improved student academic performance.

B. The following requirements apply to research to be funded with support fund monies:

1. The activities to be undertaken must meet or exceed the standards established by the American Education Research Association.

2. There must be clear guarantees that the rights of participants will be protected throughout the research activities.

3. There must be a clear correlation between the anticipated results of the research and improved elementary and secondary student academic performance.

4. The applicant must assure that the board will receive interim reports and a comprehensive final report of all research findings.

C. The following requirements apply to pilot programs to be funded with support fund monies.

1. The program must either:

a. include a research component; or

b. include documentation that the design of the pilot program is based upon validated research findings.

2. There must be clear guarantees that the rights of participants in any research component of the pilot program will be protected throughout the program period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3147 (December 2012).

§731. Provisions Relative to School Remediation Programs

A. The population to be served must be clearly identified in the proposal.

B. The need for the remediation of the identified population must be clearly documented by provision of educational performance data acceptable to the board.

C. The location in which the services will be provided must be included in the proposal (e.g., the location of an alternative school setting).

D. If financial or personnel support will be received from any source other than the applicant (e.g., volunteer instructors from the community, "big brother" type support provided by a civic or religious organization, etc.), the source and type of such assistance, including the level of financial support, must be included in the proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3147 (December 2012).

§733. Provisions Relative to Pre-school Programs

A. The population to be served must be clearly identified.

B. The need of the target population for pre-school instruction must be substantiated by test or demographic data acceptable to the board.

C. The certification to be required of instructional personnel must be included in the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3147 (December 2012).

§735. Provisions Relative to Foreign Language Instruction in Elementary and Secondary Schools

A. The following types of projects are eligible in this constitutional category:

1. programs which offer foreign language instruction designed to improve overall academic performance of students, provided that proposals relying on improved academic performance must include evidence from validated research to support the anticipated improvements;

2. programs designed for a specific target population, provided that projects for such programs must clearly identify the population to be served;

3. expansion of the regular foreign language program offered at the elementary or secondary level in any school system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3147 (December 2012).

Chapter 9. Administration of Annual 8(g) Program and Budget

§901. Procedure for Payment to Support Fund Grantees

A. The board shall authorize payment to each support fund grantee in accordance with the approved project budget.

B. Each grantee shall submit a claim for reimbursement, in the form prescribed by the board. Grantees may request reimbursement of expenditures on a monthly basis.

C. Claims for reimbursement must conform to the budget approved by the board for each project.

D. Budget amendments which do not exceed 20 percent of the line item of the budget, or 5 percent of the total budget, may be approved routinely by the board staff. Any line item amendment to an approved budget which exceeds 20 percent of the approved line item must be submitted to the board for its approval.

E. Each grantee shall submit to the board a summary report showing all expenditures during the approved project period no later than 60 days after the close of the project period.

F. Any grantee not in compliance with Subsections D or E of this Section shall be required to repay the grant money with interest upon demand of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3147 (December 2012).

§903. Quarterly Report to the Board

A. The Department shall submit to the board a quarterly report showing all expenditures in each project no later than 30 days after the close of each quarter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3148 (December 2012).

§905. Mid-Year Progress to Legislature

A. Each recipient of 8(g) funds (which is not a public or quasi-public entity that is a budget unit of the state) must provide a written report to the BESE office concerning the use of funds and progress on meeting goals and objectives of the project in March.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3148 (December 2012).

§907. Final Programmatic Report

A. Each support fund grantee shall submit a final programmatic report to the board within 60 days after the close of a project period. The final programmatic report shall include, but not be limited to, the following:

1. benefits achieved by the program;
2. evidence of compliance with timelines established in the project application;
3. data showing the degree of success achieved by the project;
4. feasibility of replication of the project;
5. such other information as may be beneficial to the board in its consideration of continuation of the project.

B. Those 8(g) recipients who have not submitted End of Year Reports on prior year projects as of September 1 shall not receive current year 8(g) funds until reports have been submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3148 (December 2012).

§909. Monitoring and Evaluation of Approved Support Fund Projects

A. Each project approved for support funds shall be monitored at least once during the project period.

B. The board may elect to conduct monitoring through the use of employees of the board.

C. The board may elect to employ the services of independent monitors to conduct some or all of the monitoring of projects.

D. The board may employ one or more independent consultants to conduct an in-depth evaluation of such projects as may be selected by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3148 (December 2012).

§911. Annual Report of Each Fiscal Year Support Fund Activities

A. No later than December 31st of each year, the department shall prepare and submit to the board a comprehensive report of all projects funded during the previous fiscal year. The report shall contain such information as may be required by the board. The report shall be submitted to the legislature and the governor at such time as may be deemed appropriate by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3148 (December 2012).

Chapter 11. Ownership/Production Rights

§1101. Ownership/Production Rights

A. Upon termination at the completion of 8(g) funding for a project/program, the state Board of Elementary and Secondary Education may approve an agency's request to retain equipment purchased with 8(g) funds based on the agency's assurance that the equipment will be used for educational enhancement.

B. All educational products developed using 8(g) funds awarded by the state Board of Elementary and Secondary Education are the property of the board and cannot be distributed for profit without explicit approval from the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 38:3148 (December 2012).

Heather Cope
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RULE

Board of Elementary and Secondary Education

Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation (LAC 28:XLIX.101-3501)

Editor's Note: All Sections contained in Chapters 1 through 35 (§§101 through 3501) are being repealed. They are not shown individually due to space and cost considerations.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has repealed *Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation*: §101 through §3501. The policy repeal will eliminate the redundancy of codifying the federal law, regulations, and policies, into a

separate bulletin within the *Louisiana Administrative Code*. Bulletin 741 already contains references to the USDA Child Nutrition Programs administered by the Board of Elementary and Secondary Education and all needed state policy shall be incorporated into Bulletin 741.

**Title 28
EDUCATION**

Part XLIX. Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation

- Chapter 1. Administration**
Repealed.
- Chapter 3. Financial Management and Accounting**
Repealed.
- Chapter 5. Free and Reduced Price Meals**
Repealed.
- Chapter 7. Meal Planning Service**
Repealed.
- Chapter 9. Afterschool Care Program**
Repealed.
- Chapter 11. Personnel**
Repealed.
- Chapter 13. Equipment**
Repealed.
- Chapter 15. Procurement**
Repealed.
- Chapter 17. Commodities**
Repealed.
- Chapter 19. Sanitation**
Repealed.
- Chapter 21. Civil Rights—Handling Complaints**
Repealed.
- Chapter 23. Ethics**
Repealed.
- Chapter 25. Summer Food Service Program**
Repealed.
- Chapter 27. Special Milk Program**
Repealed.
- Chapter 29. Child and Adult Care Food Program**
Repealed.
- Chapter 31. Disaster Feeding**
Repealed.
- Chapter 33. Financial Management and Accounting for Child and Adult Care Food Program Family Day Care Homes (FDCH)**
Repealed.
- Chapter 34. National School Lunch Program and Child and Adult Care Food Program Appeals Procedures**
Repealed.
- Chapter 35. Glossary**
Repealed.

Heather Cope
Executive Director

1212#010

RULE

Board of Elementary and Secondary Education

Technical Revisions and Updates
(LAC 28:I.103, 305-315, 501, 703-705, 709-713, 713, 717, 719, 725, 901, 903, 1101-1107 and 1303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended the *Louisiana Administrative Code*, Title 28, Part I. These revisions bring the "BESE Code" into alignment with current law and policy. All of the amendments are technical, rather than substantive, and are necessary for a range of reasons, including:

- legislation enacted into law since 2008;
- amendments to statutes that serve as the basis for policies within the Code;
- changes in numbers assigned to statutes that are cited within authority notes at the end of each Section;
- shifts in the geographical coverage of BESE districts prompted by the 2010 Census and subsequent redistricting process;
- duplication of policies in law, which supersedes BESE's authority and to which the code should defer;
- inconsistencies within the Code itself caused by changes to rules since 2008 that were not applied throughout the document; and
- edits to terminology and grammar.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 1. General Provisions**

§103. Definitions

BESE and/or *Board*—the Board of Elementary and Secondary Education as created by the Louisiana constitution and the *Louisiana Revised Statutes*.

Constitution—the constitution of the state of Louisiana.

House—the Louisiana House of Representatives.

Louisiana Department of Education or *LDE*—the Louisiana Department of Education, the administrative arm of the Board of Elementary and Secondary Education.

Senate—the Louisiana Senate.

State Superintendent—the Louisiana superintendent of education, who shall be the chief administrative officer of the Louisiana Department of Education and shall administer, coordinate, and supervise the activities of the LDE in accordance with law, regulation, and policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:409 (March 2008), amended LR 38:3149 (December 2012).

Chapter 3. Composition and General Authority

§305. Election of Officers and Their Duties

A. ...

B. The president shall conduct board meetings and perform duties designated by the board or by statute. The president shall sign, on behalf of the board, contracts, agreements, and/or official documents approved by the board. The president is authorized to make ad hoc decisions for the board in emergency situations when the board is not in regular or special session and where policies and statutes are silent. However, any such decisions, which constitute an obligation, official position, or action of the board, are subject to ratification by the board at the next scheduled meeting. The president shall appoint members of committees of the board.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3 and R.S. 17:22.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:409 (March 2008), amended LR 38:3149 (December 2012).

§307. General Powers and Duties

A. - A.2. ...

3. Supervise, manage, and operate or provide for the supervision, management, and operation of a public elementary or secondary school which has been determined to be failing, including the power to receive, control, and expend state funds appropriated and allocated pursuant to La. Const. Art. VIII, Sec. 13(B), any local contribution required by La. Const. Art. VIII, Sec. 13, and any other local revenue available to a school board with responsibility for a school determined to be failing in amounts that are calculated based on the number of students in attendance in such a school, all in the manner provided by and in accordance with law.

4. Approve the administration of the special school district and the recovery school district by the LDE.

5. Approve budgets of the LDE, including the special school district and recovery school district, and all entities under the jurisdiction of the board as provided herein.

6. - 11. ...

12. Exercise approval authority over the administration of the special school district by the LDE pursuant to law.

13. ...

14. Exercise approval authority over the administration of the recovery school district by the LDE pursuant to law.

15. Authorize the operation of Type 2, Type 4, and Type 5 charter schools and provide oversight through the LDE of Type 2, Type 4, and Type 5 charter schools.

a. - b. ...

c. Determine the policy and provide direction to the LDE for providing the oversight of the operation of charter schools chartered with the board.

16. ...

AUTHORITY NOTE: Promulgated in accordance with La. Const. art. VIII §8, R.S. 17:6(A), R.S. 17:7(2)(a), R.S. 17:7(3), R.S. 17:7(4), R.S. 17:7(5), R.S. 17:7(6)(a)(i), R.S. 17:7(7), R.S. 17:7(8), R.S. 17:4.1, R.S. 17:43, R.S. 17:348, R.S. 17:6(A)(10), R.S. 17:6(A)(11), R.S. 17:10.5, R.S. 17:1990 and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:410 (March 2008), amended LR 38:3150 (December 2012).

§309. State Superintendent

A. - C. ...

D. General Authority

1. The state superintendent shall execute and implement those educational policies and programs which are under the supervision and control of the board and shall serve as the administrative head of the LDE.

2. ...

3. The state superintendent shall administer the recovery school district, an intermediate education unit within the LDE, pursuant to R.S. 17:1990. As the administrative head of the LDE, the state superintendent is the appointing authority for the Recovery School District, except as provided herein.

4. The state superintendent shall be the governing authority for the special school district, an educational service agency within the LDE, pursuant to R.S. 17:1945. As the administrative head of the LDE, the state superintendent is the appointing authority for the special school district, except as provided herein.

5. The state superintendent may delegate, subject to the approval of the board, the appointing authority conferred upon him/her by law as to the recovery school district to the recovery school district superintendent. The state superintendent may delegate administrative authority conferred upon him/her by law as to the recovery school district to the recovery school district superintendent, subject to any restrictions provided by law, rule, or policy.

E. Duties

1. The state superintendent shall establish such divisions within the LDE as are necessary or appropriate to carry out the functions vested by or under authority of the constitution and laws.

2. The state superintendent shall have budgetary responsibility for all funds appropriated or allocated by the state for the day-to-day operations and for the functions of the LDE that are not inconsistent with the functions of the board.

3. The state superintendent, as the administrative head of the LDE, shall oversee the administration and distribution of all federal funds received for the benefit of those phases of education under the jurisdiction of the board, in accordance with policies adopted by the board.

4. The state superintendent may review the responsibilities of the LDE and prepare a plan to restructure and reorganize the LDE subject to the approval of the board and in accordance with Chapter 15 of Title 36 of the Louisiana Revised Statutes.

5. The state superintendent shall provide staff services within the LDE that are needed by the board to carry out its constitutional and statutory mandates.

6. ...

a. The state superintendent, with the consent of the board, may establish or abolish positions that direct the offices/divisions of the LDE.

b. - c. ...

d. The state superintendent shall appoint the superintendent of the special school district, subject to confirmation by the Senate.

e. The state superintendent shall employ/appoint and fix the salaries and duties of employees of the LDE, including the special school district and the recovery school district, subject to applicable Civil Service laws, rules, and regulations, and other applicable laws, rules, regulations, and policies.

f. The selection of appointees to all unclassified positions shall be based on professional, technical, and/or clerical qualifications appropriate to each position.

g. No person shall, on the basis of race, color, religion, sex, age, national origin, handicap, veteran status, or any other non-merit factor, be discriminated against in any employment practice.

h. In addition to the above, the state superintendent shall exercise his/her responsibilities for personnel matters in accordance with the constitution and laws of the state.

7. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:21(C), 17:6(B), 17:21(B), 17:21(D), 17:21(A), 17:1990, 17:24(A), 17:24(B), 17:24(C), 17:24(D), 17:22(2)(f), 36:645, 17:22(6), 17:88(B), 17:88(D), 17:92, 17:10.6(A)(2), 17:3983, 17:43, 17:1945, 36:642(C)(1), and 36:648.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:410 (March 2008), amended LR 37:886 (March 2011), amended LR 38:3150 (December 2012).

§311. The Special School District

A. Functions of the Special School District

1. The special school district is an educational service agency administered by the LDE that includes the Louisiana special schools (Louisiana Schools for the Deaf and Visually Impaired and the Louisiana Special Education Center) and the special school programs. The special school district is available to all eligible students regardless of their place of residence within the state.

a. The Louisiana special schools (Louisiana Schools for the Deaf and Visually Impaired, and Louisiana Special Education Center) are state-operated schools providing educational programs and services for residential and/or day students. The Louisiana Special Schools are established to provide a free appropriate public education for children with low incidence disabilities who meet the admission criteria (i.e., deaf, blind, orthopedically impaired) for each such special school and who are enrolled in such special school.

b. The special school programs provide educational services to students enrolled in state approved programs in non-traditional settings such as those provided by the Office for Citizens with Developmental Disabilities, the Office of Behavioral Health, the Office of Juvenile Justice, and the Department of Public Safety and Corrections.

B. Administration

1. The special school district shall be under the administration and supervision of a superintendent of the special school district. The superintendent of the special school district shall exercise all duties and functions under the direct supervision and control of the state superintendent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:4.1, R.S. 17:6(B), R.S. 17:43, R.S. 17:1945, R.S. 36:642(C)(1), and R.S. 36:648.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:412 (March 2008), amended LR 38:3151 (December 2012).

§313. The Recovery School District

A. Establishment

1. The recovery school district is established as an intermediate educational unit administered by the LDE, subject to the approval of the board, to provide an appropriate education for children attending any public elementary or secondary school operated under the jurisdiction and direction of any city, parish, or other local public school board or any other public entity, which has been transferred to its jurisdiction pursuant to R.S. 17:10.5 or 10.7.

B. Organization and Administration of the Recovery School District

1. The recovery school district shall be administered by the LDE, subject to the approval of the board.

2. The board shall oversee the administration of the recovery school district, with such administration subject to board approval through the policies it prescribes.

3. The overall administrative organization of the recovery school district consists of the board in the exercise of its approval over the administration of the recovery school district, the state superintendent acting as the recovery school district's governing authority consistent with authority delegated by the board and statutory authority acknowledged by the board, and a superintendent of the recovery school district.

4. The recovery school district shall be administered by a superintendent, who shall report to the state superintendent. The responsibilities and duties of the recovery school district superintendent shall be prescribed by the state superintendent.

C. Policies and Procedures for the Recovery School District

1. Policies for the board's administrative oversight of the recovery school district shall be adopted by BESE and set forth in the recovery school district bulletin. Administrative oversight shall include, but not be limited to, policy governing activities that will ensure the purpose and functions of the recovery school district are being achieved, fiscal responsibilities are being met, community involvement is sought, property is managed and developed under uniform and established guidelines, student progress is measured and corrective action is taken, when necessary, district progress is measured in all essential areas and corrective action is taken, when necessary, reporting and planning measures are defined, compliance with law and board policy exists, charter school oversight exists, and the recovery school district plan is being fulfilled.

2. Procedures for the operation of the schools within the recovery school addressing the day-to-day operation of schools by the recovery school district shall be adopted by the state superintendent and set forth in the *Recovery School District Handbook* and supplements thereto. The state superintendent shall report on such procedures adopted, as required by the board. The board shall have the authority to review and provide guidance on procedures adopted by the

superintendent and shall have the authority to direct the amendment of a procedure the board determines is in violation of law or policy. Operational procedures shall include, but not be limited to:

- a. instructional program;
- b. human resource and employment policies;
- c. rules governing student conduct, rights, and responsibilities;
- d. fiscal management;
- e. business management;
- f. school facility use and maintenance;
- g. district and student records;
- h. public and educational agency relations; and
- i. any procedure required by the RSD bulletin.

3. The recovery school district shall be subject to a BESE charter school bulletin to the extent that it is applicable to the charter schools under its jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:6(B), and R.S. 36:651(F).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:413 (March 2008), amended LR 36:2851 (December 2010), LR 38:3151 (December 2012).

§315. Board Staff

A. - D. ...

E. In general, duties of the staff include the following:

1. provide professional staffing functions for all committees of the board, including the appellate functions related to the quasi-judicial actions of the board acting as the administrative agency of last resort prior to regular judicial proceedings;

2. - 3. ...

4. provide staffing services to advisory councils established by the board and educational commissions established by the legislature. The board staff shall serve as secretariat to the advisory councils of the board. Secretarial services shall include the preparation of agenda and minutes, both of which shall be prepared according to regular office procedures of the board. The executive director shall supply each advisory council with a staff person who shall serve as an aide to the chair of the council and serve as a representative of the executive director for the purpose of coordinating activities of the advisory councils and the committees of the board;

5. - 7. ...

8. develop charter school policy and monitor the LDE's implementation of policy and its oversight of the charter schools authorized by BESE;

9. - 10. ...

F. Staff assistance from employees of the LDE may be secured for advisory councils only at the direction of the state superintendent of education.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(15), R.S. 17:6(A)(10), R.S. 17:3(D), Article VII § 10.1, R.S. 17:3801, and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:415 (March 2008), amended LR 38:3152 (December 2012).

Chapter 5. Organization

§501. Committees

A. - B.1. ...

a. Primary areas of responsibility (AOR):

i. - iii.(a). ...

iv. nonpublic school management;

(a). - (b). ...

b. Issues included on "as needed" basis in AOR:

1.b.i. - 2. ...

a. Primary areas of responsibility (AOR):

2.a.i. - 3. ...

a. Primary areas of responsibility (AOR):

i. ...

(a). certification revocations;

(b). records reviews for:

(i). certification denials;

(ii). revocations due to felony convictions;

(iii). revocations due to submission of

fraudulent documents;

(c). policy concepts;

B.3.a.ii. - 4.b.i. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:415 (March 2008), amended LR 35:223 (February 2009), LR 35:1874 (September 2009), amended LR 36:2851 (December 2010), LR 37:2139 (July 2011), LR 38:3152 (December 2012).

§503. Advisory Councils

A. - C.3.a. ...

b. Membership—24 members as follows:

i. two city, parish, or other local public school superintendents recommended by each board member. It is recommended that the composition reflect all sizes of systems and be equitable in the regions represented, to the extent possible;

ii. - iii. ...

iv. Repealed.

b.v. - c.i. ...

ii. Recommendations from the superintendents' advisory council shall go to the appropriate board committee. The LDE shall provide responses to the various recommendations.

C.4. - F.1. ...

2. Vacancies. A vacancy in an appointed position shall occur if an appointee, for any reason, is unable to serve the full extent of his/her term. Appointments to fill vacancies shall be considered interim appointments.

3. - 5. ...

6. Attendance Policy

a. Appointed members are expected to attend all scheduled meetings of an advisory body. Unless otherwise provided, if a member is unable to attend a meeting, a request for an excused absence should be submitted to the council chair or the executive director one week prior to the meeting and a proxy may be named by the appointed member to serve for a total of three meetings. A council member shall be removed and his/her seat declared vacant if he/she is no longer a legal resident of Louisiana, fails to

remain active in or is no longer employed by the organization or agency he/she was appointed to represent, or misses more than two meetings, unless excused prior to the meeting by the council chair.

F.6.b. - G.3. ...

4. In accordance with Act 131 of the 2008 Regular Legislative Session, the agenda may be amended upon unanimous approval of the members present at a meeting and subject to other provisions of the Act.

5. In all particulars, except for those listed in these rules and procedures, the business in advisory councils shall be conducted according to *Robert's Rules of Order*.

6. Every motion passed by an advisory council, whether or not made as a recommendation, shall be made as a main motion and must be seconded. All motions must be voted on and roll call votes may be requested by any of the membership in attendance at a meeting.

a. Requests from advisory councils for data/reports must be made in the form of a motion, requesting that the board direct the LDE or BESE staff to provide such information to the council making the request.

7. The minutes and reports of each advisory council shall be presented to the board's executive director for referral to the board. Actions taken in response to referrals shall be forwarded to the appropriate committee(s). A committee, after consideration of the recommendations of the advisory council, shall report its recommendations to the board for final action.

8. All meetings of advisory councils shall be considered official functions of the board to assist in the execution of board responsibilities and duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:6(A)(15), R.S. 17:24.4, and R.S. 17:11.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:416 (March 2008), amended LR 35:1874 (September 2009), LR 36:2851 (December 2010), LR 37:2140 (July 2011), LR 38:772 (March 2012), LR:38:3152 (December 2012).

Chapter 7. Operations

§703. Regular and Special Meeting Schedules

A. ...

B. The board and committee meeting schedules for future calendar years are submitted to the board for approval in October .

C. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3(E), R.S. 17:6(A)(10), and Article VIII, Section 5(D).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:420 (March 2008), amended LR 35:1874 (September 2009), LR 37:2141 (July 2011), LR 38:3153 (December 2012).

§705. Agenda

A. - B.3. ...

C. Amending Board or Committee Agenda. In accordance with Act 131 of the 2008 Regular Legislative Session, the agenda may be amended upon unanimous approval of the members present at a meeting and subject to other provisions of the Act.

D. Distribution and Posting of the Agenda. The agenda for board and committee meetings shall be distributed to board members at least 10 days prior to the meeting date and posted on the web at <http://www.louisianaschools.net>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:420 (March 2008), amended LR 37:2141 (July 2011), LR 38:3153 (December 2012).

§709. Board and Committee Meeting Protocol

A. - C.4. ...

D. Rules of Conduct

1. ...

2. The presiding officer or chair should be cognizant of the schedule for board and committee work and attempt to conduct business within the time allotted. The presiding officer or chair shall have the right to limit, in time, the length of discussion on each motion, if time is of a critical nature.

3. It is the responsibility of the presiding officer or chair to direct the orderly meeting discussion. The presiding officer or chair, as an individual member, has the same right to discussion as any other member, but the impartiality required of the presiding officer in a discussion precludes his/her exercising these rights while he/she is presiding. If the presiding officer or chair wishes to make lengthy comments he/she should relinquish the chair, secure recognition, and participate. It is requested that any remarks that the presiding officer or chair wishes to make concerning an issue be made after all other members have been recognized.

4. LDE personnel should condense all presentations as much as possible and only in special instances should these presentations exceed 30 minutes.

5. An individual board member may request from the LDE any public document, which has already been prepared or is in a readily available form.

6. ...

7. Persons other than board members, the executive director, staff persons assigned to the committee, or the state superintendent should not be on the dais while business is being conducted.

8. ...

9. Private discussions among board member(s), staff, or the state superintendent should occur away from the designated meeting area. The audience is asked to go outside the meeting room to conduct personal discussions.

10. ...

11. Cell phones and other electronic devices must be turned off or taken to the side rooms for conversations, when activated.

12. ...

13. When a member feels the rules are being violated as to procedure, the member may make a point of order request to the presiding officer, calling for a ruling and an enforcement of the regular rules. a point of order request shall follow procedures in *Robert's Rules of Order*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 42:13, R.S. 17:3(C), R.S. 42:14, and R.S. 42:16.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:421 (March 2008), amended LR 37:2141 (July 2011), LR 38:3153 (December 2012).

§711. Order of Business for Board Meetings

A. ...

B. The proposed agenda shall be adopted as the official order of business for the meeting, including unfinished business from the preceding meeting and any emergency items, as publicly noted. The agenda adopted shall not include any items that have not been posted pursuant to

§701.B and the Louisiana Open Meetings Law, unless amended pursuant to §705.C.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:422 (March 2008), amended LR 38:3153 (December 2012).

§713. Public Comments

A. To carry on its business in an orderly and efficient manner, the board utilizes committees. Full discussion of board business usually occurs at the committee level, and public comment should ideally be at that time, rather than after a recommendation has been forwarded to the board. Opportunity to comment publicly on a committee or board agenda item shall be provided to a representative number of proponents and opponents according to the following procedures.

1. - 2. ...

3. The presiding officer or chair shall have the right to limit, in time, the length of public comment on each motion, if time is of a critical nature.

4. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 42:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:422 (March 2008), amended LR 36:59 (January 2010), LR 37:2141 (July 2011), LR 38:3154 (December 2012).

§717. Electronic Recordings

A. Electronic recordings are made of all official meetings of the board, its committees, and its advisory councils.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:423 (March 2008), amended LR 38:3154 (December 2012).

§719. Minutes

A. - C. ...

D. A committee or board member may request that his/her views on individual items become part of the committee or board meeting minutes. To become part of the committee minutes, such views must be expressed at the committee meeting. To become part of the board minutes, such views must be expressed at the board meeting or must be presented to the board recorder, in writing, within three working days after the board meeting.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:20.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:423 (March 2008), amended LR 37:2142 (July 2011), LR 38:3154 (December 2012).

§725. Rules for Board Tenure Hearings

Repealed.

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), repealed LR 38:3154 (December 2012).

Chapter 9. Equal Employment

§901. Equal Employment Opportunity; Affirmative Action

A. In compliance with all applicable federal and state laws and regulations (including, but not limited to, Title VII of the Civil Rights Act of 1964), the Board of Elementary and Secondary Education upholds the following policy: This is an equal opportunity agency and is dedicated to a policy of nondiscrimination in employment in all agencies and institutions under its direct supervision. Applicants and employees will not be discriminated against on the basis of race, color, creed, national origin, sex, religion, age, handicap, or any other non-merit factor in any aspect of employment such as recruitment, hiring, promotion, retention, tenure, discharge, layoff, compensation, leave, fringe benefits, training, or any other employment practice or benefit.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:423 (March 2008), amended LR 38:3154 (December 2012).

§903. Civil Rights Compliance and Assurances

A. In compliance with all applicable federal and state laws and regulations (including, but not limited to, Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; §504 of the Rehabilitation Act of 1973), the Board of Elementary and Secondary Education upholds the following policy:

This is an equal opportunity agency and is dedicated to a policy of nondiscrimination in all programs or activities under its direct jurisdiction including city, parish, or other local public school systems or other entities receiving state or federal financial assistance through the board. No one will be discriminated against in any employment practice or in any educational program or activity on the basis of race, color, creed, national origin, sex, religion, age, handicap, or any other non-merit factor.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:424 (March 2008), amended LR 38:3154 (December 2012).

Chapter 11. Finance and Property

§1101. Projects and Facilities

A. Capital Projects

1. All requests for new capital construction or renovation projects submitted by board entities, including the Special School District, and the Recovery School District, shall comply with all applicable state laws, all applicable regulations issued by the Division of Administration, and all BESE policy.

2. Requests for capital projects from the Special School District shall be submitted to the superintendent of the Special School District.

3. All requests for any given fiscal year shall be prioritized by the Louisiana Department of Education, and the LDE shall present the priority listing of projects to the board. The board shall approve all capital construction or renovation projects and the priority of the requests prior to

submission to the executive and legislative branches of government or prior to implementation of a project, as applicable.

B. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:424 (March 2008), amended LR 38:3154 (December 2012).

§1103. Purchasing, Auditing, and Contracts for Professional Services

A. - B.1. ...

2. Once the Office of the Legislative Auditor has issued a report on the operations of an entity under the board's jurisdiction, it shall be the responsibility of the LDE to provide the board with a complete analysis of the report and to recommend corrective actions to be taken, when necessary.

B.3. - C.2. ...

3. The state superintendent shall recommend to the board for approval all contracts for professional/consulting services negotiated by the RSD in accordance with board policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:424 (March 2008), amended LR 38:3155 (December 2012).

§1105. Budgets

A. General Policies

1. The LDE, including the Special School District and the Recovery School District, and all entities under the jurisdiction of the board shall submit all budget requests for all funds (state, federal, self-generated, etc.) to the board for review and approval. The entities shall be responsible for complying with all state laws and regulations regarding budget submission to the executive and legislative branches of government.

2. In approving budgets for the LDE and entities under the board's jurisdiction, the board shall be guided by all state plans adopted for the purpose of administering federal and state funded programs.

B. Budget Submission. The LDE, including the Special School District and the Recovery School District, and entities under the jurisdiction of the board shall submit their budgets to the board in a timely manner for approval prior to submission to the Division of Administration and legislative offices.

C. Budget Forms. The LDE, including the Special School District and the Recovery School District, and entities under the jurisdiction of the board shall submit their budgets on the forms prescribed by the Division of Administration.

D. ...

E. Interim Emergency Board. Prior to the submission of a request for funding from the Interim Emergency Board of the legislature, the LDE, including the Special School District and the Recovery School District, and entities under the jurisdiction of the board shall complete requests on forms prescribed by the Interim Emergency Board and shall receive approval for submission by the board. Submissions to the Interim Emergency Board shall be in compliance with all rules promulgated by that board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:425 (March 2008), amended LR 38:3155 (December 2012).

§1107. Minimum Foundation Program

A. - A.1.b. ...

2. Local Responsibility

a. It shall be the responsibility of parish/city and other local school systems, recovery school district schools, and LSU and Southern Lab schools to submit to the Louisiana Department of Education in a timely manner all necessary and required information for the computation of an individual allocation from the minimum foundation formula. This information shall be submitted to the LDE in the form required by the LDE. It shall also be the responsibility of all parish/city and other local school systems, recovery school district schools, and LSU and Southern Lab schools to follow all circulars issued by the LDE providing instructions for the preparation of the required data and other instructions regarding the computation of an allotment from the formula.

B. - B.1. ...

C. MFP—Student Membership Definition

1. Definition. For state reporting for public education for the purpose of establishing the base student count for state funding, each parish/city and other local school system, recovery school district school, LSU and Southern Lab school, Office of Juvenile Justice school, New Orleans Center for Creative Arts (NOCCA), Louisiana School for Math, Science, and the Arts (LSMSA), Special School District (SSD), Louisiana School for the Deaf and Visually Impaired (LSDVI), and the Student Scholarships for Educational Excellence Program (SSEEP) shall adhere to the following.

a. - b.i. ...

ii. all students, including special education students who meet the following criteria will be included in the base student membership count:

(a). have registered or pre-registered on or before student count dates designated in the current adopted MFP resolution (If student count date(s) falls on a Saturday, report membership on the previous Friday. If student count date(s) falls on a Sunday, report membership on the following Monday);

(b). are actively attending school (All current state laws and BESE policies concerning attendance should be carefully followed. Appropriate documentation [either written or computer documents] such as dates of absences, letters to parents, notification to child welfare and attendance officers should be placed in individual permanent records for any students who may have absences which raise questions about the student's active attendance.);

ii.(c). - x. ...

D. MFP—Add-on Students/Units

1. Required Data. For purposes of establishing the data sets used in determining the add-on students/units, the following will be adhered to.

a. At-risk student count shall be determined by the number of students whose family income is at or below income eligibility guidelines or other guidelines as provided by BESE and the number of students identified as English

language learners (ELL) that were not included based on income eligibility guidelines. The current income eligibility guidelines include those students qualifying to participate in the federal free and reduced price breakfast and lunch program. The fall count is determined by the number of students qualifying for the free and reduced price lunch program and those ELL students not included on income eligibility guidelines during the month of October as reported in the Student Information System (SIS). For any additional required count date(s), the at-risk student count will be those qualifying for free and reduced lunch and those ELL students not included on income eligibility guidelines as reported in SIS, as of that count date.

b. - e. ...

AUTHORITY NOTE: Promulgated in accordance with Art. VIII §13 and R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:425 (March 2008), amended LR 37:1142 (April 2011), LR 37:3219 (November 2011), LR 38:3155 (December 2012).

Chapter 13. Regulatory Documents

§1303. Rulemaking

A. *Rule*—each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. *Rule* includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A *rule* may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

B. ...

C. The following process must be followed for adoption of a new policy, the amendment of an existing policy, or the repeal of an existing policy.

1. ...

2. Following Approval of a Proposed Rule to be advertised as a Notice of Intent

a. The appropriate LDE/BESE staff is requested to submit a Fiscal and Economic Impact Statement (FEIS), Family Impact Statement, Small Business Statement, proposed policy language, present policy language (if there is a policy already in existence), and comparison language (if applicable) to the board recorder for processing.

b. - e. ...

f. In the event that substantive changes are made to the Notice of Intent as a result of the public comments received, the board can choose to:

i. approve for final adoption only those Sections that will not be changed as a result of the public comments and re-advertise as Notice of Intent only those Sections requiring substantive change; or

C.2.f.ii. - D. ...

E. *Louisiana Administrative Code*, Title 28, Part Numbers XI, ad infinitum, have been reserved for board and LDE bulletins.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 49:951 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:426 (March 2008), amended LR 37:3220 (November 2011), LR 38:3156 (December 2012).

Heather Cope
Executive Director

1212#017

RULE

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs (LAC 28:IV.301, 507, 509, 703, 705, 803, 805, 2103, and 2107)

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). (SG13140R)

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 this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

* * *

Qualified Summer Session—those summer sessions (includes terms and semesters conducted during the summer) for which the student's institution certifies that:

a. the summer session is required in the student's degree program for graduation and the student enrolled for at least the minimum number of hours required for the degree program for the session; or

b. the student can complete his program's graduation requirements in the summer session; or

c. the course(s) taken during the summer session is required for graduation in the program in which the student is enrolled and is only offered during the summer session; or

d. the course(s) taken during the summer session is in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree; or

e. for the summer of 2006 only, the student is a displaced student as identified in §2103.G.1 of these rules, whose TOPS award was not paid for one or more semesters during the 2005-2006 academic year; or

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; and
 - (c). 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 35:1489 (August 2009), LR 35:1490 (August 2009), LR 36:311 (February 2010), LR 36:490 (March 2010), LR 36:2854 (December 2010), LR 37:1561 (June 2011), LR 37:1562 (June 2011), LR 38:3156 (December 2012).

Chapter 5. Applications, Federal Grant Aid and ACT Test

§507. Final Deadline for Submitting Documentation of Eligibility

A. - B.1. ...

2. Beginning with the 2005-2006 academic year (college) through the 2010-11 academic year (college), all documentation and certifications necessary to establish student initial eligibility including, but not limited to, high school and/or college transcripts and certifications, copies of student aid reports, applicant confirmation forms, promissory notes, ACT and/or SAT scores, residency affidavits, proof of citizenship or permanent residency status and other documents that may be utilized in determining eligibility, must be received by LASFAC no later than July 1 immediately following the academic year (college) the student is first eligible for payment of a TOPS award. For example, if a student's initial FAFSA is received no later than July 1, 2007, for that student to receive an award for the 2007-2008 academic year (college), LASFAC must have in its possession all documents relevant to establishing eligibility by July 1, 2008.

3. Beginning with the 2011-12 academic year (college), all documentation and certifications necessary to establish student initial eligibility including, but not limited to, high school and/or college transcripts and certifications, copies of student aid reports, applicant confirmation forms, promissory notes, ACT and/or SAT scores, residency

affidavits, proof of citizenship or permanent residency status and other documents that may be utilized in determining eligibility, must be received by LASFAC no later than January 15 immediately following the final deadline for receipt of the student's FAFSA or on-line application. For example, if a student's graduates from high school in May 2011, the final deadline for receipt of the student's FAFSA or on-line application is July 1, 2012, and the deadline for receipt of all documents relevant to establishing eligibility is January 15, 2013.

C. - E. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 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 36:312 (February 2010), LR 38:3157 (December 2012).

§509. ACT Testing Deadline

A.1. - A.2. ...

B.1. The student may substitute an equivalent score, as determined by the comparison tables used by LASFAC, on an equivalent SAT taken on or before the official April test date in the academic year (high school) in which the student graduates. In order to substitute a SAT score, the student must direct the college board to send the score to LOSFA so that the score is electronically reported to LOSFA by the college board within 45 days of the final test date allowed by §509. SAT scores received in any other manner shall not be considered.

2. An eligible non-graduate may substitute an equivalent score, as determined by the comparison tables used by LASFAC, on an equivalent SAT taken before the first day of the semester the student first enrolls in an eligible college or university. In order to substitute an SAT score, the student must direct the college board to send the score to LOSFA so that the score is electronically reported to LOSFA by the college board within 45 days of the final test date allowed by §509. SAT scores received in any other manner shall not be considered.

C. Final ACT Testing Deadline for Reduced Awards

1.a. Beginning with awards made to applicants graduating in academic year (high school) 2000 through 2003, if an applicant does not achieve a qualifying score on the ACT or on the SAT for the TOPS Opportunity Award by the April national ACT test date in the year of the applicant's high school graduation, then the applicant's first qualifying score for any TOPS award obtained on an authorized testing date after the April national ACT test date in the year of the applicant's high school graduation but prior to July 1 of the year of such graduation will be accepted. However, when granting an award to an applicant whose qualifying test score is obtained on an authorized testing date after the date of the applicant's high school graduation but prior to July 1 of the year of such graduation, the applicant's 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. Except for an applicant who has

qualified for a TOPS-Tech Award on or prior to the April national ACT test date, an applicant will not be allowed to use a test score obtained after the April national ACT test date to upgrade a TOPS award.

b.i. Beginning with awards made to applicants graduating in academic year (high school) 2004 through 2010, if an applicant does not achieve a qualifying score on the ACT or on the SAT for the TOPS Opportunity Award by the April national ACT test date in the year of the applicant's high school graduation, then the applicant's first qualifying score for any TOPS award obtained on an authorized testing date after the April national ACT test date in the year of the applicant's high school graduation but prior to July 1 of the year of such graduation will be accepted. However, when granting an award to an applicant whose qualifying test score is obtained on an authorized testing date after the April national ACT test date in the year of the applicant's high school graduation but prior to July 1 of the year of such graduation, the applicant's 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. Except for an applicant who has qualified for a TOPS-Tech Award on or prior to the April national ACT test date, an applicant will not be allowed to use a test score obtained after the April national ACT test date to upgrade a TOPS award.

ii. Beginning with awards made to applicants graduating in academic year (high school) 2011, if an applicant does not achieve a qualifying score on the ACT or on the SAT for the TOPS Opportunity Award by the April national ACT test date in the year of the applicant's high school graduation, then the applicant's first qualifying score for any TOPS award obtained on an authorized testing date after the April national ACT test date in the year of the applicant's high school graduation but prior to July 1 of the year of such graduation will be accepted or, if the commission determines that the applicant was prevented from taking the test prior to July 1 of the year of graduation due to circumstances beyond the immediate control of the student and attributable to the administration of the test, the applicant's first qualifying score for any TOPS award obtained on an authorized testing date after the April national ACT test date in the year of the applicant's high school graduation but prior to October 1 of the year of such graduation will be accepted. However, when granting an award to an applicant whose qualifying test score is obtained on an authorized testing date after the April national ACT test date in the year of the applicant's high school graduation, the applicant's 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. Except for an applicant who has qualified for a TOPS-Tech Award on or prior to the April national ACT test date, an applicant will not be allowed to use a test score obtained after the April national ACT test date to upgrade a TOPS award.

c. For the purpose of the Subsection, the *April national ACT test date* shall be defined as the month of April.

d. Tests taken by an eligible non-graduate after the first day of the semester the student first enrolls in an eligible college or university shall not be accepted.

2.a. Beginning with applicants graduating in academic year (high school) 1997 through 2010, applicants who fail to achieve an ACT or SAT qualifying score prior to July 1 of the year of high school graduation shall not be considered for an award.

b. Beginning with applicants graduating in academic year (high school) 2011, applicants shall not be considered for an award if they fail to achieve a qualifying score on the ACT or on the SAT prior to July 1 of the year of high school graduation, or prior to October 1 of the year of high school graduation, if the commission determines that the applicant was prevented from taking the test prior to July 1 of the year of graduation due to circumstances beyond the immediate control of the student and attributable to the administration of the test.

D. - E. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 26:1995 (September 2000), amended LR 26:2000 (September 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), repromulgated LR 27:1847 (November 2001), amended LR 30:1161 (June 2004), LR 31:37 (January 2005), LR 38:3157 (December 2012).

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

§703. Establishing Eligibility

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

b. if the student joins the United States Armed Forces within one year after graduating from an eligible Louisiana or an eligible non-Louisiana high school or from an eligible out of country high school, enroll not later than the semester, quarter or term, excluding summer semesters or sessions immediately following the one-year anniversary of the student's separation from active duty service, including all consecutive periods of reenlistment. Reenlistment at any time during the student's first enlistment shall be considered to be on or prior to the fifth anniversary of the date that the student graduated from high school; or

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

d. if the student is eligible under the provisions of §703.A.5.d or e, and joins the United States Armed Forces within one year of completion of the 12th grade of an approved home study program, enroll not later than the semester, quarter or term, excluding summer semesters or sessions immediately following the one-year anniversary of the student's separation from active duty service, including all consecutive periods of reenlistment. Reenlistment at any time during the student's first enlistment shall be considered to be on or prior to the fifth anniversary of the date that the student graduated from high school; or

A.4.e. - 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 36:312 (February 2010), LR 36:490 (March 2010), LR 36:2269 (October 2010), LR 36:2855 (December 2010), LR 37:2987 (October 2011), LR 38:354 (February 2012), LR 38:3158 (December 2012).

§705. Maintaining Eligibility

A. - A.6.a.i. ...

ii. beginning in the 2008-2009 and through the 2010-2011 academic year (college), in an academic undergraduate program at an eligible college or university, by the end of each academic year (college), 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 quarter in the academic year (college), including any hours earned during an intersession ending during the academic year or immediately following the spring term. These hours shall include remedial course work required by the institution, but shall not include hours earned during qualified summer sessions, summer sessions or intersessions that do not end during the academic year or intersessions that do not immediately follow the spring term or by advanced placement course credits. 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; or

iii. beginning in the 2011-2012 academic year (college), in an academic undergraduate program at an eligible college or university, by the end of each academic year (college), 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 quarter, intersession and summer session in the academic year (college) (includes any hours earned during any intersession and/or summer session ending before the following fall semester or quarter). These hours shall include remedial course work required by the institution and hours for repeated courses, but shall not include hours by advanced placement course credits, by credit by exam, or through the College-Level Examination Program. Unless granted an exception for cause by the commission, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility; or

b. in a program for a vocational or technical education certificate or diploma or a non-academic undergraduate degree at an eligible college or university.

Unless granted an exception for cause by LASFAC, failure to will result in permanent cancellation of the recipient's eligibility; or

c. in an academic graduate or professional program at an eligible college or university, by the end of each academic year (college), earn at least the total college credit hours required by the college or university for full time enrollment for each semester or quarter as determined by totaling the earned hours reported by the institution for each semester or quarter, intersession and summer session in the academic year (college) (includes any hours earned during any intersession and/or summer session ending before the following fall semester or quarter). These hours shall not include hours by advanced placement course credits, by credit by exam, or through the College-Level Examination 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; or

6.d. - 9. ...

B. Students failing to meet the requirements listed in §705.A.7 or §705.A.8.a, b, or c may have their tuition awards reinstated upon regaining "steady academic progress" (see §301) and/or attainment of the required GPA, if the period of ineligibility did not persist for more than two years from the date of loss of eligibility. Students who fail to meet the continuation requirements of 705.A.8.c, but who meet the continuation requirements of §705.A.8.a or b., shall no longer be eligible for the stipend authorized for the Performance and Honors Awards, but shall continue to receive the award amount for the Opportunity Award. If the two-year period is interrupted due to a student's active duty in the United States Armed Forces, the two-year period will be extended for a length of time equal to the student's active duty service.

C. - E.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 22:338 (May 1996), repromulgated LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999), LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26:1996 (September 2000), LR 26:2001 (September 2000), repromulgated LR 27:1853 (November 2001), amended LR 28:447 (March 2002), LR 28:772 (April 2002), LR 28:2332 (November 2002), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1163 (June 2004), LR 30:2019 (September 2004), LR 31:3115 (December 2005), LR 33:437 (March 2007), LR 34:1390 (July 2008), LR 36:491 (March 2010), LR 36:2856 (December 2010), LR 38:3159 (December 2012).

Chapter 8. TOPS-Tech Award

§803. Establishing Eligibility

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

b. if the student joins the United States Armed Forces within one year after graduating from an eligible Louisiana or an eligible non-Louisiana high school or from an eligible out of country high school, enroll not later than the semester, quarter or term excluding summer semesters or sessions, immediately following the one-year anniversary of the student's separation from active duty service, including all consecutive periods of reenlistment. Reenlistment at any time during the student's first enlistment shall be considered

to be on or prior to the fifth anniversary of the date that the student graduated from high school; or

c. if the student is eligible under the provisions of §803.A.5.d, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the first anniversary of the date the student completed the home study program, which is deemed to be May 31; or

d. if the student is eligible under the provisions of §803.A.5.d and has joined and is on active duty with the United States Armed Forces within one year of the date the student completed the home study program, which is deemed to be May 31, enroll not later than the semester, quarter or term, excluding summer semesters or sessions, immediately following the one-year anniversary of the student's separation from active duty service, including all consecutive periods of reenlistment. Reenlistment at any time during the student's first enlistment shall be considered to be on or prior to the fifth anniversary of the date that the student graduated from high school; and

A.5. - B.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 24:1904 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65 and 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2754 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), repromulgated LR 27:1854 (November 2001), amended LR 28:447 (March 2002), LR 28:773 (April 2002), LR 28:2330 (November 2002), LR 29:554 (April 2003), LR 30:1164 (June 2004), LR 30:2019 (September 2004), LR 31:39 (January 2005), LR 31:3114 (December 2005), LR 33:437 (March 2007), LR 33:2614 (December 2007), LR 35:230 (February 2009), LR 36:491 (March 2010), LR 36:2270 (October 2010), LR 36:2856 (December 2010), LR 38:3159 (December 2012).

§805. Maintaining Eligibility

A. - A.8. ...

B. Students failing to meet the requirements listed in §805.A.7 and 8 may have their tuition awards reinstated upon achieving steady academic progress, as defined in §301, and the attainment of the required grade point average, if the period of ineligibility did not persist for more than one year from the date of loss of eligibility. If the one-year period is interrupted due to a student's active duty in the United States Armed Forces, the one-year period will be extended for a length of time equal to the student's active duty service.

C. - 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), LR 38:3160 (December 2012).

Chapter 21. Miscellaneous Provisions and Exceptions

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

A. - E.1.c. ...

2. Physical Rehabilitation Program

a. Definition. The student/recipient is receiving rehabilitation in a program prescribed by a qualified medical professional and administered by a qualified medical professional.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form including the reason for the rehabilitation, dates of absence from class, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, and any other information or documents; and

ii. a written statement from a qualified medical professional confirming the student/recipient's rehabilitation, and the beginning and ending dates of the rehabilitation.

c. Maximum length of exception—up to four consecutive semesters (six consecutive quarters) per occurrence.

3. Substance Abuse Rehabilitation Program

a. Definition. The student/recipient is receiving rehabilitation in a substance abuse program.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form including official college transcripts, the reason for the rehabilitation, dates of absence from class, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, and any other information or documents; and

ii. a written statement from a qualified professional confirming the student's rehabilitation and the beginning and ending dates of the rehabilitation.

c. Maximum length of exception—up to two consecutive semesters (three consecutive quarters). This exception shall be available to a student only one time.

4.a. Temporary Disability—Student

i. Definition. The student/recipient is recovering from an accident, injury, illness or required surgery.

ii. Certification Requirements. The student/recipient must submit:

(a) a completed exception request form including official college transcripts, the reason for the disability, dates of absence from class, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, and any other information or documents; and

(b) a written statement from a qualified professional of the existence of a temporary disability, the dates of treatment, and opinions as to the impact of the disability on the student's ability to attend school.

iii. Maximum length of exception—up to four consecutive semesters (six consecutive quarters).

b. Temporary Disability—Student/Recipient's Care of Immediate Family Member

i.(a). Definition. The student/recipient is providing continuous care to his/her immediate family

member due to an accident, illness, injury or required surgery.

(b). An immediate family member is his/her spouse, dependent, parent, stepparent, custodian, or grandparent.

ii. Certification Requirements. The student/recipient must submit:

(a). a completed exception request form including official college transcripts, the reason for the disability, dates of absence from class, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, and any other information or documents; and

(b). a written statement from a qualified professional of the existence of a temporary disability of the immediate family member, and the beginning and ending dates of the doctor's care; and

(c). a statement from a family member or a qualified professional confirming the care given by the student.

iii. Maximum length of exception—up to a maximum of two consecutive semesters (three consecutive quarters).

5. - 5.c. ...

6. Exceptional Educational Opportunity

a. Definition. The student/recipient is enrolled in an internship, residency, cooperative work, or work/study program or a similar program that is related to the student's major or otherwise has an opportunity not specifically sponsored by the school attended by the student that, in the opinion of the student's academic dean, will enhance the student's education. Participation in one of the programs does not qualify as an exception to the initial enrollment requirement.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form including official college transcripts; and

ii. a written statement from the college/school official that the applicant is a student at the school/college and that the program is offered or sponsored by the college/school, or a statement from the dean of the college or the dean's designee that the program is related to the student's major and will enhance the student's education. The statements must include the dates of leave of absence, the semester(s) or number of days involved, the beginning and ending dates of the program.

c. Maximum length of exception—up to four semesters (six consecutive quarters) or required program of study.

7. Religious Commitment

a. Definition. The student/recipient is a member of a religious group that requires the student to perform certain activities or obligations which necessitate taking a leave of absence from school.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form including official college transcripts, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, and the length of the religious obligation; and

ii. a written statement from the religious group's governing official evidencing the requirement necessitating the leave of absence including dates of the required leave of absence.

c. Maximum length of exception—up to five consecutive semesters (eight consecutive quarters).

8. - 8.c. ...

9. Military Service

a. Definition. The student/recipient is in the United States Armed Forces Reserves or National Guard and is called on active duty status or is performing emergency state service with the National Guard or enlists or reenlists and enters on active duty as a member of the regular United States Armed Forces.

b. Certification Requirements. The student/recipient must submit:

i. a completed exception request form including official college transcripts, the dates of the required leave of absence, necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, and the length of duty (beginning and ending dates); and

ii. a written certification from the military including the dates and location of active duty; or

iii. a copy of the military orders or other military documents confirming military service.

c. Maximum length of exception—up to the length of the required active duty service period.

10. - 10.c. ...

11. Exceptional Circumstances

a. Definition. The student/recipient has exceptional circumstances, other than those listed in §2103.E.1-10, which are beyond his immediate control and which necessitate full or partial withdrawal from, or non-enrollment in an eligible postsecondary institution.

i. The following situations are not exceptional circumstances:

(a). financial conditions related to a student's ability to meet his or her educational expenses are not a justified reason for failure to meet the hours or continuous enrollment requirement, because TOPS is a merit, rather than need-based award;

(b). dropping a course, failing a course, or withdrawing from school to protect the student's grade point average or because of difficulty with a course or difficulty arranging tutoring;

(c). not being aware of or understanding the requirements;

(d). assumption that advanced standing, or correspondence course work credited outside the academic year would be applied to the hours requirement;

(e). differing scholarship or award requirements for other programs, such as NCAA full-time enrollment requirements;

(f). voluntary withdrawal from school to move out-of-state or pursue other interests or activities;

(g). claims of receipt of advice that is contrary to these rules, public information promulgated by LOSFA, award letters, and the rights and responsibilities document that detail the requirements for full-time continuous enrollment;

(h). failure to provide or respond to a request for documentation within 30 days of the date of the request,

unless additional time is requested in writing, LOSFA grants the request, and the requested documentation is provided within the additional time granted;

(i). an involuntary drop, suspension, or withdrawal from enrollment because of academics, scholastics, or failure to attend classes or to comply with institutional regulations;

(j). a suspension or expulsion for misconduct;

(k). an inability to register because of failure to satisfy financial obligations.

ii. All other situations will be assessed at the discretion of LOSFA and subject to appeal to the commission.

b. Certification Requirement. Submit a completed exception request form including a sworn affidavit from the student detailing the circumstances and including the official college transcripts and documentation necessary to support the request for reinstatement.

c. Maximum length of exception—up to the number of semesters or quarters determined to be supported by the request for exception.

F. - G.5.b.iii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3050.1-3050.4.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), amended LR 23:1648 (December 1997), repromulgated LR 24:647 (April 1998), amended LR 24:1916 (October 1998), LR 26:1015 (May 2000), LR 26:2002 (September 2000), LR 27:36 (January 2001), repromulgated LR 27:1866 (November 2001), amended LR 27:1875 (November 2001), LR 28:46 (January 2002), LR 28:449 (March 2002), LR 28:775 (April 2002), LR 28:2330 and 2333 (November 2002), LR 29:126 (February 2003), LR 29:2373 (November 2003), LR 29:2373 (November 2003), LR 30:785 (April 2004), LR 30:1167 (June 2004), LR 31:1060 (May 2005), LR 33:440 (March 2007), LR 35:1233 (July 2009), LR 38:3160 (December 2012).

§2107. Funding and Fees

A. Limitation of Terms Funded. Routine funding for all Scholarship and Grant Programs is limited to the fall, winter and spring school terms.

1. - 2. Repealed.

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), amended LR 23:1648 (December 1997), repromulgated LR 24:649 (April 1998), amended LR 24:1919 (October 1998), LR 26:1998 (September 2000), repromulgated LR 27:1869 (November 2001), amended LR 28:449 (March 2002), LR 28:777 (April 2002), LR 28:2333 (November 2002), LR 31:40 (January 2005), LR 38:3162 (December 2012).

George Badge Eldredge
General Counsel

1212#042

RULE

Tuition Trust Authority Office of Student Financial Assistance

START Saving Program—Applicable Definitions (LAC 28:VI.107)

The Louisiana Tuition Trust Authority has amended its START Saving Program rules (R.S. 17:3091 et seq.). (ST13141R)

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.

* * *

Eligible Educational Institution (either)—

a. a state college or university or a technical college or institute or an independent college or university located in this state that is approved by the U.S. Secretary of Education to participate in a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1088), as amended; or

b. a public or independent college or a university located outside this state that is approved by the U.S. secretary of education to participate in a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1088), as amended; or

c. a Louisiana licensed proprietary school, licensed pursuant to R.S. Chapter 24-A of Title 17, and any subsequent amendments thereto and is eligible to participate in a program under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1088), as amended.

* * *

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 23:712 (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), LR 38:3162 (December 2012).

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General Counsel

1212#041

RULE

Department of Environmental Quality Office of the Secretary

PM_{2.5} Increments, Significant Impact Levels and Significant Monitoring Concentration (LAC 33:III.509)(AQ328ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.509 (AQ328ft).

This Rule is identical to federal regulations found in 75 FR 202 pages 64864-64907, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This action incorporates the provisions of the Environmental Protection Agency's final rule entitled "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (75 FR 64864, October 20, 2010) into the Louisiana air regulations. The New Source Review (NSR) provisions of the Clean Air Act (CAA) are a combination of air quality planning and air pollution control technology program requirements for new and modified stationary sources of air pollution. In brief, section 109 of the CAA requires EPA to promulgate primary National Ambient Air Quality Standards (NAAQS) to protect public health and secondary NAAQS to protect public welfare. Once EPA has set these standards, states must develop, adopt, and submit to the agency for approval state implementation plans (SIPs) that contain emission limitations and other control measures to attain and maintain the NAAQS and to meet the other requirements of section 110(a) of the CAA.

Part C of Title I of the CAA contains the requirements for a component of the major NSR program known as the PSD program. This program sets forth procedures for the preconstruction review and permitting of new and modified major stationary sources of air pollution located in areas meeting the NAAQS ("attainment" areas) and areas for which there is insufficient information to classify an area as either attainment or nonattainment ("unclassifiable" areas).

Louisiana has a SIP-approved PSD program. In the aforementioned Rule:

[W]e [EPA] are establishing the final PM_{2.5} increments as minimum program elements for all State PSD programs. Accordingly, states must submit for EPA's approval revised SIPs that incorporate the final PM_{2.5} increments or alternative measures that can be demonstrated to EPA's satisfaction to provide an equivalent level of protection as the PM_{2.5} increments. In accordance with section 166(b) of the Act, we are requiring states to submit revised implementation plans to EPA for approval within 21 months of promulgation, that is, by July 20, 2012.
(75 FR 64898)

The basis and rationale for this Rule are to incorporate PSD increments, SILs, and the SMC for PM_{2.5} into LAC 33:III.509.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§509. Prevention of Significant Deterioration

A. - A.5. ...

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

Baseline Area—

a. any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than the following amounts of the pollutant for which the minor source baseline date is established: 1 g/m³ (annual average) for SO₂, NO₂, or PM₁₀; or 0.3 g/m³ (annual average) for PM_{2.5};

b. area redesignations under Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

b.i. - c. ...

Baseline Date—

a. *Major Source Baseline Date—*

i. in the case of particulate matter (PM₁₀) and sulfur dioxide, January 6, 1975;

ii. in the case of nitrogen dioxide, February 8, 1988; and

iii. in the case of PM_{2.5}, October 20, 2011.

b. *Minor Source Baseline Date—*the earliest date after the trigger date on which a major stationary source or a major modification subject to this Section submits a complete application under the relevant regulations. The trigger date is:

i. in the case of particulate matter (PM₁₀) and sulfur dioxide, August 7, 1977;

ii. in the case of nitrogen dioxide, February 8, 1988; and

iii. in the case of PM_{2.5}, October 20, 2011.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

i. the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved in accordance with 40 CFR 51.166; and

c.ii. - d. ...

C. Ambient Air Increments. In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following.

Pollutant	Maximum Allowable Increase (Micrograms per Cubic Meter) ¹
Class I	
Particulate matter:	
PM _{2.5} , annual arithmetic mean	1
PM _{2.5} , 24-hr maximum	2
PM ₁₀ , annual arithmetic mean	4
PM ₁₀ , 24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate matter:	
PM _{2.5} , annual arithmetic mean	4
PM _{2.5} , 24-hr maximum	9
PM ₁₀ , annual arithmetic mean	17
PM ₁₀ , 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III	
Particulate matter:	
PM _{2.5} , annual arithmetic mean	8
PM _{2.5} , 24-hr maximum	18
PM ₁₀ , annual arithmetic mean	34
PM ₁₀ , 24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

¹ For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

D. - I.4. ...

5. The administrative authority may exempt a stationary source or modification from the requirements of Subsection M of this Section, with respect to monitoring for a particular pollutant, if:

a. the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts.

Carbon monoxide	575 µg/m ³	8-hour average
Nitrogen dioxide	14 µg/m ³	annual average
Particulate matter	10 µg/m ³ of PM ₁₀ 4 µg/m ³ of PM _{2.5}	24-hour average 24-hour average
Sulfur dioxide	13 µg/m ³	24-hour average
Ozone	No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would require the performance of an ambient impact analysis including the gathering of ambient air quality data.	

Lead	0.1 µg/m ³	3-month average
Fluorides	0.25 µg/m ³	24-hour average
Total reduced sulfur	10 µg/m ³	1-hour average
Hydrogen sulfide	0.2 µg/m ³	1-hour average
Reduced sulfur compounds	10 µg/m ³	1-hour average

I.5.b. - I.7. ...

8. The permitting requirements of Subparagraph K.1.b of this Section shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this Section before the provisions embodying the maximum allowable increase took effect as part of the applicable State Implementation Plan and the permitting authority subsequently determined that the application as submitted before that date was complete.

9. The permitting requirements of Subparagraph K.1.b of this Section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM₁₀ if:

a. ...

b. the permitting authority subsequently determined that the application as submitted before that date was complete. Instead, the applicable requirements equivalent to Subparagraph K.1.b of this Section shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

J. - J.4. ...

K. Source Impact Analysis

1. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, would not cause or contribute to air pollution in violation of:

a. any national ambient air quality standard in any air quality control region; or

b. any applicable maximum allowable increase over the baseline concentration in any area.

2. Reserved.

L. - P.4. ...

5. Class I Variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality-related values of any such lands, including visibility, notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations that would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and he so certifies, the administrative authority, provided that the applicable requirements of this Section are otherwise met, may issue the permit with such emission limitations as may be necessary to ensure that emissions of sulfur dioxide, PM_{2.5}, PM₁₀, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants.

Pollutant	Maximum Allowable Increase (Micrograms per Cubic Meter)
Particulate matter:	
PM _{2.5} , annual arithmetic mean	4
PM _{2.5} , 24-hr maximum	9
PM ₁₀ , annual arithmetic mean	17
PM ₁₀ , 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

P.6. - AA.15.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:2556 (November 2010), LR 37:1148 (April 2011), repromulgated LR 37:1389 (May 2011), amended LR 37:1570 (June 2011), repromulgated LR 37:2146 (July 2011), amended LR 38:3163 (December 2012).

Herman Robinson, CPM
Executive Counsel

1212#044

RULE

Office of the Governor Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River

Pilot Recency Requirements and Continuing Education
(LAC 46:LXX.Chapters 61, 62, 63, and 64)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River hereby promulgate, repeals and reenacts its rules. This Rule restates 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 rules provide more stringent educational and licensing requirements for applicants seeking a state pilot commission. The rules revise the standard of conduct for state commissioned NOBRA pilots and the process for filing a complaint against state commissioned NOBRA pilots. This Rule establishes a maximum age for selection into the Board of Examiners' Pilot Development Program. The rules revise pilot recency requirements and continuing education requirements for NOBRA pilots.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXX. River Pilots

Subpart 3. Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots

Chapter 61. General Provisions

§6102. Definitions

Applicant—any person who has submitted an application to be considered for selection into the Pilot Development Program for New Orleans and Baton Rouge Steamship Pilots.

Apprentice—any person duly selected by the members of NOBRA, but not yet commissioned, who is serving in the Pilot Development Program.

* * *

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:493 (March 2010), LR 38:3165 (December 2012).

§6105. Rules, Records, Meetings, Application

A. All board rules must be adopted by a majority of the examiners. The board shall maintain records in accordance with R.S. 44:1 et seq., and all other state laws. The board shall file an annual report of investigations, findings, actions and accident data in accordance with state laws. The board shall conduct its meetings in accordance with R.S. 42:4.1 et seq., and any other state laws.

B. - C. ...

D. These rules shall apply to all applicants, apprentice pilots and New Orleans and Baton Rouge steamship pilots.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:494 (March 2010), LR 38:3165 (December 2012).

Chapter 62. Qualifications and Examination of Pilots

§6204. Application

A. ...

* * *

B. All applications shall be in writing, signed by the applicant and presented to a member of the board or their authorized representative by the applicant. All persons wishing to submit an application shall make an appointment with an examiner or their authorized representative by contacting the board's office. All applications shall be notarized and be accompanied by satisfactory proof of compliance with all of the board's objective requirements. Upon submission a board member or their authorized representative will provide a stamped copy to the applicant indicating the date and time of submission. The board or their authorized representative shall reject all deficient applications and provide an applicant written notice of the specific deficiency.

C. ...

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:495 (March 2010), LR 38:3165 (December 2012).

§6205. General Requirements

A. - B. ...

C. An applicant shall submit proof of a current satisfactory United States Coast Guard approved physical (Merchant Mariner Physical Examination Report). Upon notification of an impending NOBRA selection of apprentices, the applicant shall submit to a physical examination administered by an Examiner appointed physician specializing in occupational medicine no more than 40 days prior to the selection.

D. An applicant must not have reached his forty-fifth birthday prior to the date of selection into the Pilot Development Program.

E. An applicant shall submit evidence of satisfactory completion of training programs approved by the board for the following courses of instruction:

1. bridge resource management;
2. basic ship handling (5 day);
3. radar observer;
4. advanced firefighting; and
5. CPR.

F. An applicant shall provide proof they have passed a board approved drug screen test consistent with the board's drug screen policy (See Chapter 65 of the board's rules) within 30 days prior to submission of an application. Additionally, upon notification of a pending NOBRA selection of apprentices, the applicant shall submit proof that they have passed a board approved drug screen test not more than 40 days prior to the selection.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:495 (March 2010), LR 38:3166 (December 2012).

§6206. Licenses/Education/Experience

A. In addition to the above, an applicant must submit satisfactory proof of the following licensing, education and experience criteria.

1. An applicant must hold at least a current First Class Pilots License, Any Gross Tons, upon the Lower Mississippi River from Chalmette, Louisiana to Baton Rouge Railroad and Highway Bridge at Baton Rouge, Louisiana, including physical, and, at least, either a Master of Steam or Motor Vessels; or Master of Towing Vessels; or Third Mate; or an equivalent or greater United States Coast Guard license.

a. ...

2. An applicant must hold a Bachelor degree from an accredited maritime academy approved by and conducted under rules prescribed by the Federal Maritime Administrator and listed at Title 46, Code of Federal Regulations, Part 310.

NOTE: Should the association choose to select entrants into the Pilot Development Program prior to January 1, 2018, applicants who hold at least a Bachelor degree from an accredited institution of higher learning may be presented to the association for consideration.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:495 (March 2010), LR 38:3166 (December 2012).

§6207. Notice of Apprentice Selection

A. At least 50 days prior to an apprentice selection, NOBRA must inform the board, in writing, that a selection will be held and the date of the selection.

B. At least 40 days prior to the apprentice selection, the board will advertise the date of the apprentice selection, as well as the deadline for submission of application materials, in at least two periodicals, one of which shall have a circulation of the greater New Orleans area and one of which shall have a circulation of the greater Baton Rouge area. In addition, all relevant dates will be posted on the board's website.

C. At least 30 days prior to the apprentice selection, the board will give notice, via U.S. Mail, to all applicants of the date of the selection and the deadline for submitting documentation in support of their application.

D. The deadline for submitting an application and supporting documentation, shall be 3 p.m., 20 days prior to the apprentice selection.

E. At least 18 days prior to the apprentice selection, the board will forward to NOBRA a list of all qualified candidates and supporting documentation of all candidates who meet the criteria for selection, as enumerated in the board's rules.

F. At the conclusion of a NOBRA apprentice selection, NOBRA shall provide the board, in writing, a list of those candidates selected for admission into the Pilot Development Program as an Apprentice Pilot. The board shall unilaterally determine the maximum number apprentices admitted into the Pilot Development Program at any given time. After receipt of notification from NOBRA, the board will notify the selected applicant via U.S. Mail of the time, date and location of the commencement of the Pilot Development Program.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:496 (March 2010), LR 38:3166 (December 2012).

§6208. Expiration of Applications

A. Following an apprentice selection, all unselected applications on file with the board will be deemed expired and destroyed.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge

Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:496 (March 2010), LR 38:3166 (December 2012).

§6209. Pilot Development Program

A. - E.2.d. ...

e. lack of fitness for the position and responsibilities of a pilot; and

f. any violations of standards of conduct as enumerated in §6307 of the board's rules.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:496 (March 2010), LR 38:3167 (December 2012).

Chapter 63. Standards of Conduct

§6304. Definitions

A. As used in this Chapter, the following terms, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

* * *

Deputy Pilot—a commissioned pilot in the Pilot Development Program.

Fit for Duty—a pilot who meets the board's requirements regarding licensure, physical and medical competency and is current with their continuing education requirements.

* * *

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:498 (March 2010), LR 38:3167 (December 2012).

§6307. Standards of Conduct

A. The board may in its discretion recommend to the Office of the Governor, reprimand, fine, suspension and/or revocation of a pilot, Deputy Pilot, or apprentice for the following non-exclusive list of particulars:

1. - 3. ...

4. failure to maintain a current satisfactory United States Coast Guard approved physical (Merchant Mariner Physical Examination Report);

5. conviction of any felony from any jurisdiction whatsoever;

6. any violation of the board's drug and alcohol policy;

7. neglect of duty; and

8. any violation of these rules.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:498 (March 2010), LR 38 3167 (December 2012).

§6310. Continuing Professional Education (Formerly §6311)

A.1. Every pilot seeking to maintain a pilot's commission must successfully complete the following required courses every five years:

a. A Bridge Resource Management (B.R.M.P.) course or seminar for pilots;

b. An Emergency Ship Handling course or seminar for pilots;

c. A marine technical course or seminar, which includes vessel traffic service training;

d. A course or seminar in marine electronic navigation for pilots;

e. A course or seminar on applicable United States Coast Guard navigation regulations (Rules of the Road); and

f. A course or seminar on marine incident management for pilots.

2. Every pilot must annually and successfully complete 8 hours of professional development courses approved by the board. The board may, from time to time, adjust these requirements in order to maintain the highest level of professional competency and pilot safety.

B. All professional education classes and programs shall be approved by the board. The board will maintain a non-exclusive list of approved professional education classes and programs, which may be periodically updated.

C. It is the responsibility of the pilot to attend the necessary professional education classes and to present the board with proof of satisfactory completion.

D. Any pilot who fails to successfully complete the required professional education classes or programs will be removed from duty until the pilot complies with the requirements of this section.

E. The board may, for good cause shown, grant a waiver or extend the time for a pilot to complete the continuing professional education requirement, upon timely application, in writing, by the pilot.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:499 (March 2010), LR 38:3167 (December 2012).

§6311. Mandatory Rest Period (Formerly §6312)

A. For the purpose of this rule, a turn is the time period from dispatch to the termination of the allotted travel time.

B. All pilots shall have a minimum of eight hours rest period between turns.

C. For the purpose of this rule, the rest period begins at the termination of the allotted travel time at the completion of one turn and ends at the time of dispatching for the next turn.

D. Notwithstanding Subsection B, the captain of the station and shift pilots shall be exempt from the minimum 8 hours rest period in between turns. However, in no case shall the captain of the station and shift pilots exceed 12 bridge hours in any 24 hour period.

E. Notwithstanding Subsection B, any pilot completing a turn lasting less than 4 bridge hours or receiving a discharge, shall not be required to comply with the mandatory 8 hours rest period. However, in no case shall any pilot acquire more than 12 hours in a 24 hour period. Pilots requesting eight hours rest period shall not be called or dispatched in less than 8 hours from the completion of their finishing time.

F. Notwithstanding Subsection B, during a state of declared emergency all pilots shall be exempt from the minimum 8 hours rest period in between turns. However, in no case shall any pilot exceed 12 bridge hours in any 24 hour period.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 31:56 (January 2005), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:500 (March 2010), LR 38:3167 (December 2012).

Chapter 64. Investigations and Enforcement

§6404. Duty to Report

A. - C. ...

D. Upon receipt of any incident by a pilot the board shall conduct an investigation and take appropriate action commensurate with the nature of the incident.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:500 (March 2010), LR 38:3168 (December 2012).

§6406. Investigations and Enforcement

A. All incidents and complaints reported to the board shall be referred for investigation.

1. any source may file a sworn complaint within one year of the alleged acts complained of;

2. the board shall receive any sworn complaint from any source against any pilot, deputy pilot or apprentice while in the performance of his duties;

3. any sworn complaint submitted by any source to the board shall be typewritten and submitted on plain paper and shall include the date and time of the incident, a description of what happened, the type of incident, casualties, location, conditions, name of vessel piloted, if known, any other vessels, structures, or objects involved, the name of the pilot, if known, and any allegations against the pilot, and shall be given in an authentic act in which the complainant swears to the truthfulness of the allegations, subject to the penalties of perjury;

4. if a sworn complaint is not submitted in the prescribed manner, the board shall return it, with an explanation of error, and without prejudice to the sender to properly refile.

B. - U. ...

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2478 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and

Baton Rouge Steamship Pilots for the Mississippi River, LR 36:501 (March 2010), LR 38:3168 (December 2012).

Captain Robert D. Heitmeier
President

1212#001

RULE

Office of the Governor Division of Administration Racing Commission

Owner's Entry of More Than One Horse (LAC 35:V.6335)

The Louisiana State Racing Commission hereby amends Owner's Entry of More Than One Horse (LAC 35:V.6335) as follows.

Title 35

HORSE RACING

Part V. Racing Procedures

Chapter 63. Entries

§6335. Owner's Entry of More Than One Horse

A. ...

B. In stakes races with a purse value of \$50,000 or greater, horses having common ties through ownership or interest may be uncoupled and allowed to run as separate betting units at the discretion of the stewards.

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

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission LR 2:437 (December 1976), amended LR 3:33 (January 1977), LR 4:280 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 38:3168 (December 2012).

Charles A. Gardiner III
Executive Director

1212#040

RULE

Office of the Governor Office of Financial Institutions

Dishonest or Unethical Practices
(LAC 10:XIII.1201 and 1205)

In accordance with the Louisiana Securities Law (hereinafter "the LSL"), R.S. 51:701, et seq., and particularly, R.S. 51:704 A.(10), and the Louisiana Administrative Procedure Act, R.S. 49:950, et seq., the commissioner of Financial Institutions, in his capacity as the Commissioner of Securities (hereinafter "the Commissioner") adopts LAC 10:XIII.1201-1205, a Rule illustrating examples of dishonest or unethical practices providing grounds for suspension or revocation of registration. Such examples are illustrative only and shall not be deemed exclusive.

This proposed Rule is necessary to carry out the provisions of the LSL where such action is consistent with

the public interest and with the purpose fairly intended by the policy and provisions of the LSL.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part XIII. Investment Securities

Subpart 1. Securities

Chapter 12. Dishonest or Unethical Practices

§1201. General

A. Any dealer, salesman, investment adviser, or investment adviser representative who engages in one or more of the following practices set out in Section 1203 or Section 1205 shall be deemed to have engaged in dishonest or unethical practices as provided by R.S. 51:704 A.(10), and such conduct may constitute grounds for suspension or revocation of registration or such other action authorized by statute. This Rule is not intended to be all inclusive, and thus, acts or practices not enumerated herein may also be deemed to be dishonest or unethical

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:704 A(10)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 38:3169 (December 2012).

§1203. Dealers and Salesmen

A. *Dealers and Salesmen*—includes the following actions:

1. engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any customer or in the payment upon request of free credit balances reflecting completed transactions of any customer;

2. inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

3. recommending to a customer the purchase, sale or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs and other relevant information known by the dealer;

4. executing a transaction on behalf of a customer without authorization to do so;

5. exercising discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price, or both, for the execution of orders;

6. executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

7. failing to segregate customers' free securities or securities held in safekeeping;

8. hypothecating a customer's securities without having a lien thereon unless the dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission;

9. entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

10. failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include information set forth in the final prospectus;

11. charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities and other services related to its securities business;

12. offering to buy from or sell to a person a security at a stated price unless the dealer or salesman is prepared to purchase or sell the security at such price and under the conditions that are stated at the time of the offer to buy or sell;

13. representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the dealer or salesman knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the dealer, or by a person for whom the dealer is acting, or by a person with whom the dealer is associated in the distribution, or by a person controlled by, controlling or under common control with the dealer;

14. effecting a transaction in, or inducing the purchase or sale of, a security by means of a manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include:

a. effecting a transaction in a security which involves no change in the beneficial ownership thereof;

b. entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time, and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. Nothing in this subsection prohibits a dealer from entering bona fide agency cross transactions for its customers;

c. effecting, along or with one or more other persons, a series of transactions in a security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

15. guaranteeing a customer against loss in a securities account of the customer or in a securities transaction effected with or for the customer;

16. publishing or circulating, or causing to be published or circulated, a notice, circular, advertisement, newspaper article, investment service or communication of any kind which purports to report a transaction as a purchase or sale of a security unless the dealer or salesman believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for a security, unless the dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

17. using an advertising or sales presentation in such a fashion as to be deceptive or misleading;

18. failing to disclose that the dealer is controlled by, controlling, affiliated with, or under common control with

the issuer of a security before entering into a contract with or for a customer for the purchase or sale of the security. If the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

19. failing to make a bona fide public offering of all of the securities allotted to a dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member;

20. failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint;

21. failing to comply with an applicable provision of the Rules of Fair Practice of the Financial Industry Regulatory Authority or an applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission;

22. engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer without proper authority to do so;

23. effecting securities transactions not recorded on the regular books or records of the dealer, unless the transactions are authorized in writing by the dealer prior to execution of the transaction;

24. establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

25. sharing directly or indirectly in profits or losses in the account of a customer without the written authorization of the customer;

26. dividing or otherwise splitting a salesman's commissions, profits or other compensation from the purchase or sale of securities with a person not also registered as a salesman for the same dealer, or for a dealer under direct or indirect common control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:704 A(10)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 38:3169 (December 2012).

§1205. Investment Advisers and Investment Adviser Representatives

A.1. Investment Advisers and Investment Adviser Representatives—includes the following actions:

a. recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of a security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative;

b. exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed under oral discretionary authority, unless the discretionary power relates solely to the price at which,

or the time when, an order involving a definite amount of a specified security shall be executed, or both;

c. inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;

d. placing an order to purchase or sell a security for the account of a client without authority to do so;

e. placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;

f. borrowing money or securities from a client unless the client is a dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

g. loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

h. misrepresenting to an advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, or an employee of the investment adviser; misrepresenting the nature of the advisory services being offered; or misrepresenting fees to be charged for the service; or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

i. providing a report or recommendation to an advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render advice or where an investment adviser or investment adviser representative orders the report in the normal course of providing advice;

j. charging a client an unreasonable advisory fee in light of the type of service to be provided; the experience and expertise of the investment adviser; or the sophistication or bargaining power of the client; or without notice to the client, dividing or otherwise splitting the advisory fee or other compensation derived from the advisory services;

k. failing to disclose to clients in writing before advice is rendered a material conflict of interest relating to the investment adviser, the investment adviser representative or an employee of the investment adviser which could reasonably be expected to impair the rendering of unbiased and objective advice including:

i. compensation arrangements connected with advisory services to clients which are in addition to compensation from the clients for the services;

ii. charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the investment adviser, the investment adviser representative or an employee of the investment adviser;

l. guaranteeing a client that a specific result will be achieved, gain or no loss, with advice which will be rendered;

m. publishing, circulating or distributing an advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940 (15 U.S.C.A. §§80b-1 - 80b-21);

n. disclosing the identity, affairs or investments of a client unless required by law to do so, or unless consented to by the client;

o. entering into, extending or renewing an investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of a prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract;

p. failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204a of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-4a) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder;

q. entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-5) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 703 of the LSL notwithstanding whether the investment adviser is exempt from registration with the United States Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-3);

r. to indicate, in an advisory contract, any condition, stipulation or provision binding any person to waive compliance with any provision of the LSL or any other language which may lead a client to believe that legal rights have been restricted or waived;

s. engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-6(4) and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder. This applies to all investment advisers and investment adviser representatives registered under section 703 of the LSL notwithstanding whether the investment adviser is exempt from registration with the United States Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940;

t. engaging in conduct or committing any act, directly, indirectly or through or by another person, which would be unlawful for the person to do directly under the provisions of the LSL or any rule, regulation or order issued thereunder, or engaging in other conduct such as nondisclosure, incomplete disclosure or deceptive practices shall be deemed an unethical practice.

2. This Section does not apply to Federally-covered advisers unless the conduct otherwise is actionable under section 712 of the LSL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:704 A. (10)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 38:3170 (December 2012).

John Ducrest
Commissioner of Securities

1212#002

RULE

Office of the Governor Real Estate Commission

Real Estate Schools, Vendors, Post-Licensing and Continuing Education (LAC 46:LXVII.5319, 5513, 5515, 5523, 5527, 5529 and 5531)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has amended LAC 46:LXVII, Real Estate, Chapters 53 and 55.

A pre-license instructor certification will no longer serve to automatically qualify pre-license instructors to instruct post-license and continuing education courses. Post-license and continuing education instructors will no longer be certified by the LREC, and will forego the cost of the certification exam. All instructors, including certified pre-license instructors, will be required to submit an application for approval to instruct post-license or continuing education per course, which will be graded by an LREC-developed point system. Unlike the current procedure, which effectively grandfathered pre-license instructors to teach post-license and continuing education with no qualifying requirements, the amended procedure is designed to ensure that post-license and continuing education instructors possess the knowledge and skills to teach courses of this type.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXVII. Real Estate

Subpart 1. Real Estate

Chapter 53. Real Estate Schools

§5319. Pre-License Instructors; Initial and Renewal Applications; Guest Lecturers

A. No person shall act as pre-license instructor at any real estate school, and no real estate school shall hire or otherwise permit any person to act as a pre-license instructor for the school, unless that person has been certified as such by the commission.

B. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3015 (October 2011), amended LR 38:3171 (December 2012).

Chapter 55. Real estate vendors; post-licensing and continuing education

§5513. Post-License and Continuing Education Instructors

A. No person shall act as a post-license/continuing education instructor, and no real estate vendor shall hire or otherwise permit any person to act as a post-license/continuing education instructor, unless that person has been approved by the commission.

B. The application to become approved as a real estate post-license/continuing education instructor shall be in such form and detail as prescribed by the commission and shall be accompanied by any documentation requested therein and the certification fee(s) prescribed in R.S. 37:1443.

1. Approval as a post-license/continuing education instructor shall be required per vendor course and shall not qualify an approved instructor to instruct any other post-license/continuing education courses.

2. The expiration of an approved post-license/continuing education course shall result in the automatic expiration of all instructor approvals issued for that course.

C. The commission shall approve or deny a post-license/continuing education instructor application within 45 calendar days after it is received. Incomplete applications, or a request from the commission for additional information, may be cause for delay beyond 45 calendar days.

D. The commission may deny an application for approval as a post-license/continuing education instructor for any of the following reasons.

1. The applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or theft, or has been convicted of a felony or crime involving moral turpitude in any court of competent jurisdiction.

2. An application contains a false statement of material fact.

3. A professional license or certification held by an applicant has been revoked.

4. The applicant fails to meet the minimum requirements prescribed by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3020 (October 2011), amended LR 38:3172 (December 2012).

§5515. Supplemental Post-License/Continuing Education Instructors

A. Real estate vendors may hire or otherwise permit a supplemental course instructor to participate with a primary instructor in the instruction of an approved post-license/continuing education course, provided the supplemental course instructor is named as such in the application for post-license/continuing education instructor submitted by the primary instructor.

B. A supplemental course instructor shall work under the direct supervision of the approved primary course instructor and shall be limited to no more than 25 percent of the total course instruction. In instances where there is more than one supplemental course instructor, the supplemental course

instructors shall be limited to a combined total of no more than 25 percent of the total course instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3020 (October 2011), amended LR 38:3172 (December 2012).

§5523. Suspension or Revocation of a Vendor Certification or Post-License/Continuing Education Instructor Approval

A. The commission may impose fines, and/or suspend or revoke a vendor certification and/or post-license/continuing education instructor approval for the following acts committed by a vendor, employee, or approved post-license/continuing education instructor:

1. violation of any rule or regulation promulgated by the commission;

2. conviction of a felony or entering a plea of guilty or nolo contendere to a felony charge;

3. refusal to appear or testify under oath at any hearing held by the commission;

4. false certification of course attendance hours for any student;

5. suspension or revocation of a salesperson, broker, or timeshare interest salesperson license by the commission;

6. failure of a real estate vendor contact person to inform post-license/continuing education instructors on changes to the Louisiana Real Estate License Law or commission rules and regulations.

7. using designated course instruction time to teach, promote, advance, encourage, or further personal opinion, information, data, statistics, facts, figures, material, news, reports, intelligence, or knowledge that is not included in the approved course curriculum.

B. Suspension or revocation of a post-license/continuing education instructor approval shall include all courses for which the post-license/continuing education instructor approval has been granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3021 (October 2011), amended LR 38:3172 (December 2012).

§5527. Post License Education Courses

A. Post-license education courses offered by real estate education vendors shall be developed in accordance with the content outline prescribed by the commission.

B. Real estate education vendors shall not issue credit for any post-license education course unless the student has passed an examination on the course content. Post-license hours shall be secured through and reported by one approved vendor.

C. Post-license education courses shall be open to all licensees regardless of broker affiliation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3021 (October 2011), amended LR 38:3172 (December 2012).

§5529. Continuing Education Courses

A. Real estate education vendors may offer continuing education course topics that include, but are not limited to, appraisal, finance, taxes, zoning, Louisiana Real Estate License Law/commission rules and regulations,

environmental quality, property management, and federal laws affecting real estate such as HUD and fair housing regulations.

B. Continuing education courses offered by real estate education vendors shall be a minimum of two hours. A classroom hour is defined as sixty minutes, of which fifty minutes are instruction. The prescribed number of classroom hours may include time devoted to examinations if a required part of the course. Time devoted to breakfasts, luncheons, dinners, or other refreshments shall not be counted as instruction time.

C. Licensees shall not receive duplicate credit for attending the same continuing education course from the same vendor in the same year. It shall be the responsibility of the real estate education vendor to advise licensees that credit shall not be awarded for completing duplicate courses within the same license period.

D. Course work completed by licensees through non-approved providers will be considered for credit by the commission on an individual basis. Licensees seeking approval for course work obtained through non-approved providers shall apply for such approval by submitting documentation of attendance, hours completed, date of attendance, and detailed course content information.

E. Continuing education courses shall be open to all licensees regardless of broker affiliation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3022 (October 2011), amended LR 38:3172 (December 2012).

§5531. Mandatory Courses

A. The commission shall mandate an annual four-hour continuing education course topic and curriculum that licensees shall complete during each license period as a requirement for license renewal.

B. Real estate education vendors shall not offer the mandatory course for credit unless a course approval application has been approved by the commission.

C. There shall be no substitute curriculum for the mandatory course, including any previously approved course that is similar in name and/or content, without prior commission approval.

D. Any instructor used in the presentation of the mandatory course shall have first completed the annual Train the Trainer instructor workshop developed specifically for each mandatory course topic. Completion of a prior year Train the Trainer instructor workshop shall not be substituted for completion of the current year workshop.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3022 (October 2011), amended LR 38:3173 (December 2012).

Bruce Unangst
Executive Director

1212#070

RULE

Department of Health and Hospitals Board of Medical Examiners

Licensure and Certification; Definitions;
Qualifications for License
(LAC 46:XLV.303 and 311)

Pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana State Board of Medical Examiners has amended §303.A and §311.A of its administrative rules governing licensure and certification of physicians. The amendments are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 3. Physicians

Subchapter A. General Provisions

§303. Definitions

A. As used in this Chapter, the following terms shall have the meanings specified:

* * *

Primarily Engaged—that activity to which the applicant devotes the majority of his or her time.

* * *

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1271 and 37:1274.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:513 (June 1990), LR 27:835 (June 2001), LR 31:1582 (July 2005), LR 38:3173 (December 2012).

Subchapter B. Graduates of American and Canadian Medical School and Colleges

§311. Qualifications for License

A. To be eligible for a license, an applicant shall:

1. - 6. ...

7. have been primarily engaged in the practice of medicine, medical education, or postgraduate medical education or training, or any combination of the foregoing, for the four years immediately preceding the date of the submission of an application. An applicant who does not satisfy this requirement, shall demonstrate his or her clinical competency by the successful passage of an assessment examination or such other competency testing or evaluation, monitoring or supervision as may be designated by the board.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 1271, 1272, 1274 and 1275.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:513 (June 1990), LR 22:207 (March 1996), withdrawal LR 22:280 (April 1996), amended LR 27:836 (June 2001), LR 31:1583 (July 2005), LR 37:337 (January 2011), LR 38:3173 (December 2012).

Robert L. Marier, M.D.
Executive Director

1212#065

RULE

Department of Health and Hospitals Board of Medical Examiners

Physician Assistants, Licensure and Certification;
Qualifications for Registration of Prescriptive Authority
(LAC 46:XLV.1521)

Pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292 and the Louisiana Physician Assistant Practice Act, R.S. 37:1360.21-1360.38, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana State Board of Medical Examiners has amended its administrative rules governing the qualifications of physician assistants for registration of prescriptive authority. The amendments are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 15. Physician Assistants

§1521. Qualifications for Physician Assistant Registration of Prescriptive Authority

A. Legend Drugs/Medical Devices. To be eligible for registration of prescriptive authority for legend drugs or medical devices, or both, a physician assistant shall:

1. ...

2. possess a current license to practice as a physician assistant duly issued by the board and not be the subject of a current investigation or pending disciplinary proceeding by the board;

A.3. - B.3. ...

C. A physician assistant shall be deemed ineligible for registration of authority to prescribe controlled substances who:

1. - 4. ...

5. Repealed and Reserved;

C.6. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 1360.23(D) and (F), and 1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 31:75 (January 2005), amended LR 38:3174 (December 2012).

Robert L. Marier, M.D.
Executive Director

1212#064

RULE

Department of Health and Hospitals Board of Medical Examiners

Physician Licensure and Certification;
Reports to the Board (LAC 46:XLV.422)

Pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana State Board of Medical Examiners has adopted LAC 46:XLV.422. The Rule is set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 3. Physicians

Subchapter I. License Issuance, Termination, Renewal, Reinstatement and Exemptions

§422. Reports to the Board; Suspension, Termination, Non-Renewal, Surrender, Resignation or Withdrawal from Postgraduate Medical Training

A. A physician participating in an accredited postgraduate medical training program (program) in this state under the authority of a registration, permit or license issued by the board shall report, and shall request that the program report, to the board in writing his or her suspension, termination, non-renewal, surrender, resignation or withdrawal from the program within thirty days of such action.

B. In the event of a conflict between the reporting requirements of Subsection A of this Section and a physician's duty to self-report under R.S. 37:1285A(31) or a program's duty to report under Louisiana Health Care Professionals Reporting Act, R.S. 37:1745.11-37:1745.17, respectively, the provisions of R.S. 37:1285A(31) and 37:1745.11-37:1745.17, shall govern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, R.S. 37:1285A(31), R.S. 37:1745.11-37:1745.17.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 38:3174 (December 2012).

Robert L. Marier, M.D.
Executive Director

1212#066

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Direct Service Worker Registry
(LAC 48:I.Chapter 92)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 48:I.Chapter 92 as authorized by R.S. 37:1031-1034 and R.S. 40:2179-2179.2. This proposed 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. Health Standards

Chapter 92. Direct Service Worker

Registry Subchapter A. General Provisions

§9201. Definitions

Able to Self-Direct the Services—a person's ability to make decisions about his or her own care and actively participate in the planning and directing of that care.

Abuse—

1. the willful infliction of physical or mental injury;
2. causing deterioration by means including, but not limited to:

- a. sexual abuse;
- b. exploitation; or
- c. extortion of funds or other things of value to such

an extent that the health, moral or emotional well-being of the individual being supported is endangered; or

3. the willful infliction of injury, unreasonable confinement, intimidation or punishment which results in or which could reasonably be expected to result in physical or mental harm, pain or mental anguish. Lack of awareness or knowledge by the victim of the act which produced or which could have reasonably been expected to produce physical or mental injury or harm shall not be a defense to the charge of abuse.

Board—the Louisiana State Board of Nursing.

Daily Monitoring—activities pursued on a daily basis by a family member, direct service worker and/or other health care providers for the purposes of collecting critical information needed to assure the individual's welfare. Monitoring activities may include, but are not limited to face-to-face home visits with the person receiving assistance or services and/or daily telephone calls with the individual.

* * *

Employer—an individual or entity that pays an individual wages or a salary for performing a job.

* * *

Finding—allegations of abuse, neglect, exploitation or extortion that are placed on the registry by the department following a decision by an administrative law judge or a court of law after all appeal delays afforded by law or allegations of abuse, neglect, exploitation or extortion that are placed on the registry by the department as a result of

failure to timely request an appeal in accordance with the provisions of this Rule.

Health Standards Section—the Department of Health and Hospitals, Bureau of Health Services Financing's Health Standards Section.

Home and Community-Based Services—those services as defined in R.S. 40:2120.2 or a successor statute. For the purposes of this Rule, home and community-based services do not include services provided in day or residential congregate care settings including, but not limited to, the following:

1. nursing facilities;
2. hospice care facilities;
3. hospitals;
4. intermediate care facilities;
5. adult residential care providers;
6. adult day health care centers; or
7. any other 24-hour facility licensed by the department or the Department of Children and Family Services, exclusive of center-based respite facilities.

Independent Living Environment—a person's residence which may include the person's home, apartment, trailer or other unlicensed residence and includes where the person works, attends school or engages in community activities.

* * *

Neglect—the failure, or willful forsaking of an adult by a caregiver responsible for an adult's care or by other parties, to provide the proper or necessary support or medical, surgical, or any other care necessary for his/her well-being.

Noncomplex Task—a health-related task with predictable results that can be safely performed according to exact directions with no need to alter the standard procedure.

Person-Specific Training—a set of knowledge, skills and abilities that pay close attention to the person's strengths, age, disabilities, health care needs and related factors in order to meet the unique needs of the person receiving care.

Plan of Care—a plan that describes the assistance or services to be provided to a person receiving home and community-based services, as defined herein. The plan also describes who shall provide the assistance and the frequency and/or duration of the services that will be provided.

Provider—

1. an entity that furnishes care and services to consumers and has been licensed by the department to operate in the state;
2. in the case of an authorized departmental self-directed program, provider shall be the entity or individual as specified by the program employing the direct service worker.

Registered Nurse—any individual possessing a valid, active and unencumbered Louisiana license to practice nursing as a registered nurse (RN).

Stable and Predictable—a situation in which the person's clinical and behavioral status is determined by a licensed RN to be non-fluctuating and consistent. A stable and predictable condition involves long term health care needs which are recuperative in nature and do not require the regular scheduled presence of a RN or licensed practical nurse (LPN).

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 32:2058 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3175 (December 2012).

§9202. Introduction

A. The Department of Health and Hospitals (DHH) shall maintain a registry of individuals for whom specific findings of abuse, neglect, exploitation or extortion have been substantiated by the department, and administrative law judge, or a court of law.

B. The Direct Service Worker Registry will contain the following items on each individual for whom a finding has been placed:

1. name;
 - a. - i.v. Repealed.
2. address;
3. Social Security number;
4. state registration number;
5. an accurate summary of finding(s); and
6. information relative to registry status which will be

available through procedures established by the Health Standards Section (HSS).

C. Employers must use the registry to determine if there is a finding that a prospective hire has abused or neglected an individual being supported, or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired.

D. 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 32:2059 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012).

Subchapter B. Training and Competency Requirements

§9211. General Provisions

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 32:2059 (November 2006), amended LR 33:96 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012).

§9213. Trainee Responsibilities

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 32:2059 (November 2006), amended LR 33:96 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012).

§9215. Training Curriculum

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), LR 35:2437 (November 2009), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012).

§9217. Training Coordinators

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 33:97 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012).

§9219. Competency Evaluation

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 33:97 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012).

§9221. Compliance with Training and Competency Evaluation

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 33:97 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012).

Subchapter C. Provider Participation

§9231. Provider Responsibilities

A. Prior to hiring any direct service worker or trainee, a licensed provider shall:

1. assure that the individual is at least 18 years of age, and that they have the ability to read, write and carry out directions competently as assigned; and

2. access the registry to determine if there is a finding that he/she has abused or neglected an individual being supported or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired.

B. The provider shall check the registry every six months to determine if any currently employed direct service worker or trainee has been placed on the registry with a finding that he/she has abused or neglected an individual being supported or misappropriated the individual's property or funds.

1. The provider shall maintain printed confirmation from the registry web site as verification of compliance with this procedure.

C. - E.2. 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 32:2061 (November 2006), amended LR 33:97 (January 2007), amended by the Department of Health and

Hospitals, Bureau of Health Services Financing, LR 38:3176 (December 2012).

Subchapter D. Medication Administration and Noncomplex Tasks in Home and Community-Based Settings

§9241. General Provisions

A. Unless authorized to provide medication administration or non-complex tasks by another state law or regulation, all direct service workers providing medication administration or non-complex tasks shall comply with the provisions of Subchapter D of this Rule.

B. In order to perform any of the authorized procedures specified in this Subchapter, the direct service worker shall not have a finding placed against him/her on the DSW Registry. Any direct service worker who has had a finding placed against him/her on the Direct Service Worker Registry shall not perform any of the authorized procedures specified in this Subchapter.

C. The medication administration and non-complex tasks authorized by this Subchapter may be performed only in home and community-based settings by DSWs who meet the requirements of this Subchapter. The requirements of this Subchapter are in addition to the general training, competency, and provider requirements which generally govern direct service workers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3177 (December 2012).

§9243. General Requirements for the Performance of Medication Administration and Noncomplex Tasks

A. A registered nurse shall authorize and monitor medication administration and noncomplex tasks performed by the direct service workers. In order for the RN to authorize these tasks, the direct service worker shall:

1. be employed or contracted by an agency licensed by the Health Standards Section or employed as part of an authorized departmental self-directed program; and
2. attend to an individual who:
 - a. is receiving home and community-based services;
 - b. is able to self-direct the services or resides in a residence where there is daily monitoring by a family member or other health care provider;
 - c. has an approved current plan of care; and
 - d. receives periodic assessment by a RN based on the person's health status and specified within the plan of care; in no case shall the periodic assessment be less than annually. A comprehensive assessment performed for a client in accordance with policies and procedures established by Medicaid or by a DHH program office may serve as the basis of the RN assessment but may not be used in lieu of the RN assessment.

B. A registered nurse may delegate to a licensed practical nurse components of the training and supervision of the DSW. The decision is based upon assessment of the individual task to be performed. The RN shall retain the responsibility and accountability for all acts of delegation and ensuring authorization and competency validation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3177 (December 2012).

§9245. Training Requirements for the Performance of Medication Administration and Noncomplex Tasks

A. Person-Specific Training. Direct service workers shall receive person-specific training from a RN who has assessed the health status of the person and who has determined that the direct service worker can competently perform the tasks in a safe, appropriate manner for this person.

1. The RN's determination of competency shall be certified by the RN in writing, and the written certification shall be maintained in the direct service worker's personnel file. The RN's determination of competency shall not be delegated.

2. This training shall be repeated if the RN does not certify that the direct service worker has demonstrated a sufficient level of competency in the subject matter.

3. Based on the nursing assessment and clinical judgment, the RN shall provide additional person-specific training when the person receiving care has a change in health status or physician orders and yet remains in a stable, predictable condition. The RN may make a determination based upon his/her assessment of the worker's competency that training can be safely performed via telephone contact with the worker. Examples include, but are not limited to:

- a. changes in physician orders concerning health care tasks to be performed;
- b. changes in physician orders regarding routine medications; or
- c. new physician orders for short-term use of medication for a minor acute health condition.

B. Medication Administration Training. Direct service workers shall attain proficiency in the fundamentals of medication administration. Direct Service Staff shall receive 16 hours of medication administration training which has been coordinated and approved by an RN and which shall include the following.

1. Medication Administration Core Curriculum:
 - a. legal aspects of administering medication;
 - b. roles and responsibilities of medication administration;
 - c. medical terminology;
 - d. classification and identification of drugs;
 - e. measuring medications;
 - f. effects and side effects;
 - g. distribution and routes of medication;
 - h. drug interactions;
 - i. handling and storage of medicines;
 - j. six fundamental rights of administering medication:
 - i. give the right medication;
 - ii. give the right dose;
 - iii. give the medication to the right individual;
 - iv. give the medication by the right route;
 - v. give the medication at the right time; and
 - vi. provide the right documentation.

2. Documentation Training. Direct service workers shall attain proficiency in documentation which includes:

- a. the contents of chart or record;
- b. the importance of record keeping;
- c. the rules for charting, including time limits;
- d. documenting vital signs, as applicable;
- e. documenting the condition of the person receiving care and significant changes; and
- f. the name of medication, dose, route and time of administration.

3. Skill Proficiency Training. Direct service workers shall attain proficiency in the following skill areas, either by physical or verbal demonstration to the RN:

- a. universal precautions and infection control;
- b. vital signs, as applicable:
 - i. counting pulse;
 - ii. counting respirations;
 - iii. taking blood pressure; and
 - iv. taking oral, rectal, or axillary temperature.

C. A direct service worker who has not completed didactic training and demonstrated competency in accordance with guidelines established and approved by the Department of Health and Hospitals and the Louisiana Board of Nursing shall not be allowed to perform medication administration or any noncomplex tasks covered by this Rule.

D. Any direct service worker currently employed to perform the procedures authorized by this Chapter shall complete the training required by this Subchapter no later than 12 months after promulgation of this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3177 (December 2012).

§9247. Annual Competency Evaluation

A. The direct service worker shall undergo an annual competency evaluation performed by a RN to determine whether he/she is competent to perform the authorized person-specific medication administration and noncomplex tasks safely and appropriately.

B. The RN shall use professional judgment in assessing whether or not the tasks are being performed correctly and safely by the DSW.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3178 (December 2012).

§9249. Authorized Medication Administration and Noncomplex Tasks

A. Direct service workers who meet the requirements of this Rule, including training and competency assessment, and who are so authorized may perform medication administration and non-complex tasks authorized by this Subchapter. Such a direct service worker may perform the following tasks for a person who is in stable condition only when the tasks may be performed according to exact directions, there is no need to alter the standard procedure, and the results are predictable:

1. administration of oral and topical medication, ointments, suppositories or a pre-measured dosage unit

provided by the manufacturer of an oral inhalant aerosol, as ordered by an authorized prescriber;

a. any medication administered by a direct service worker under these provisions shall be in a container which meets acceptable pharmaceutical standards and is marked with:

- i. clear instructions;
- ii. the prescriber's name;
- iii. the prescription number, if any;
- iv. the name of the medication;
- v. the dosage;
- vi. the route;
- vii. the frequency; and
- viii. the time to be administered, if applicable;

2. provision of routine hydration, nutrition or medication by way of an established gastro-tube; and

3. other noncomplex tasks as identified by guidelines established and approved by the Department of Health and Hospitals and the Louisiana Board of Nursing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3178 (December 2012).

§9251. Direct Service Worker Responsibilities

A. The responsibilities of the direct service worker include, but are not limited to:

1. following the exact instructions of the RN in the performance of all authorized procedures;

2. notifying the employer or the RN when the health status of the person receiving assistance changes so the RN can reassess to determine whether or not the procedures can still be performed by the direct service worker in a safe manner;

3. notifying the employer or the registered nurse when the prescribed procedures or medications or dosages change so additional person-specific training can be conducted by the RN if applicable; and

4. notifying the employer, the RN, and the person receiving assistance or services if a finding has been placed against him/her on the Direct Service Worker Registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3178 (December 2012).

§9253. Registered Nurse Responsibilities

A. The responsibilities of the registered nurse include, but are not limited to:

1. assuring that during person-specific trainings and required evaluations, the direct service worker performs the authorized medication administration and non-complex tasks according to exact directions making certain there is no need to alter the standard procedures and the results are predictable;

2. assuring no direct service worker is authorized to perform medication administration and noncomplex tasks if the health status of the person receiving services is not stable and predictable;

3. assuring that the direct service worker demonstrates a sufficient level of competency in the subject matter as set forth in training;

4. assisting in the development of the plan of care for the person receiving assistance or services;
5. assisting the person's planning team to determine the frequency needed for RN assessments of the health status of the person receiving assistance or services;
6. at least annually, completing the competency evaluation of the direct service worker; and
7. completing and submitting the required documentation to the licensed agency employing the direct service worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3178 (December 2012).

§9255. Employer Responsibilities

A. The responsibilities of the employer employing the direct service worker include, but are not limited to:

1. assuring that only direct service workers authorized under these provisions, or other provisions authorized through state laws or regulations, perform medication administration and noncomplex tasks;
2. assuring that the direct service worker performs the authorized procedures as trained by the RN and written in the plan of care;
3. maintaining all of the required documentation in the agency's permanent files;
4. assuring that the registered nurse assesses the health status of the person receiving assistance at least annually, or if required, more frequently as determined by the assessment of the RN and as specified in the plan of care;
5. assuring that the direct service worker received the required training and annual competency evaluation;
6. assuring that the direct service worker does not have a finding placed against him/her on the DSW Registry;
7. assuring that no direct service worker whose authorization has terminated continues to perform the procedures that had been previously authorized;
8. notifying the RN of any changes in the health status of the person receiving services or any concerns regarding the ability of the direct service worker to continue to perform the authorized procedures safely;
9. cooperating with the Health Standards Section during any monitoring of these provisions including, but not limited to:
 - a. providing access to required documentation; and
 - b. providing access to the direct service worker and supervisory staff; and
10. assisting the Health Standards Section with obtaining access to persons receiving assistance and their guardians.

B. The employer shall maintain the following documentation within its permanent files:

1. documentation by the RN to show that the person is able to self-direct the services or resides in a residence where there is daily monitoring by a family member, a direct service worker, or other health care provider;
2. a current plan of care for the person receiving services;
3. copies of the RN assessments of the person's health status;

4. documentation that the direct service worker does not have a finding placed against him/her on the DSW Registry;

5. documentation that the direct service worker has met the training requirements, including the additional person-specific training required when tasks or medications or dosages change, as determined by the RN;

6. documentation that the direct service worker has met the medication administration training requirements, including documentation that the RN conducting the training has assessed the proficiency and determined that the direct service worker exhibits sufficient proficiency to be able to administer medications safely and/or to perform non-complex tasks safely;

7. a statement signed by the RN who conducted the annual competency evaluation specifying when it was conducted and what tasks the direct service worker is authorized to perform; and

8. if applicable, a statement regarding termination of authorization with the date that authorization was terminated and the reason for termination. If the termination is due to a RN assessment of the health status of the person receiving assistance or the competency of the direct service worker, the statement shall be written and signed by the RN.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3179 (December 2012).

§9257. Liability

A. Any registered nurse who has properly trained and documented that a direct service worker is competent to perform the prescribed tasks shall not be liable for any civil damages as a result of any act or omission of the direct service worker.

B. Any physician licensed to practice medicine by the Louisiana State Board of Medical Examiners, whether or not the physician developed the person's plan of care, including but not limited to the prescribed medical regime, who is rendering professional medical care services shall not be liable for any civil damages as a result of any negligent or intentional act or omission of the direct service worker or licensed agency.

C. Notwithstanding any other provision of law, licensed agencies that employ direct service workers shall be liable for acts or omissions of the direct service worker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3179 (December 2012).

§9259. Termination of Authorization to Perform Services

A. Authorization for a direct service worker to perform medication administration and noncomplex tasks shall terminate for any of the following reasons.

1. The condition of the person for whom the direct service worker is performing the tasks has become unstable.
2. A registered nurse certifies that the direct service worker can no longer perform the prescribed tasks safely.

3. The direct service worker has a finding placed against him/her on the DSW Registry.

4. The direct service worker failed to comply with any provision of the enabling statute.

5. Additional person-specific training by a RN was not completed after the tasks to be performed or the types of medications to be administered changed.

6. The annual competency evaluation was not completed.

7. The person receiving assistance or their guardian has requested that the direct service worker no longer be authorized to administer or perform the authorized procedures for the person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3179 (December 2012).

§9261. Violations and Noncompliance

A. The Health Standards Section is responsible for investigation of complaints and noncompliance with these provisions.

B. If a direct service worker is found to be administering medication or performing noncomplex tasks in a manner not consistent with these provisions or other state regulations, the HSS shall require that the direct service worker immediately cease performing such procedures.

C. If the professional performance of a registered nurse or a licensed practical nurse is found to be questionable by the Health Standards Section, a referral shall be made to the respective professional licensing board for review and consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012).

Subchapter E. Violations

§9271. Disqualification of Training Programs

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 32:2061 (November 2006), amended LR 33:98 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012).

§9273. Allegations of Direct Service Worker Wrong-Doing

A. The department, through the Division of Administrative Law, or its successor, has provided for a process of the review and investigation of all allegations of wrong-doing by direct service workers. Direct service workers and trainees must not:

1. - 2. ...

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 32:2061 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012).

§9277. Informal Dispute Resolution

A. When a direct service worker feels that he/she has been wrongly accused, the following procedure should be followed:

1. The direct service worker may request an informal dispute resolution (IDR) within 15 calendar days of the receipt of the department's notice of violation. The request for an IDR must be made to the department in writing.

2. - 4e. ...

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 32:2061 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012).

Subchapter F. Administrative Hearings

§9285. General Provisions

A. ...

1. The request for an administrative hearing must be made in writing to the Division of Administrative Law, or its successor.

2. ...

3. Unless a timely and proper request is received by the Division of Administrative Law or its successor, the findings of the department shall be considered a final and binding administrative determination.

a. ...

B. When an administrative hearing is scheduled, the Division of Administrative Law, or its successor, shall notify the direct service worker, his/her representative and the agency representative in writing.

1. - 1.c. ...

C. The administrative hearing shall be conducted by an administrative law judge from the Division of Administrative Law, or its successor, as authorized by R.S. 46:107 and according to the following procedures.

1. - 8. ...

9. When the allegation(s) supporting placement of a finding is substantiated, the direct service worker may not rest on the mere denial in his/her testimony and/or pleading(s) but must set forth specific facts and produce evidence to disprove or contest the allegation(s).

D. - H. ...

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 32:2062 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012).

§9287. Preliminary Conferences

A. - A.6. ...

B. When the Division of Administrative Law, or its successor, 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. - C.1. ...

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 32:2062 (November 2006), amended LR 33:99 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3180 (December 2012).

§9289. Witnesses and Subpoenas

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 32:2063 (November 2006), amended LR 33:99 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3181 (December 2012).

§9291. Continuances or Further Hearings

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 32:2063 (November 2006), amended LR 33:100 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3181 (December 2012).

§9293. Failure to Appear at Administrative Hearings

A. If a direct service worker fails to appear at an administrative hearing, a notice/letter of abandonment may be issued by the Division of Administrative Law, or its successor, dismissing the appeal. A copy of the notice shall be mailed to each party.

B. - B.2. ...

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 32:2063 (November 2006), amended LR 33:100 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3181 (December 2012).

Bruce D. Greenstein
Secretary

1212#109

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing**

Inpatient Hospital Services
Non-Rural, Non-State Public Hospitals
Reimbursement Methodology (LAC 50:V.963)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.963 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§963. Public Hospitals

A. Effective for dates of service on or after May 15, 2011, non-rural, non-state public hospitals shall be reimbursed up to the Medicare inpatient upper payment limits as determined in accordance with 42 CFR §447.272.

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 38:3181 (December 2012).

Bruce D. Greenstein
Secretary

1212#104

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing**

Intermediate Care Facilities for Persons
with Developmental Disabilities
Minimum Licensing Standards
(LAC 48:I.Chapter 85 and 86)

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed LAC 48:I.Chapter 51 governing the licensing requirements for community homes and LAC 48:I.Chapter 63 governing the licensing requirements for group homes in their entirety, and repealed and replaced LAC 48:I.Chapter 85 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. 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 and Certification

**Chapter 85. Intermediate Care Facilities for Persons
with Developmental Disabilities**

Subchapter A. General Provisions

§8501. Introduction

A. These rules and regulations contain the minimum licensure standards for intermediate care facilities for persons with developmental disabilities (ICF/DD), pursuant to R.S. 40:2180 et seq.

B. Standards are established to ensure minimum compliance under the law, equity among those served, provision of authorized services, and proper disbursement. It is the ICF/DD facility's responsibility to keep these standards current. The standards are the basis for surveys by the state agency, and are necessary for the ICF/DD to remain in compliance with state regulations for licensure.

C. Monitoring of an ICF/DD's compliance with state regulations is the responsibility of Department of Health and Hospitals, Health Standards Section (HSS).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3181 (December 2012).

§8503. Definitions

Administrator—the person appointed by the governing body who is responsible for the day to day functions of the ICF/DD. The administrator can also be called a chief executive officer (CEO).

Bedroom Space—a distinct area used as a sleeping area.

Building Systems—plumbing, mechanical and electrical systems necessary for the complete operations of a facility.

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 on the needs of the individual interdicted.

Department—the Louisiana Department of Health and Hospitals (DHH).

Developmental Disabilities (DD)—severe, chronic disabilities which are attributable to mental retardation, cerebral palsy, autism, epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation. This condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of mental retardation, and requires treatment or services similar to those required for MR/DD, are manifested before the person reaches age 22 and are likely to continue indefinitely.

Discipline—training that is expected to produce a specified character or pattern of behavior, and especially is expected to produce moral or mental improvement.

Discipline—a field of study, a branch of instruction or learning, or a branch of knowledge or teaching.

Direct Service Management—the act of controlling the various aspects of ICF/DD involving direct services to individuals in order to ensure effective care and treatment.

Direct Service Worker—an employee of an ICF/DD who works directly with individuals as a major function of his/her job.

Existing Licensed Facility—a structure which has been licensed by the department and has received occupancy approval from the local/parish authorities or occupancy approval from Louisiana State Facility Planning and Control and the Office of the State Fire Marshal prior to the effective date of promulgation of these provisions as a final Rule.

Family—the natural or adoptive father, mother, brother, and sister, but may be interpreted broadly to include any person, whether related to the individual by blood or not, who resides in the individual's home and takes part in the individual's family life.

Governing Body—a person or persons with the ultimate responsibility for conducting the affairs of the ICF/DD. The governing body is responsible for appointing an administrator of the ICF/DD.

Intermediate Care Facility for Persons with Developmental Disabilities (ICF/DD)—any 24-hour residential facility, whether public or private, that provides

services to individuals that meet the criteria to reside in that facility.

Individual—a person who receives services from an ICF/DD.

Legally Responsible Person—as appropriate, the parent(s) or tutor of a minor or the curator of an interdicted individual.

License—a written certification, whether provisional or regular, of an ICF/DD's authorization to operate under state law.

Living Units—an integral living space utilized by a particular group of individuals who reside in that space.

Major Renovation—any repair or replacement of building materials or equipment which does not meet the definition of *minor alteration*.

Minor Alteration—repair or replacement of building materials and equipment with materials and equipment of a similar type that does not diminish the level of construction beyond that which existed prior to the alteration. This does not include any alteration to the "functionality" or original design of the construction (for example, normal maintenance, re-roofing, painting, wallpapering, asbestos removal, and changes to the electrical and mechanical systems).

Parent—the natural or adoptive mother and father of an individual.

Passive Physical Restraint—the least amount of direct physical contact required on the part of a staff member to prevent an individual from harming himself/herself or others.

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 individuals 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. For example, the term does not include anticonvulsants or hormones.

Qualified Mental Retardation Professional (QMRP)—the professionally qualified person responsible for overseeing the implementation of an individual's service plan. A QMRP is a person who has specialized training or one year of experience in training or one year of experience in treating or working with the mentally retarded as described in §8579 below.

Qualified Professional (QP)—a psychologist or physician as described in §8579 below.

Re-Establishment Facilities—an existing licensed facility that maintains its license while it has temporarily suspended operation in all or portions of a building due to substantial structural damage.

Replacement Facilities—an existing structure that has obtained substantial structural damage beyond repair and is being totally replaced at another site location or on the same site.

Restraint—the extraordinary restriction of an individual's freedom or freedom of movement.

Service Plan—a comprehensive, time-limited, goal-oriented, individualized plan for care, treatment, and education of an individual in care of an ICF/DD. The *service*

plan is based on a current comprehensive evaluation of the individual's needs.

SIP—shelter in place.

Start of Construction—the date the construction permit was issued for new construction, provided that the actual start of construction commenced within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footing, the installation of piles, the construction of columns, or any other work beyond the stage of excavation; or the placement of a manufactured home. Permanent construction does not include land preparation such as clearing, grading, or filling; nor does it include excavation of a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial repair or substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a structure, whether or not that alteration affects the external dimensions of the structure.

Structure—any building or other structure.

Substantial Structural Damage—damage of any origin sustained by a structure, whereby the cost of restoration to its pre-damaged condition equals or exceeds 50 percent of its pre-damaged market value, or equals or exceeds a smaller percentage established by the authority having jurisdiction. Evaluation shall be as determined and accepted by the Department of Public Safety, Office of the State Fire Marshal in accordance with RS 40:1574 C-G.

Time-Out Procedure—the isolation of an individual for a period of less than 30 minutes in an unlocked room.

Training—any activity outside the normal routine of the ICF/DD which promotes the development of skills related to individual 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 informed by a particular therapeutic model and used to meet a diagnosed need of an individual in care over and above the provisions of basic care.

Tutor—pursuant to Louisiana civil law, a person appointed to have the care of the person of a minor and the administration of his/her estate. There are four types of tutorship.

1. Tutorship by Nature. Upon the death of either parent, the tutorship of minor individuals belongs of right to the other parent. Upon divorce or judicial separation, the tutorship of each minor individual belongs of right to the parent under whose care he/she has been placed.

2. Tutorship by Will. The right of appointing a tutor belongs exclusively to the father or mother dying last. The appointment may be through the surviving parent's will or by declaration in notaries act executed before a notary public and two witnesses. If the parents are divorced or judicially separated, only one with court-appointed custody may appoint a tutor by will or notaries act.

3. Tutorship by the Effect of Law. When a tutor has not been appointed for a minor by the parent dying last, the court shall appoint the nearest ascendant in the direct line of the minor.

4. Tutorship by Appointment of the Judge. When a minor is an orphan and has had no tutor appointed by either parent, or any relation claiming tutorship by effect of law, the court shall appoint a tutor for the minor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3182 (December 2012).

§8505. Licensing Requirements

A. All ICF/DD providers shall be licensed by the Department of Health and Hospitals. An ICF/DD shall not be established, opened, operated, managed, maintained, or conducted in the state without a license issued by DHH. Each ICF/DD shall be separately licensed.

B. DHH is the only licensing authority for ICF/DD providers in the state of Louisiana. It shall be unlawful to operate an ICF/DD provider without possessing a current, valid license issued by the department.

C. Each ICF/DD license shall:

1. be issued only to the person or entity named in the license application;

2. be valid only for the ICF/DD provider to which it is issued, and only for the specific geographic address of that provider;

3. be valid for one year from the date of issuance, unless revoked, suspended, modified, or terminated prior to that date, or unless a provisional license is issued;

4. expire the last day of the twelfth month after the date of issuance, unless timely renewed by the ICF/DD provider;

5. not be subject to sale, assignment, donation, or other transfer, whether voluntary or involuntary;

6. be posted in a conspicuous place on the licensed premises at all times; and

7. specify the maximum number of individuals which may be served by the ICF/DD facility.

D. The licensed ICF/DD provider shall abide by and adhere to any federal, state and local laws, rules, policy, procedure, manual, or memorandums pertaining to ICF/DD provider facilities.

E. A separately licensed ICF/DD provider shall not use a name which is substantially the same as the name of another ICF/DD provider licensed by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3183 (December 2012).

§8507. Initial Licensing Application Process

A. An application packet for licensing as an ICF/DD must be obtained from the department. A completed initial license application packet for the ICF/DD must be submitted to and approved by the department prior to an applicant providing services.

B. An initial applicant must submit a completed licensing packet to DHH, which shall include:

1. a completed ICF/DD licensure application and the non-refundable licensing fee as established by statute;
2. a completed disclosure of ownership and control information form;
3. a copy of a statewide criminal background check, including sex offender registry status, on all owners and administrators;
4. a copy of the approval letter of the architectural facility plans from the Office of the State Fire Marshal and any other office/entity designated by the department to review and approve the facilities architectural plans, if the facility must go through plan review;
5. a copy of the on-site inspection report with approval for occupancy from the Office of the State Fire Marshal;
6. a copy of the health inspection report with approval of occupancy from the Office of Public Health;
7. zoning approval from local governmental authorities; and
8. any other documentation or information required by the department for licensure.

C. Any person convicted of any felony listed below is prohibited from being the owner or administrator of an ICF/DD facility. Any licensing application from such a person shall be rejected by the department.

1. For purposes of this Paragraph, conviction of a felony means:
 - a. any felony relating to the violence, abuse, or negligence of a person;
 - b. any felony relating to the misappropriation of property belonging to another person;
 - c. any felony relating to cruelty to the infirmed, exploitation of the infirmed, or sexual battery of the infirmed;
 - d. any felony relating to a drug offense;
 - e. any felony relating to crimes of a sexual nature;
 - f. any felony relating to a firearm or deadly weapon;
 - g. any felony relating to Medicare or Medicaid fraud; or
 - h. any felony relating to fraud or misappropriation of federal or state funds.

D. If the initial licensing packet is incomplete, the applicant shall be notified of the missing information and shall have 90 days from receipt of notification to submit the additional requested information. If the additional requested information is not submitted to the department within 90 days, the application shall be closed. After an initial licensing application is closed, an applicant who is still interested in becoming an ICF/DD provider must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

E. Once the initial licensing application packet has been approved by the department, notification of such approval shall be forwarded to the applicant. Within 90 days of receipt of the approval of the application, the applicant must notify DHH that the ICF/DD is ready and is requesting an initial licensing survey. If an applicant fails to so notify DHH within 90 days, the initial licensing application shall be closed. After an initial licensing application is closed, an

applicant who is still interested in becoming an ICF/DD provider must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

F. Applicants must be in compliance with all of the appropriate federal, state, departmental, or local statutes, laws, ordinances, rules, regulations, policy, manuals, memorandums and fees before the ICF/DD provider will be issued an initial license to operate by DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3183 (December 2012).

§8509. Initial Licensing Surveys

A. Prior to the initial license being issued to the ICF/DD, an initial licensing survey shall be conducted on site at the facility to assure compliance with the licensing laws and standards.

B. In the event that the initial licensing survey finds that the ICF/DD facility is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the provider. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended or terminated.

C. In the event the initial licensing survey finds that the ICF/DD facility is non-compliant with any licensing laws or regulations or any other required statutes, law, ordinances, rules or regulations, but the department in its sole discretion determines that the noncompliance does not present a potential threat to the health, safety, or welfare of the individuals receiving services, the department may issue a provisional initial license for a period not to exceed six months. The facility must submit a plan of correction to DHH for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. If all such noncompliance or deficiencies are determined to be corrected on a follow-up survey, then a full license shall be issued. If all such noncompliance or deficiencies are not corrected on the follow-up survey or new deficiencies affecting the health, safety, or welfare of a client are cited, the provisional license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license packet and fee. However, at the sole discretion of the department the provisional license may be extended for an additional period not to exceed nine days in order for the ICF/DD to correct the noncompliance or deficiencies.

D. In the event that the initial licensing survey finds that the ICF/DD facility is noncompliant with any licensing laws or regulations or any other required statute, law, ordinance, Rule, or regulation, or that present a potential threat to the health, safety, or welfare of the individuals receiving services, the department shall deny the initial license.

E. The initial licensing survey of an ICF/DD provider shall be a scheduled, announced survey. There shall be at least one individual in the ICF/DD facility at the time of the initial licensing survey.

F. Once an ICF/DD provider has been issued an initial license, the department shall conduct licensing surveys at intervals deemed necessary by DHH to determine compliance with licensing regulations, as well as other

required statutes, laws, ordinances, rules, regulations, and fees. These licensing surveys shall be unannounced.

1. An acceptable plan of correction may be required from an ICF/DD provider for any survey where deficiencies have been cited. Such plan of correction shall be approved by the department.

2. A follow-up survey shall be conducted for any survey where deficiencies have been cited to ensure correction of the deficient practices.

3. If deficiencies have been cited, regardless of whether an acceptable plan of correction is required, the department may issue appropriate sanctions, including, but not limited to:

- a. civil monetary penalties;
- b. directed plans of correction; and
- c. license revocations.

G. DHH surveyors and staff shall be given access to all areas of the facility and all relevant files during any licensing or other survey. DHH surveyors and staff shall be allowed to interview any provider staff, participant, or person receiving services, as necessary to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3184 (December 2012).

§8511. Types of Licenses and Expiration Dates

A. The department shall have authority to issue the following types of licenses.

1. Full Initial License. In the event that the initial licensing survey finds that the ICF/DD facility is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations and fees, the department shall issue a full license to the provider. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended or terminated.

2. Provisional Initial License. In the event that the initial licensing survey finds that the ICF/DD facility is non-compliant with any licensing laws or regulations or any other required statutes, laws, ordinances, Rules, regulations or fees, the department is authorized to issue a provisional initial license pursuant to the requirements and provisions of these regulations.

3. Full Renewal License. The department may issue a full renewal license to an existing licensed ICF/DD provider which is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, Rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. Provisional Renewal License. The department, in its sole discretion, may issue a provisional license to an existing licensed ICF/DD provider for a period not to exceed six months, for the following reasons:

a. the existing ICF/DD provider has more than five deficient practices or deficiencies cited during any one survey;

b. the existing ICF/DD provider has more than three validated complaints in a 12-month period;

c. the existing ICF/DD provider has been issued a deficiency that involved placing an individual at risk for serious harm or death;

d. the existing ICF/DD provider has failed to correct deficient practices within 60 days of being cited for such deficient practices or at the time of the follow-up survey; or

e. the existing ICF/DD provider is not in substantial compliance with all of the applicable federal, state, departmental, and local statutes, laws, ordinances, Rules, regulations, and fees at the time of renewal of the license.

5. When the department issues a provisional license to an existing licensed ICF/DD provider, the provider must submit a plan of correction to DHH for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. The department shall conduct an on-site follow-up survey at the ICF/DD provider prior to the expiration of the provisional license. If that on-site follow-up survey determines that the ICF/DD provider has corrected the deficient practices and has maintained compliance during the period of the provisional license, then the department may issue a full license for the remainder of the year until the anniversary date of the ICF/DD license. If that on-site follow-up survey determines that the ICF/DD provider has not corrected the deficient practices, has not maintained compliance during the period of the provisional license, or if new deficiencies that are a threat to the health, safety, or welfare of a client are cited on the follow-up, the provisional license shall expire. However, at the sole discretion of the department the provisional license may be extended by the department, not to exceed 90 days, in order for the ICF/DD provider to correct the non-compliance or deficiencies.

B. If an existing licensed ICF/DD provider has been issued a notice of license revocation or termination, and the provider's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

1. The denial of the license renewal application shall not affect in any manner the license revocation, suspension, or termination.

C. The renewal of a license does not in any manner affect any sanction, civil monetary penalty, or other action imposed by the department against the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3185 (December 2012).

§8513. Changes in Licensee Information or Personnel

A. An ICF/DD license shall be valid only for the person or entity named in the license application and only for the specific geographic address listed on the license application.

B. Any changes regarding the ICF/DD's facility name, "doing business as" name, mailing address, phone number, or any combination thereof, shall be reported in writing to the department within five days of the change.

C. Any change regarding the provider's key administrative personnel shall be reported in writing to DHH within five days of the change.

1. Key administrative personnel include the:
 - a. administrator.

2. The facility's notice to DHH shall include the individual's:

- a. name;
- b. address;
- c. hire date; and
- d. qualifications.

D. A change of ownership (CHOW) of the ICF/DD shall be reported in writing to the department within five days of the change of ownership. The license of the ICF/DD is not transferable or assignable; the license of an ICF/DD cannot be sold. In the event of a CHOW, the new owner shall submit the legal CHOW document, all documents required for a new license, and the applicable licensing fee. Once all application requirements are completed and approved by the department, a new license shall be issued to the new owner.

1. An ICF/DD provider who is under license suspension, revocation, or termination may not undergo a CHOW.

2. If the CHOW results in a change of geographic address, an on-site survey shall be required prior to the issuance of the new license.

E. If the ICF/DD provider changes its name without a change in ownership, the ICF/DD provider shall report such change to DHH in writing five days prior to the change. The change in the ICF/DD provider name requires a change to the provider's license and payment of the applicable fee.

F. Any request for a duplicate license must be accompanied by the applicable fee.

G. An ICF/DD provider that intends to change the physical address of its geographic location is required to have plan review approval, Office of the State Fire Marshal approval, Office of Public Health approval, compliance with other applicable licensing requirements, and an on-site licensing survey prior to the relocation of the facility. The relocation of the facility's physical address results in a new anniversary date and the full licensing fee shall be paid. Written notice of intent to relocate must be submitted to the licensing section of the department when plan review request is submitted to the department for approval.

H. Any ICF/DD provider who intends to renovate its facility is required to have plan review approval prior to renovation and an on-site licensing survey after renovation of the facility is complete. Written notice of intent to renovate shall be submitted to the licensing section of the department when plan review request is submitted to the department for approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3185 (December 2012).

§8515. Renewal of License

A. License Renewal Application. The ICF/DD provider shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the existing current license. The license renewal application packet shall include:

1. the license renewal application;
2. a copy of the current on-site inspection with approval for occupancy from the Office of the State Fire Marshal;
3. a copy of the current on-site inspection report with approval of occupancy from the Office of Public Health;
4. the non-refundable license renewal fee; and
5. any other documentation required by the department.

B. The department may perform an on-site survey and inspection upon annual renewal.

C. Failure to submit to DHH a completed license renewal application packet prior to the expiration of the current license shall result in the voluntary non-renewal of the ICF/DD license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3186 (December 2012).

§8517. Survey Activities

A. The department may conduct annual licensing surveys and other surveys as deemed necessary to ensure compliance with all laws, rules, and regulations governing ICF/DD providers and to ensure client health, safety and welfare. These surveys may be conducted on-site or as an administrative review.

B. The department shall conduct complaint surveys. Complaint surveys shall be conducted in accordance with R.S. 40:2009.13 et seq.

C. Surveys shall be unannounced surveys.

D. The department may require an acceptable plan of correction from a provider for any survey where deficiencies have been cited, regardless of whether the department takes other action against the facility for the deficiencies cited in the survey. The acceptable plan of correction shall be approved by DHH.

E. A follow-up survey may be conducted for a survey where deficiencies have been cited to ensure correction of the deficient practices.

F. The department may issue appropriate sanctions for noncompliance, deficiencies, and violations of law, rules and regulations. Sanctions include, but are not limited to:

1. civil monetary penalties;
2. directed plans of correction; and
3. license revocation.

G. DHH surveyors and staff shall be given access to all areas of the facility and all relevant files during any complaint survey. DHH surveyors and staff shall be allowed to interview any provider staff or individual receiving services, as necessary or required to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3186 (December 2012).

§8519. Statement of Deficiencies

A. The following statements of deficiencies issued by the department to the ICF/DD shall be posted in a conspicuous place on the licensed premises:

1. the most recent annual survey statement of deficiencies; and

2. any subsequent complaint survey statement of deficiencies.

B. Any statement of deficiencies issued by the department to the ICF/DD provider shall be available for disclosure to the public 30 calendar days after the provider submits an acceptable plan of correction of the deficiencies or 90 calendar days after the statement of deficiencies is issued to the provider, whichever occurs first.

C. Unless otherwise provided in statute or in this licensing Rule, a provider shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

1. Correction of the deficient practices, of the violation, or of the non-compliance or deficiency shall not be the basis for the reconsideration.

2. The informal reconsideration of the deficiencies shall be requested in writing within 10 calendar days of receipt of the statement of deficiencies, unless otherwise provided in this Rule.

3. The request for informal reconsideration of the deficiencies shall be made to the department's Health Standards Section. The request for informal reconsideration shall be considered timely if received by the Health Standards Section within 10 calendar days of the provider's receipt of the statement of deficiencies.

4. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the informal reconsideration.

5. The provider shall be notified in writing of the results of the informal reconsideration.

6. Except as provided for in complaint surveys pursuant to R.S. 40:2009.11 et seq., and as provided in this licensing Rule for license denials, revocations, and non-renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies. There is no administrative appeal right of such deficiencies.

7. Pursuant to R.S. 40:2009.13, et seq., for complaint surveys in which the licensing agency (Health Standards Section) of the department determines that the complaint involves issues that have resulted in, or are likely to result in, serious harm or death, as defined in the statute, the determination of the informal reconsideration may be appealed administratively to the department's Division of Administrative Law or its successor. The hearing before the Division of Administrative Law or its successor is limited only to whether the investigation or complaint survey was conducted properly or improperly. The Division of Administrative Law or its successor shall not delete or remove deficiencies as a result of such hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3186 (December 2012).

§8521. Denial of License, Revocation of License, or Denial of License Renewal

A. The department may deny an application for a license, may deny a license renewal, or may revoke a license in accordance with the provisions of the Administrative Procedure Act.

B. Denial of an Initial License

1. The department shall deny an initial license in the event that the initial licensing survey finds that the ICF/DD facility is non-compliant with any licensing laws or regulations or with any other required statute, laws, ordinances, Rules or regulations that present a potential threat to the health, safety, or welfare of the individuals receiving services.

2. The department shall deny an initial license for any of the reasons a license may be revoked or non-renewed pursuant to these licensing regulations.

C. Voluntary Non-Renewal of a License

1. If a provider fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the provider.

2. If an ICF/DD fails to timely renew its license, the provider shall immediately cease and desist providing services, unless the provider has individuals in the ICF/DD facility. In which case, the provider shall comply with the following requirements:

a. shall immediately provide written notice to the department of the number of individuals receiving services in the ICF/DD facility;

b. shall immediately provide written notice to the individual, parent, legal guardian, or legal representative of the following:

i. notice of voluntary non-renewal;

ii. notice of closure; and

iii. plans for orderly transition of the individuals receiving services;

c. shall discharge and transition each individual within 15 calendar days of voluntary non-renewal; and

d. shall notify the department of where records will be stored and the contact person for those records.

3. If an ICF/DD provider fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating or owning an ICF/DD facility for a period of two years.

D. Revocation of License or Denial of License Renewal. An ICF/DD's license may be denied renewal or may be revoked for any of the following reasons, including but not limited to:

1. failure to be in substantial compliance with the ICF/DD licensing laws, rules and regulations or with other required statutes, laws, ordinances, rules or regulations;

2. failure to comply with the terms and provisions of a settlement agreement or education letter with or from the department, the Attorney General's office, any regulatory agency, or any law enforcement agency;

3. failure to uphold resident rights whereby deficient practices may result in harm or injury or death of an individual receiving services;

4. negligent or harmful failure to protect an individual receiving services from a harmful act of an employee or other individual receiving services including, but not limited to:

a. mental or physical abuse, neglect, exploitation, or extortion;

- b. an action posing a threat to an individual's health and safety;
 - c. coercion;
 - d. threat or intimidation;
 - e. harassment; or
 - d. criminal activity;
5. failure to notify the proper authorities, as required by federal or state law or Rule or regulations, of all suspected cases of:
- a. mental or physical abuse, neglect, exploitation, or extortion;
 - b. an action posing a threat to an individual's health and safety;
 - c. coercion;
 - d. threat or intimidation;
 - e. harassment; or
 - f. criminal activity;
6. knowingly making a false statement in any of the following areas, including but not limited to:
- a. application for initial license or renewal of license;
 - b. data forms;
 - c. clinical records, client records, or provider records;
 - d. matters under investigation by the department or the Office of the Attorney General; or
 - e. information submitted for reimbursement from any payment source;
7. knowingly making a false statement or providing false, forged, or altered information or documentation to DHH employees or to law enforcement agencies;
8. the use of false, fraudulent or misleading advertising;
9. fraudulent operation of an ICF/DD facility by the owner, administrator, manager, member, officer, or director;
10. an owner, officer, member, manager, administrator, director, or person designated to manage or supervise an individual receiving services has plead guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the court. For purposes of this paragraph, conviction of a felony means:
- a. any felony relating to the violence, abuse, or negligence of a person;
 - b. any felony relating to the misappropriation of property belonging to another person;
 - c. any felony relating to cruelty of the infirmed, exploitation of the infirmed, or sexual battery of the infirmed;
 - d. any felony relating to a drug offense;
 - e. any felony relating to crimes of sexual nature;
 - f. any felony relating to a firearm or deadly weapon;
 - g. any felony relating to Medicare or Medicaid fraud; or
 - h. any felony relating to fraud or misappropriation of federal or state funds;
11. failure to comply with all reporting requirements in a timely manner as required by the department;
12. bribery, harassment, intimidation, or solicitation of any client designed to cause that client to use or retain the services of any particular ICF/DD;

- 13. cessation of business or non-operational status;
- 14. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview provider staff or individuals;
- 15. interference with the survey process, including but not limited to, harassment, intimidation, or threats against the survey staff;
- 16. failure to allow or refusal to allow access to provider, facility or client records by authorized departmental personnel;
- 17. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment; or
- 18. failure to timely pay outstanding fees, fines, sanctions or other debts owed to the department.

E. In the event an ICF/DD's license is revoked or renewal is denied, (other than for cessation of business or non-operational status) any owner, officer, member, director, manager, or administrator of such ICF/DD facility may be prohibited from opening, managing, directing, operating, or owning another ICF/DD facility for a period of two years from the date of the final disposition of the revocation or denial action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3187 (December 2012).

§8523. Notice and Appeal of License Denial, Revocation or Non-Renewal

A. Notice of a license denial, license revocation, or license non-renewal (i.e. denial of license renewal) shall be given to the provider in writing.

B. The ICF/DD has the right to an informal reconsideration of the license denial, license revocation, or license non-renewal. There is no right to an informal reconsideration of a voluntary non-renewal or surrender of a license by the provider.

1. The ICF/DD provider shall request the informal reconsideration within 15 calendar days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for informal reconsideration shall be in writing and shall be forwarded to the department's Health Standards Section. The request for informal reconsideration shall be considered timely if received by DHH Health Standards within 15 days from the provider's receipt of the notice.

2. The request for informal reconsideration shall include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an informal reconsideration is received by the Health Standards Section, an informal reconsideration shall be scheduled and the provider will receive written notification of the date of the informal reconsideration.

4. The provider shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a violation of a deficiency which is the basis for the denial, revocation or non-renewal, shall not be a basis for reconsideration.

6. The informal reconsideration process is not in lieu of the administrative appeals process.

7. The provider will be notified in writing of the results of the informal reconsideration.

C. The ICF/DD provider has a right to an administrative appeal of the license denial, license revocation, or license non-renewal. There is no right to an administrative appeal of a voluntary non-renewal or surrender of a license by a provider.

1. The ICF/DD provider shall request the administrative appeal within 30 calendar days of the receipt of the result of the informal reconsideration. The ICF/DD may forgo its rights to an informal reconsideration, and if so, the ICF/DD shall request the administrative appeal within 30 calendar days of the recipient of the notice of license denial, license revocation, or license non-renewal. The request for administrative appeal shall be in writing and shall be submitted to the department's Division of Administrative Law or its successor.

2. The request for administrative appeal shall include any documentation that demonstrates that the determination was made in error and shall include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the Division of Administrative Law or its successor, the administrative appeal of the license revocation or license non-renewal shall be suspensive, and the provider shall be allowed to continue to operate and provide services until such time as the department issues a final administrative decision. If the department denied an initial license application, the ICF/DD shall discharge any and all individuals receiving services.

a. Notwithstanding the provisions of Paragraph §8523.C.3 above, if the secretary of the department determines that the violations of the facility pose an imminent or immediate threat to the health, welfare, or safety of a participant or individual receiving services, then the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal.

b. If the secretary of the department makes such a determination, the facility shall be notified in writing of such determination.

4. Correction of a violation or a deficiency which is the basis for the denial, revocation, or non-renewal, shall not be a basis for the administrative appeal.

D. If an existing ICF/DD provider has been issued a notice of license revocation and the provider's license is due for annual renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect in any manner the license revocation.

E. If a timely administrative appeal has been filed by the provider on a license denial, license non-renewal, or license revocation, the department's Division of Administrative Law or its successor shall conduct the hearing within 90 days of docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Division of Administrative Law or its successor upon good cause shown.

1. If the final agency action is to reverse the license denial, the license non-renewal, or the license revocation, the provider's license will be re-instated or granted upon the

payment of any licensing or other fees due to the department and the payment of any outstanding sanctions due to the department.

2. If the final agency action is to affirm the license non-renewal or the license revocation, the provider shall discharge any and all individuals receiving services according to the provisions of this Rule. Within 10 days of the final agency decision, the provider must notify the department's licensing section in writing of the secure and confidential location of where client records will be stored.

F. There is no right to an informal reconsideration or an administrative appeal of the issuance of a provisional initial license to a new ICF/DD or the issuance of a provisional license to an existing ICF/DD. A provider who has been issued a provisional license is licensed and operational for the term of the provisional license. The issuance of a provisional license to an existing ICF/DD is not considered to be a denial of license, a denial of license nonrenewal, or a license revocation.

1. If a provisional license is issued, the provider shall submit a plan of correction to DHH for approval, and shall be required to correct all noncompliance or deficiencies prior to the expiration of the provisional license.

2. The department shall conduct a follow-up survey, either on-site or by desk review, of the ICF/DD provider prior to the expiration of the provisional license.

3. If the follow-up survey determines that the ICF/DD provider has corrected the deficient practices and has maintained compliance during the period of the provisional license, the department may issue a full license for the remainder of the year until the anniversary date of the ICF/DD provider.

4. If the follow-up survey determines that all noncompliance or deficiencies have not been corrected, or if new deficiencies that are a threat to the health, safety, or welfare of individuals receiving services are cited on the follow-up survey, the provisional initial license or provisional license shall expire on the date specified on the provisional license. However, at the sole discretion of the department, the provisional license may be extended for an additional period not to exceed 90 days in order for the ICF/DD facility to correct the non-compliance or deficiencies.

5. The department shall issue written notice to the provider of the results of the follow-up survey.

6. A provider with a provisional initial license or an existing provider with a provisional license that expires due to noncompliance or deficiencies cited at the follow-up survey shall have the right to an informal reconsideration and the right to an administrative appeal as to the deficiencies cited in the follow-up survey.

a. The correction of a violation, noncompliance, or deficiency after the follow-up survey shall not be the basis for the informal reconsideration or the administrative appeal.

b. The informal reconsideration and the administrative appeal are limited to whether the deficiencies were properly cited at the follow-up survey.

c. The provider shall request the informal reconsideration in writing to the DHH Health Standards Section within five calendar days of receipt of the notice of the results of the follow-up survey from the department. The informal reconsideration request shall be considered timely

if received by the Health Standards Section within five days from provider's receipt of the notice.

d. The provider must request an administrative appeal within five calendar days of receipt of the notice of the results of the informal reconsideration. The facility may forgo its right to an informal reconsideration, and if so, the facility shall request an administrative appeal within five calendar days of receipt of the notice of the results of the follow-up survey. The request for an administrative appeal shall be in writing and shall be submitted to the department's Division of Administrative Law or its successor.

e. A provider with a provisional initial license or an existing provider with a provisional license that expires under the provisions of this section shall cease providing services and discharge clients unless the Division of Administrative Law or its successor issues a stay of the expiration. The stay may be granted by the Division of Administrative Law or its successor upon application by the provider at the time the administrative appeal is filed and only after a contradictory hearing, and only upon a showing that there is no potential harm to the client being served by the provider.

f. If a timely administrative appeal has been filed by a provider with a provisional license that has expired or by an existing provider whose provisional license has expired under the provision of this section, the Division of Administrative Law or its successor 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 Division of Administrative Law or its successor upon good cause shown.

i. If the final agency decision is to remove all deficiencies, the provider's license will be reinstated upon the payment of any licensing or other fees due to the department and the payment of any outstanding sanctions due to the department

ii. If the final agency decision is to uphold the deficiencies and affirm the expiration of the provisional license, the provider shall discharge any and all individuals receiving services. Within 10 days of the final agency decision, the provider must notify the department's licensing section in writing of the secure and confidential location of where client records will be stored.

G. Representation at Hearings. An ICF/DD shall, when allowed by law, have a representative present at all judicial, educational, or administrative hearings which address the status of an individual in the care of the ICF/DD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3188 (December 2012).

§8525. Cessation of Business

A. An ICF/DD that intends to close or cease operations shall comply with the following procedures:

1. shall give 30 days advance written notice to the following:

- a. the department; and
- b. the parent(s) or legal guardian or legal representative;

2. shall notify the department of where records will be stored and the contact person for those records; and

3. shall provide for an orderly discharge and transition of the individuals in the facility.

B. If an ICF/DD provider fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating or owning an ICF/DD for a period of two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3190 (December 2012).

Subchapter B. Administration and Organization

§8531. Governing Body

A. An ICF/DD shall have an owner or identifiable governing body with responsibility for, and authority over, the policies and activities of the ICF/DD and ultimate authority for:

1. the overall operation of the facility;
2. the adequacy and quality of care;
3. the financial solvency of the facility and the appropriate use of its funds;
4. the implementation of the standards set forth in these regulations; and
5. the adoption, implementation, and maintenance, in accordance with the requirements of state and federal laws and regulations and these licensing standards, of ICFs/DD and administrative policies governing the operation of the facility.

B. An ICF/DD shall have documents identifying the names and addresses of its owners. When an ICF/DD is owned by any type of corporation, partnership, or association it shall identify the names and address of its members and officers and shall have, where applicable, a charter, partnership agreement, articles of association, by laws, or other organizational documents.

C. An ICF/DD shall have documents identifying all members of the governing body; their addresses; their terms of membership; officers of the governing body, and terms of office of all officers, if applicable.

D. When the governing body of an ICF/DD is composed of more than one person, the governing body shall hold formal meetings at least twice a year.

E. When the governing body is composed of more than one person, an ICF/DD shall have written minutes of all formal meetings of the governing body and by-laws specifying the frequency of meetings and the quorum requirements.

F. Responsibilities of a Governing Body. The governing body of an ICF/DD shall:

1. ensure the ICF/DD's continual compliance and conformity with the ICF/DD's charter, bylaws or other organizational documents;
2. ensure the ICF/DD's continual compliance and conformity with all relevant federal, state, local and municipal laws and regulations;
3. ensure that the ICF/DD is adequately funded and fiscally sound;
4. review and approve the ICF/DD's annual budget;

5. ensure the review and approval of an annual external audit;

6. ensure that the ICF/DD is housed, maintained, staffed, and equipped appropriately considering the nature of the ICF/DD's program;

7. designate a person to act as administrator and delegate sufficient authority to this person to manage the ICF/DD;

8. formulate and annually review, in consultation with the administrator, written policies concerning the ICF/DD's philosophy, goals, current services, personnel practices, and fiscal management;

9. annually evaluate the administrator's performance;

10. have the authority to dismiss the administrator;

11. meet with designated representatives of the department whenever required to do so;

12. inform designated representatives of DHH prior to initiating any substantial changes in the program, services or physical plant of the ICF/DD; and

13. ensure statewide criminal background check on all unlicensed persons.

G. The administrator or a person authorized to act on behalf of the administrator shall be accessible to the ICF/DD staff and designated representatives of DHH at all times.

H. An ICF/DD shall have a written statement describing its philosophy and describing both long-term and short-term goals. An ICF/DD shall have a written program plan describing the services and programs offered by the ICF/DD.

I. Administrative File. An ICF/DD shall have an administrative file including:

1. articles of incorporation or certified copies thereof, if incorporated, bylaws, operating agreements, or partnership documents, if applicable;

2. documents identifying the governing body;

3. a list of members and officers of the governing body and their addresses and terms of membership, if applicable;

4. minutes of formal meetings, if applicable;

5. documentation of the ICF/DD's authority to operate under state law;

6. an organizational chart of the ICF/DD, which clearly delineates the line of authority;

7. all leases, contracts and purchase-of-service agreements to which the ICF/DD is a party;

8. insurance policies;

9. annual budgets and audit reports; and

10. copies of all Incident/Accident Reports.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3190 (December 2012).

§8533. Fund Raising and Publicity

A. An ICF/DD shall have a policy regarding participation of individuals in activities related to fund-raising and publicity.

B. Consent of the individual receiving services and, where appropriate, the legally responsible person shall be obtained prior to participation in such activities.

C. An ICF/DD shall have written policies and procedures regarding the photographing and audio or audio-visual recordings of individuals.

D. The written consent of the individual receiving services and, where appropriate, the legally responsible person shall be obtained before the individual is photographed or recorded for research or program publicity purposes. Such consent cannot be made a condition for admission into, remaining in, or participating fully in the activities of the facility. Consent agreements must clearly notify the individual receiving services of his/her rights under this regulation, must specify precisely what use is to be made of the photography or recordings, and are valid for a maximum of one year from the date of execution. Individuals are free to revoke such agreements at any time, either orally or in writing.

E. All photographs and recordings shall be used in a manner which respects the dignity and confidentiality of the individual receiving services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3191 (December 2012).

§8535. Research

A. An ICF/DD shall have written policies regarding the participation of individuals in research projects. These policies shall conform to the National Institute of Mental Health Standards on protection of human subjects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3191 (December 2012).

Subchapter C. Admission, Transfer, and Discharge Criteria

§8541. Admissions

A. Each ICF/DD shall have written policies and procedures governing the admission, transfer, and discharge of individuals receiving services.

B. Intake and Admissions Policy

1. An ICF/DD shall have a written description of admission policies and criteria. A copy of the admission policies and criteria shall be provided to the department and shall be available to the legally responsible person for any individual referred for placement. The admission policies and criteria shall include, but is not limited to, the following information:

a. policies and procedures related to intake. Intake policies shall include, at least, due process procedures for admission of minors, and determination before admission of appropriate legal status according to appropriate state laws;

b. the age and sex of individuals receiving services in care;

c. the needs, problems, situations, or patterns best addressed by the ICF/DD's program;

d. any other criterion for admission;

e. criteria for discharge;

f. any placement requirements on the individual, the legally responsible person, the department, or other involved agencies; and

g. procedures for ensuring that placement within the program is the least restrictive alternative appropriate to meet the individual's needs.

2. The ICF/DD 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. An ICF/DD shall not refuse admission to any individual receiving services on the grounds of race, ethnic origin, or disability.

4. An ICF/DD shall not admit more individuals receiving services into care than the number specified on the ICF/DD's license.

5. An ICF/DD shall not accept any individual receiving services for placement whose needs cannot be adequately met by the ICF/DD's program.

6. An ICF/DD shall assess an individual to determine if they are able to meet the needs of that individual. If the ICF/DD is unable to admit the individual based on that assessment the ICF/DD shall provide a written statement to the designated representative of DHH detailing why they are unable to meet the needs of that individuals.

7. An ICF/DD shall ensure that the individual receiving services 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.

C. Intake Evaluation

1. The ICF/DD shall accept an individual 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 individual cannot be maintained in a less restrictive environment within the community.

2. In emergency situations necessitating immediate placement into care, the ICF/DD shall gather as much information as possible about the individual 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.

D. Clarification of Expectations to Individuals. The ICF/DD shall, consistent with the individual's maturity and ability to understand, make clear its expectations and requirements for behavior and provide the individual referred for placement with an explanation of the ICF/DD's criteria for successful participation in and completion of the program.

E. Placement Agreement

1. The ICF/DD 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 individual's record and a copy shall be available to DHH, the individual and, where appropriate, the legally responsible person.

2. An ICF/DD shall not admit any individual into care whose presence will be seriously damaging to the ongoing functioning of the ICF/DD or to individuals already in care.

3. The placement agreement shall be developed with the involvement of the individual, where appropriate, the legally responsible person and DHH. 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:

a. discussion of the individual's and the family's expectations regarding:

i. family contact and involvement;

ii. the nature and goals of care, including any specialized services to be provided;

iii. the religious orientation and practices of the individual; and

iv. the anticipated discharge date and aftercare plans;

b. a delineation of the respective roles and responsibilities of all agencies and persons involved with the individual and his/her family;

c. authorization to care for the individual;

d. authorization to obtain medical care for the individual;

e. arrangements regarding visits, vacation, mail, gifts, and telephone calls;

f. arrangements as to the nature and frequency of reports to, and meetings involving, the legally responsible person and referring agency; and

g. provision for notification of the legally responsible person in the event of unauthorized absence, illness, accident or any other significant event regarding the individual.

4. The ICF/DD shall ensure that each individual, upon placement, is checked for illness, fever, rashes, bruises, and injury. The individual shall be asked if he/she has any physical complaints. The results of this procedure shall be documented and kept in the individual's record.

5. The ICF/DD shall assign a staff member to orient the individual, and where available, the family to life at the ICF/DD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3191 (December 2012).

§8543. Voluntary and Involuntary Transfers and Discharges

A. There are two types of transfers or discharges from an ICF/DD facility:

1. planned or voluntary discharge; or

2. involuntary transfer or discharge.

B. A planned or voluntary transfer or discharge occurs in the following situations:

1. a planned downsizing of a state facility; or

2. a planned transfer or discharge due to client or authorized representative request.

C. The client and/or legal representative(s) must give their written consent to all non-emergency situations, however, written consent by the client and/or legal representative(s) is not required for those situations involving a planned downsizing of a state facility. Notification shall be made to the parents or legal representative(s) as soon as possible, if applicable.

D. Prior to a planned discharge of an individual, the ICF/DD's staff shall formulate an aftercare plan specifying the supports and resources to be provided to the individual. Aftercare plans shall be kept in the individual's record.

E. Prior to discharge, the ICF/DD's staff shall ensure that the individual is aware of and understands his/her aftercare plan and the department's representative shall be notified of the plans.

F. If the client is being discharged to another ICF/DD or provider, representatives from the staff of both the sending and receiving facilities or providers shall confer as often as necessary to share appropriate information regarding all aspects of the client's care and habilitation training. The transferring ICF/DD is responsible for developing a final summary of the client's developmental, behavioral, social, health and nutritional status, and with the consent of the client and/or legal representative, providing a copy to authorized persons and agencies. A copy of the summary shall be included in the client's record and must accompany the client upon discharge to another ICF/DD or provider. This summary shall include:

1. the name and home address of the individual and, where appropriate, the legally responsible person;
2. the name, address, telephone number of the ICF/DD;
3. a summary of services provided during care;
4. a summary of growth and accomplishments during care;
5. the assessed needs which remain to be met and alternate service possibilities which might meet those needs; and
6. a statement of an aftercare plan and identification of who is responsible for follow-up services and aftercare.

G. The ICF/DD shall have a written policy concerning unplanned, involuntary discharge. The policy shall ensure that emergency discharges initiated by the ICF/DD take place only when the health and safety of an individual or other individuals might be endangered by the individual's further placement at the agency.

H. The ICF/DD shall give immediate notice of the client's discharge. The resident and his/her responsible party and/or legal representative or interested family member if known and available, have the right to be notified in writing in a language and manner they understand of the transfer and discharge. The notice must be given no less than thirty days in advance of the proposed action, except that the notice may be given as soon as is practicable prior to the action in the case of an emergency. A copy of the notice must be placed in the client's clinical record and a copy transmitted to:

1. the client;
2. a family member of the client, if known;
3. the client's legal representative and legal guardian, if known;
4. the Community Living Ombudsman Program;
5. DHH, Health Standards Section;
6. the regional office of the Office for Citizens with Developmental Disabilities (OCDD) for assistance with the placement decision;
7. the client's physician; and
8. appropriate educational authorities.

I. The resident, or his legal representative or interested family member, if known and available, has the right to

appeal any transfer or discharge to the Department of Health and Hospitals, which shall provide a fair hearing in all such appeals.

J. The facility must ensure that the transfer or discharge is effectuated in a safe and orderly manner. The resident and his legal representative or interested family member, if known and available, shall be consulted in choosing another facility if facility placement is required.

K. When arranging for placement following an emergency discharge, an ICF/DD shall consult with the receiving ICF/DD and the regional office of OCDD, to ensure that the individual is placed in a program that reasonably meets the individual's needs. The ICF/DD shall have a written report detailing the circumstances leading to each unplanned discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3192 (December 2012).

Subchapter D. Service Delivery

§8547. General Provisions

Reserved.

§8549. Individual Service Plan

A. Qualified Mental Retardation Professional (QMRP). An ICF/DD shall ensure that the QMRP, who is an appropriately qualified professional, is assigned to each individual and given responsibility for and authority over:

1. supervision of the implementation of the individual's service plan;
2. integration of the various aspects of the individual's program;
3. recording of the individual's progress as measured by objective indicators;
4. reviewing the individual's service plan, on a quarterly basis;
5. ensuring the timely release, whenever appropriate, of the individual to a less restrictive setting;
6. monitoring any extraordinary restriction of the individual's freedom including use of any form of restraint, any special restriction on an individual's communication with others and any potentially harmful treatment or behavior management techniques applied to the individual; and
7. ensuring the coordination of all care and services.

B. The Service Plan

1. An ICF/DD shall, within 30 days of admitting an individual, ensure that a comprehensive written psychological, social, and as appropriate, educational assessment of the individual has been completed and, based on this assessment, shall develop a comprehensive, time-limited, goal-oriented individual service plan addressing the needs identified by the assessment.

2. The assessment shall identify the individual'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.

3. All methods used in assessing an individual shall be appropriate considering the individual's age, cultural background and dominant language or mode of communication.

4. Individual service plans shall be developed by an interdisciplinary team including the QMRP, representatives of the direct service staff working with the individual on a daily basis and other professionals, as indicated.

5. The ICF/DD shall document that, where applicable, the designated representative of DHH 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 reasons, if known, for non-participation.

6. Unless it is clearly not feasible to do so, an ICF/DD shall ensure that the service plan and any subsequent revisions are explained to the individual and, where appropriate, the legally responsible person, in a language or method understandable to the individual.

7. An ICF/DD shall ensure that the service plan for each individual includes the following components:

- a. the findings of the assessment;
- b. a statement of goals to be achieved or worked towards for the individual and his/her family;
- c. a plan for fostering positive family relationships for the individual, when appropriate;
- d. specifications for the daily activities, including training, education and recreation, to be pursued by the program staff and the individual in order to attempt achieve the stated goals;
- e. specification of any specialized services that will be provided directly or arranged for, and measures for ensuring their proper integration with the individual's ongoing program activities;
- f. specification of time-limited targets in relation to overall goals and specific objectives;
- g. methods for evaluating the individual's progress;
- h. goals and preliminary plans for discharge and aftercare;
- i. identification of all persons responsible for implementing or coordinating implementation of the plan; and
- j. the completed service plan shall be signed by all team participants.

8. An ICF/DD shall review each service plan at least annually and evaluate the degree to which the goals have been achieved.

9. An ICF/DD shall continuously monitor the individual's service plan and provide revisions as necessary.

10. The ICF/DD shall prepare quarterly status reports on the progress of the individual relative to the goals and objectives of the service plan. These reports shall be prepared by designated staff and reviewed and approved by the QMRP.

11. An ICF/DD shall ensure that all persons working directly with the individual are appropriately informed of the service plan.

C. Education

1. An ICF/DD shall ensure that each individual has access to appropriate educational services consistent with the individual's abilities and needs, taking into account his/her age and level of functioning.

2. All individuals of school age must either be enrolled in a school system or a program approved by the Department of Education.

D. Reports. When the individual is a minor, the administrator of a ICF/DD or his/her designee shall report in writing to the legally responsible person of the individual at least annually, or as otherwise required by law, with regard to the individual's progress with reference to the goals and objectives in the service plan. This report shall include a description of the individual's medical condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3193 (December 2012).

§8551. Food Services

A. An ICF/DD shall ensure that an individual 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. The ICF/DD shall have an organized system of food service supervised by a qualified dietitian or an appropriately qualified person. This dietitian or person shall be responsible for:

1. menu planning;
2. initiating food orders or requisitions;
3. establishing specifications for food purchases and insuring that such specifications are met;
4. storing and handling of food;
5. food preparation;
6. food serving;
7. maintaining sanitary standards in compliance with state and local regulations; and
8. orientation, training, and supervision of food service personnel.

B. A person designated by the administrator shall be responsible for the total food service of the ICF/DD. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained.

C. The person responsible for food service shall: maintain a current list of individuals with special nutritional needs, have an effective method of recording and transmitting diet orders and changes, record in the individuals' medical records information relating to special nutritional needs, provide nutrition counseling to staff and individuals and manage and coordinate the resources of the dietary services to achieve effective, efficient and sanitary production. This person shall also ensure that any modified diet for an individual shall be:

1. prescribed by the individual's physician and service plan with a record of the prescription kept on file;
2. planned, prepared, and served by persons who have received adequate training; and
3. periodically reviewed and adjusted as needed.

D. An ICF/DD shall ensure that an individual 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 home. Meals shall be served to individuals in appropriate quantity, at appropriate temperatures, in a form consistent with the development level of the individual and with appropriate utensils.

E. The ICF/DD shall ensure that the food provided to an individual in care by the ICF/DD is in accord with his/her religious beliefs.

F. An ICF/DD shall develop written menus at least one week in advance.

G. 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.

H. No individual shall be denied a meal for any reason except according to a doctor's order.

I. No individual shall be forced-fed or otherwise coerced to eat against his/her will except by order of a doctor.

J. When meals are provided to staff, an ICF/DD shall ensure that staff members eat substantially the same food served to individuals in care, unless age differences or special dietary requirements dictate differences in diet.

K. An ICF/DD shall ensure that all individuals, including the mobile non-ambulatory, eat or are fed in dining rooms, except where contraindicated for health reasons or by the individual's service plan.

L. Table service shall be provided for all individuals who can and will eat at a table, including individuals in wheelchairs.

M. Dining areas in a facility shall be equipped with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each individual.

N. Dining rooms in a facility shall be adequately supervised and staffed for the direction of self-help dining procedures and to assure that each individual receives an adequate amount of food.

O. Individuals shall be provided with systematic training to develop appropriate eating skills, utilizing adaptive equipment where it serves the development process.

P. Direct-care staff shall be trained in and shall utilize proper feeding techniques.

Q. Individuals shall eat in an upright position unless medically contraindicated.

R. Individuals shall eat in a manner consistent with their developmental needs.

S. An ICF/DD shall purchase and provide to individuals only food and drink of safe quality and the storage, preparation and serving techniques shall ensure that nutrients are retained and spoilage is prevented.

T. Dry or staple food items shall be stored at least twelve inches above the floor, in a ventilated space not subject to sewage or waste water backflow or contamination by condensation, leakage, rodents or vermin.

U. An ICF/DD shall ensure that perishable foods are stored at the proper temperatures to conserve nutritive values.

V. An ICF/DD shall ensure that food served to an individual and not consumed is discarded.

W. An ICF/DD shall show evidence of effective procedures for cleaning all equipment and work areas.

X. Hand washing facilities, including hot and cold water, soap, and paper towels, shall be provided in the food service work areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3194 (December 2012).

§8553. Health Care Services

A. General Provisions

1. An ICF/DD shall ensure the availability of a comprehensive program of preventive, routine and emergency medical and dental care, as appropriate, for all individuals. The ICF/DD shall have a written plan for providing such care. This plan shall include:

a. ongoing appraisal of the general health of each individual;

b. provisions of 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 individual in language suitable to his/her age and understanding;

e. an ongoing relationship with a licensed physician and dentist to advise the ICF/DD concerning medical and dental care;

f. availability of a physician on a 24-hour a day, seven days a week basis; and

g. the ICF/DD shall show evidence of access to the resources outlined in this plan.

2. An ICF/DD shall have access to psychiatric and psychological resources, on both an emergency and ongoing basis, as appropriate to meet the needs of individuals.

B. Physician Services. An ICF/DD shall arrange a general medical examination by a physician for each individual within a week of admission unless the individual has received such an examination within 30 days before admission and the results of this examination are available to the ICF/DD.

1. This examination shall include:

a. an examination of the individual for physical injury and disease;

b. vision and hearing screening;

c. a current assessment of the individual's general health; and

d. whenever indicated, the individual shall be referred to an appropriate medical specialist for either further assessment or treatment.

2. The ICF/DD shall arrange an annual physical examination of all individuals.

3. Physicians shall participate, when appropriate, in the continuous interdisciplinary evaluation of an individual for the purposes of initiation, monitoring, and follow-up of service plans; and

4. An ICF/DD must ensure that an individual receives timely, competent medical care, in keeping with community standards of medical practice when he/she is ill.

C. Immunizations

1. Individuals receiving services shall have proper immunizations and infection control.

2. The ICF/DD shall ensure:

a. that the individual has received all immunizations and booster shots which are required by the Department of Health and Hospitals within 30 days of his/her admission; and

b. reporting of communicable diseases and infections in accordance with law.

D. Medications

1. An ICF/DD shall ensure that no medication is given to any individual except in accordance with the written order of a physician.

a. There shall be no standing orders for prescription medications.

b. The prescribing physician must be immediately informed of any side-effects observed by staff or any medication errors.

2. An ICF/DD using psychotropic medications on a regular basis shall have a written description of the use of psychotropic medications at the facility including:

a. a description of procedures to ensure that medications are used 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 individual unobtainable through less restrictive measures;

c. a description of procedures to ensure continual review of medication and discontinuation of medication when there are no demonstrable benefits to the individual; and

d. a description of an ongoing program to counsel individual's and, where appropriate, their families on the potential benefits and negative side-effects of medication and to involve individuals and, where appropriate, their families in decisions concerning medication.

3. An ICF/DD shall ensure that medications are either self-administered or administered by qualified persons according to state law.

4. A medication shall not be administered to any individual for whom the medication has not been ordered.

5. An ICF/DD shall ensure that medication is used for therapeutic and medical purposes only and are not administered in excessive dosages.

6. Medication shall not be used as a disciplinary measure, a convenience for staff or as a substitute for adequate, appropriate programming.

E. Nursing Services

1. An ICF/DD shall ensure that individuals are provided with nursing services, in accordance with their needs.

2. Nursing services to individuals shall include, as appropriate, registered nurse participation in:

a. the pre-admission study;

b. the service plan and any reviews and revisions of the service plan;

c. the development of aftercare plans;

d. the referral of individuals to appropriate community resources;

e. training in habits in personal hygiene, family life, and sex education (including family planning and venereal disease counseling);

f. control of communicable diseases and infections through identification and assessment, reporting to medical authorities and implementation of appropriate protective and preventive measures; and

g. modification of the nursing part of the service plan, in terms of the individual's daily needs, at least

annually for adults and more frequently for children, in accordance with developmental changes.

3. A registered nurse shall participate, as appropriate, in the planning and implementation of training of direct service personnel including training in:

a. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

b. basic skills required to meet the health needs and problems of the individual; and

c. first aid in the event of accident or illness.

4. An ICF/DD shall have available sufficient, appropriately licensed and qualified nursing staff, which may include licensed practical nurses and other supporting personnel, to carry out the various nursing service activities. The ICF/DD shall verify that all nursing staff has a current Louisiana license upon hire and at least annually.

5. 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.

F. Pharmacy Services

1. An ICF/DD shall ensure that pharmacy services are provided under the direction of a qualified licensed pharmacist.

2. There shall be a formal arrangement for qualified pharmacy services, including provisions for emergency service.

3. The pharmacist shall:

a. receive the original, or a direct copy of the physician's drug treatment order;

b. maintain for each individual an individual record of all medications (prescription and nonprescription) dispensed, including quantities and frequency of refills;

c. participate, as appropriate, in the continuing interdisciplinary evaluation of individuals for the purposes of initiation, monitoring, and follow-up of service plans; and

d. establish quality specifications for drug purchases and ensure that they are met.

4. Qualified pharmacy or medical personnel shall:

a. quarterly review the record of each individual on medication for potential adverse reactions, allergies, interactions, contraindications, rationality and laboratory test modifications; and

b. advise the physician of any recommended changes, stating the reasons for such changes and providing an alternate drug regimen.

5. Poisons, drugs used externally and drugs taken internally shall be stored on separate shelves or in separate cabinets at all locations.

6. Medications that are stored in a refrigerator containing things other than drugs shall be kept in a separate compartment with proper security.

7. If there is a drug storeroom, there shall be an inventory of all drugs kept in such storeroom.

8. Discontinued and outdated drugs, and containers with worn, illegible, or missing labels, shall be removed and returned to the pharmacist for proper disposition.

9. There shall be an effective drug recall procedure that can be readily implemented.

10. There shall be a procedure for reporting adverse drugs to the Federal Food and Drug Administration.

11. An ICF/DD 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 appropriate to the ICF/DD.

12. An ICF/DD shall have a written policy governing the self-administration of both prescription and nonprescription drugs.

13. 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.

14. Each drug shall be identified up to the point of administration.

15. Whenever possible, drugs that require dosage measurement shall be dispensed by the pharmacist in a form ready to administer to the individual.

16. Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.

17. All drugs shall be kept under lock and key except when authorized personnel are in attendance.

18. The security requirements for drugs of Federal and State laws shall be satisfied in storerooms, pharmacies, and living units.

G. Dental Services

1. An ICF/DD shall have an organized system for providing comprehensive diagnostic dental services for all individuals which include a complete extra and intra-oral examination, utilizing all diagnostic aids necessary to properly evaluate the individual's oral condition, within a period of 90 days following admission unless such an examination shall be in the individual's case record.

2. An ICF/DD shall have access to comprehensive dental treatment services for all individuals which include:

- a. provision for dental treatment;
- b. provision for emergency treatment on a 24-hour, seven-days-a-week basis by a qualified dentist; and
- c. a recall system that will assure that each individual is re-examined at specified intervals in accordance with his/her needs, but at least annually.

3. An ICF/DD shall have a dental hygiene program that includes imparting information regarding nutrition and diet control measures to individuals and staff, instruction of individuals and staff in living units in proper oral hygiene methods and instructions of family in the maintenance of proper oral hygiene, where appropriate.

4. Dental progress reports shall be entered in the individual's case record.

5. A copy of the permanent dental record shall be provided to an ICF/DD to which an individual is transferred.

6. There shall be available sufficient, appropriately qualified dental personnel and necessary supporting staff to carry out the dental services programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3195 (December 2012).

§8555. Professional and Specialized Programs and Services

A. General

1. An ICF/DD shall have access to the following services in accordance with the needs of individuals:

- a. physical and/or occupational therapy;
- b. speech pathology and audiology;
- c. psychological services;
- d. social work services; and
- e. training and habilitation services.

2. An ICF/DD shall ensure the following with regard to professional and special services:

- a. provide services directly through personal contact with the individual;
- b. provide services indirectly through contact with staff members and others working with the individual;
- c. develop and record appropriate plans, goals and objectives for the individual and, as appropriate, the individual's family;
- d. record all significant contacts with the individual;
- e. periodically provide written summaries of the individual's response to the service, the individual's current status relative to the service and the individual's progress to be maintained in the individual'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; and
- g. provide services appropriately integrated into the overall program.

3. An ICF/DD shall ensure that any professional or special service provided by the ICF/DD has:

- a. adequately qualified and, where 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. An ICF/DD shall ensure that any professional or special service provided by a person or agency outside the ICF/DD meets all relevant requirements contained herein.

B. Physical Therapy and 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, assistance and adaptive devices, positioning, behavior adaptations and sensory stimulation.

2. The therapist shall function closely with the individual'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; and
- c. provided appropriate professional direction and consultation.

C. Speech Pathology and Audiology

1. Speech pathology and audiology services available to the ICF/DD shall include:
 - a. screening and evaluation of individuals with respect to speech and hearing functions;
 - b. comprehensive audiological assessment of individuals as indicated by screening results, to include tests of pure tone 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 services, interpreted as an extension of the evaluation process, that include:
 - i. direct counseling with individuals, consultation with appropriate staff for speech improvement and speech education activities;
 - ii. collaboration with appropriate staff to develop specialized programs for developing the communication skills of individuals in comprehension; and
 - iii. expression and participation in in-service training programs for direct care and other staff.
2. Adequate, direct and continuing supervision shall be provided to personnel, volunteers or supportive personnel utilized in providing speech pathology and audiology services.

D. Psychological Services

1. An ICF/DD shall provide psychological services, as appropriate, to the needs of the individual, including strategies to maximize each individual's development of:
 - a. perceptual skills;
 - b. sensorimotor skills;
 - c. self-help skills;
 - d. communication skills;
 - e. social skills;
 - f. self direction;
 - g. emotional stability;
 - h. effective use of time (including leisure time); and
 - 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 individuals, including evaluation, consultation, therapy, and program development; administration and supervision of psychological services; and
 - b. participation in direct service staff training.
3. Psychologists providing services to the ICF/DD 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 an individual through the use of social work methods directed toward:
 - a. maximizing the social functioning of each individual;
 - b. enhancing the coping capacity of his family; and
 - c. asserting and safeguarding the human and civil rights of individuals and their families and fostering the human dignity and personal worth of each individual.
 2. During the evaluation process, which may or may not lead to admission, social workers shall help the individual and family to consider alternative services and make a responsible choice as to whether and when placement is needed.
 3. During the individual's admission to and residence in the ICF/DD or while the individual is receiving services from the ICF/DD, social workers shall, as appropriate, be the liaison between the individual, the ICF/DD, the family, and the community in order to:
 - a. assist staff in understanding the needs of the individual and his/her family in relation to each other;
 - b. assist staff in understanding social factors in the individual's day-to-day behavior, including staff-individual relationships;
 - c. assist staff in preparing the individual for changes in his/her living situation;
 - d. help the family to develop constructive and personally meaningful ways to support the individual's experience in the ICF/DD 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 individual's return to home or other community placement.
 4. After the individual leaves the ICF/DD, the ICF/DD's social workers shall provide systematic follow-up to assure referral to appropriate community ICF/DDs.
- F. Training and Habilitation Services
1. Training and habilitation services, defined as the facilitation of or preventing the regression of the intellectual, sensorimotor and affective development of the individual, shall be available to all individuals, regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps.
 2. Individual evaluations 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 individual; and
 - c. identify priority areas to be addressed.
 3. There shall be written training and habilitation objectives for each individual that are:
 - a. based upon complete and relevant diagnostic and prognostic data; and
 - b. stated in specific behavioral terms that permit the progress of the individual to be assessed.
 4. There shall be evidence of training and habilitation services activities designed to meet the training and habilitation objectives set for every individual.

5. There shall be a functional training and habilitation record for each individual maintained by, and available to, the training and habilitation staff.

6. Appropriate training and habilitation programs shall be provided to individuals with hearing, vision, perceptual or motor impairments, in cooperation with appropriate staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3197 (December 2012).

§8557. Transportation

A. The ICF/DD shall ensure that each individual is provided with the transportation necessary for implementing the individual's service plan.

B. The ICF/DD shall have means of transporting individuals in cases of emergency.

C. The provider shall have documentation of liability insurance coverage for all owned and non-owned vehicles used to transport individuals. Employee's personal liability insurance shall not be substituted for required coverage.

D. Any vehicle used in transporting individuals in care of the ICF/DD, whether such vehicle is operated by a staff member or any other person acting on behalf of the ICF/DD, shall be properly licensed and inspected in accordance with State law. All vehicles used for the transportation of clients shall be maintained in a safe condition, be operated at a temperature that does not compromise the health, safety, or needs of the individuals, and be operated with all applicable motor vehicle laws.

E. Any staff member of the ICF/DD or other person acting on behalf of the ICF/DD operating a vehicle for the purpose of transporting individuals shall be properly licensed to operate that class of vehicle, according to state law.

F. The ICF/DD shall not allow the number of persons in any vehicle used to transport individuals to exceed the number of available seats with seatbelts in the vehicle.

G. Identification of vehicles used to transport individuals in care of an ICF/DD shall not be of such nature to embarrass or in any way produce notoriety for individuals.

H. The ICF/DD shall ascertain the nature of any need or problem of an individual which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness or a disability. The ICF/DD shall communicate such information to staff transporting clients; any such needs shall be addressed by the provider.

I. The following additional arrangements are required for an ICF/DD serving individuals who use wheelchairs.

1. A ramp device to permit entry and exit of an individual from the vehicle shall be provided for all vehicles normally used to transport persons with disabilities. A mechanical lift may be utilized, provided that a ramp is also available in case of emergency, unless the mechanical lift has a manual override.

2. Wheelchairs used in transit shall be securely fastened inside the vehicle utilizing approved wheelchair fasteners.

3. The arrangement of the wheelchairs shall not impede access to the exit door of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3199 (December 2012).

Subchapter E. Client Protections

§8565. Client Rights

A. Civil Rights

1. An ICF/DD shall have written policy on individual civil rights and shall post and distribute a copy of those. This policy shall give assurances that:

a. an individual's civil rights are not abridged or abrogated solely as a result of placement in the ICF/DD's program;

b. an individual's civil rights are protected through accessibility of legal counsel; and

c. an individual is not denied admission, segregated into programs or otherwise subjected to discrimination on the basis of race, religion, ethnic background or disability.

2. An ICF/DD accepting any individual who resides in another state shall comply with the terms Compact on Juveniles, the Interstate Compact on the Placement of Children, and the Interstate Compact on Mental Health.

B. Basic Rights

1. All agencies must conform to applicable state laws and DHH policies and procedures relative to consumer rights, including but not limited to, those concerning confidentiality of client information and grievance procedures and client's right to appeal departmental decisions on service eligibility, planning, and delivery.

2. All agencies must conform to applicable state laws and DHH policies and procedures regarding consumer health and safety including but not limited to those concerning transporting individuals and abuse/neglect reporting.

3. There must be written policies and procedures that protect the client's welfare including the means by which the protections will be implemented and enforced.

4. The client, client's family or legal guardian, where appropriate, must be informed of their rights both verbally and in writing in language the consumer is able to understand.

5. The written policies and procedures, at a minimum, must address the following protections and rights:

- a. to human dignity;
- b. to acceptance of chosen life style;
- c. to impartial access to treatment regardless of race, religion, sex, ethnicity, age or disability;
- d. cultural access is evidenced through provision of:
 - i. interpretive services;
 - ii. translated material;
 - iii. use of native language and staff when possible;

and

- iv. staff trained in cultural awareness;
- e. access to persons with special needs is evidenced through sign language interpretation and mechanical aids and devices that assist those persons in achieving maximum benefit from services;
- f. to privacy;
- g. to confidentiality and access to consumer records including:

- i. requirement for the consumer's written, informal consent for release of information;
- ii. emergency unauthorized release;

- iii. internal access to consumer records;
- iv. external access to consumer records; and
- v. conditions for consumer access to his/her records;
- h. to a complete explanation of the nature of services and procedures to be received including risks, benefits and available alternative services;
- i. to participate, actively, in services including assessment/reassessment, service plan development, and transition/closure;
- j. to refuse specific services or participate in any activity that is against their will and for which they have not given consent;
- k. to complaint/grievance procedures;
- l. to be informed of the financial aspect of services;
- m. to be informed of the need for parental or guardian consent for treatment of services, if appropriate;
- n. to manage, personally, financial affairs unless legally determined otherwise;
- o. to give informed written consent prior to being involved in research projects;
- p. to refuse to participate in any research project without compromising access to services;
- q. to protection from harm including any form of abuse, neglect, or mistreatment;
- r. to receive services in a safe and humane environment;
- s. to receive the least intrusive services appropriate and available;
- t. to contact any advocacy resources as needed, especially during grievance procedures; and
- u. to be informed of the right to freely choose ICF/DDs from those available.

6. An ICF/DD must ensure that individuals are provided all rights available to them be they interdicted or not.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3199 (December 2012).

§8567. Grievances

A. An ICF/DD shall have a written grievance procedure for individuals designed to allow individuals to make complaints without fear of retaliation.

B. The ICF/DD shall make every effort to ensure that all individuals and their legally responsible person are aware of and understand the grievance procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3200 (December 2012).

§8569. Behavior Management

A. Description of Methods Used

1. The ICF/DD shall have a written description of the methods of behavior management to be used on a facility-wide level. This description shall include:

- a. definitions of appropriate and inappropriate behaviors of individuals; and
- b. acceptable staff responses to inappropriate behaviors.

2. The description shall be provided to all the ICF/DD's staff.

3. An ICF/DD shall have a clearly written list of rules and regulations governing conduct for individuals in care of the ICF/DD. These rules and regulations shall be made available to each staff member, each individual and, where appropriate, the legally responsible person.

B. Any behavior management plan that limits the rights of the individual shall be approved by the Human Rights Committee and consented to by the client or his/her representative or guardian.

C. Prohibition on Potentially Harmful Responses. An ICF/DD shall prohibit the following responses to individuals by staff members:

- 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 individual's life or health;
- 2. requiring an individual 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 the individual to remain silent for a long period of time;
- 7. denial of shelter, warmth, clothing or bedding;
- 8. assignment of harsh physical work;
- 9. physical exercise or repeated physical motions;
- 10. denial of usual services; and
- 11. denial of visiting or communication with family.

D. Time-Out Procedures

1. An ICF/DD with eight beds or less shall not use time out procedures.

2. An ICF/DD using time-out procedures involving seclusion of individuals in an unlocked room for brief periods shall have a written policy governing the use of time-out procedures. This policy shall ensure that time-out procedures are used only when less restrictive measures are not feasible;

3. Written orders by a physician 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 one hour.

4. Emergency use of time-out shall be approved by the administrator or his/her designee for a period not to exceed one hour. The ICF/DD shall immediately notify the individual's physician if emergency use of time-out is implemented.

5. When an individual is in time-out, a staff member shall exercise direct physical observation of the individual.

6. An individual in time-out shall not be denied access to bathroom facilities.

7. An ICF/DD shall not use time out on an as needed basis.

E. Restraints

- 1. The facility may employ physical restraints only:

a. as an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applies;

b. as an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

c. as a health related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

2. Authorization to use or extend restraints as an emergency measure must be:

a. in effect no longer than 12 consecutive hours; and

b. obtained as soon as the client is restrained or stable.

3. The facility shall not issue orders for restraint on a standing or as needed basis.

4. A client placed in restraints shall be checked at least every 30 minutes by staff trained in the use of restraints, released from the restraint as quickly as possible, and a record of these checks and usage shall be kept.

5. Restraints shall be designed and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

6. Opportunity for motion and exercise shall be provided and a record of such activity must be kept.

7. Barred enclosures shall not be more than three feet in height and must not have tops.

F. Human Rights Committee. The facility must designate and use a specially constituted committee or committees consisting of members of facility staff, parents, legal guardians, clients (as appropriate), qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior and persons with no ownership or controlling interest in the facility to:

1. review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;

2. insure that these programs are conducted only with the written informed consent of the client, parents (if the client is a minor) or legal guardian; and

3. review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other areas that the committee believes need to be addressed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3200 (December 2012).

Subchapter F. Provider Responsibilities

§8575. General Provisions

Reserved.

§8577. Staffing Requirements

A. An ICF/DD shall have a written plan for recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff members.

1. Recruitment. An ICF/DD shall employ qualified persons.

2. Screening

a. An ICF/DD'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 a signed release and the names of the references from the potential employee, an ICF/DD shall obtain written references or phone notes on oral references from three persons.

3. Orientation. An ICF/DD'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.

4. Training

a. An ICF/DD shall ensure that each direct service worker participates in in-service training each year. Orientation training and activities related to routine supervision of the employee's tasks shall not be considered for the purposes of this requirement.

b. An ICF/DD shall document that all employees receive training on an annual basis in:

i. emergency and safety procedures;

ii. the principles and practices of individual care;

iii. the ICF/DD's administrative procedures and programmatic goals;

iv. individual rights; and

v. procedures and legal requirements concerning the reporting of abuse and critical incidents.

c. Direct service workers shall, in addition, receive training in acceptable behavior management techniques, crisis management and passive physical restraint.

d. An ICF/DD shall train staff to ensure the immediate accessibility of appropriate first aid supplies in the living units of the ICF/DD.

5. Evaluation

a. An ICF/DD shall undertake an annual performance evaluation of all staff members.

b. For any person who interacts with individuals, an ICF/DD's performance evaluation procedures shall address the quality and nature of a staff member's relationship with individuals.

6. Personnel Practices

a. An ICF/DD shall have written personnel policies and written job descriptions for each staff position.

b. An ICF/DD shall have a written employee grievance procedure.

c. An ICF/DD shall have a written policy on abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment whether that abuse or mistreatment is done by another staff member, a family member, a resident or any other person.

B. Number and Qualifications of Staff

1. An ICF/DD shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to ensure that the responsibilities the ICF/DD 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 service worker functions;
- f. supervisory functions;
- g. record keeping and reporting functions;
- h. social service functions;
- i. ancillary service functions; and
- j. medication and treatment administration functions.

2. An ICF/DD shall ensure that all staff members are properly certified and/or licensed as legally required.

3. An ICF/DD shall ensure that an adequate number of qualified direct service staff are present with the individuals as necessary to ensure the health, safety and well-being of individuals. Staff coverage shall be maintained in consideration of the time of day, the size and nature of the ICF/DD and the ages and needs of the individuals.

4. An ICF/DD 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 individuals or is such that it would endanger the physical or psychological well-being of the individuals. This requirement is not to be interpreted to exclude continued employment in areas other than direct service capacities of persons undergoing temporary medical or emotional problems.

C. External Professional Services. An ICF/DD shall obtain any required professional services not available from employees of the ICF/DD and shall have documentation of access to such services either in the form of a written agreement with an appropriately qualified professional or a written agreement with the state for required resources.

D. Volunteers/Student Interns. An ICF/DD which utilizes volunteers or student interns on a regular basis shall have a written plan using such resources. This plan shall be given to all volunteers and interns. The plan shall indicate that all volunteers and interns shall:

- 1. be directly supervised by a paid staff member;
- 2. be oriented and trained in the philosophy of the facility and the needs of individuals, and methods of meeting those needs;
- 3. 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; and
- 4. be aware of and be briefed on any special needs or problems of individuals.

E. Direct Care Staff

1. All non-licensed direct care staff must meet minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179 through R.S. 40:2179.1 or a subsequently amended statute and be screened for eligibility for employment on the Louisiana Direct Service Worker Registry.

2. A provider shall ensure that each direct care staff completes no less than 16 hours of supervised classroom training per year to ensure continuing competence. The

training must address areas of weakness as determined by the workers' performance reviews and may address the special needs of clients. Orientation and normal supervision shall not be considered for meeting this requirement.

3. All direct care staff shall be trained in recognizing and responding to medical emergencies of clients.

F. Staff Communications

1. An ICF/DD shall establish procedures to assure adequate communication among staff to provide continuity of services to the individual receiving services. This system of communication shall include:

- a. a regular review of individual and aggregate problems of individuals 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 individual's service plans.

2. Any employee of an ICF/DD working directly with individuals in care shall have access to information from individual case records that is necessary for effective performance of the employee's assigned tasks.

3. An ICF/DD shall establish procedures which facilitate participation and feedback by staff members in policy-making, planning and program development for individuals receiving services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3201 (December 2012).

§8579. Staffing-Qualified Professional and Qualified Mental Retardation Professional

A. A qualified professional (QP) is:

- 1. a psychologist with at least a master's degree from an accredited program and specialized training or two years experience in treating mentally retarded, emotionally disturbed or learning disabled children whose condition is similar to the condition of the individuals being served; or
- 2. a physician licensed under state law to practice medicine or osteopathy and with specialized training or two years experience in treating emotionally disturbed, mentally retarded or learning disabled children whose condition is similar to that of the individuals being served.

B. Qualified mental retardation professional (QMRP) is a professionally qualified person responsible for overseeing the implementation of an individual's service plan. A QMRP is a person who has specialized training or one year of experience in training or one year of experience in treating or working with the mentally retarded and is one of the following:

- 1. a psychologist with a master's degree from an accredited program;
- 2. a licensed doctor of medicine or osteopathy;
- 3. an educator with a degree in education from an accredited program;
- 4. a social worker shall be:
 - a. a person with a bachelor's degree in social work from an accredited program;

- b. a person who has at least one year of experience working directly with handicapped persons in the appropriate area of handicapping conditions; and is:
 - i. a physician;
 - ii. a registered nurse;
 - iii. an occupational therapist who:
 - (a). is eligible for certification as an occupational therapist (OTR) by the American Occupational Therapy association; or
 - (b). is a graduate of an occupational therapist educational program accredited jointly by the American Occupational Therapy association and the committee on allied Health Education and accreditation of the American Medical Association;
 - iv. an occupational therapy assistant who:
 - (a). is eligible for certification as a certified occupational therapy assistant (COTA) by the American Occupational Therapy Association; or
 - (b). is a graduate of an occupational therapy assistant program accredited by the American Occupational Therapy association;
 - v. a physical therapist that is licensed by the state in which he/she practices;
 - vi. a physical therapy assistant who is a graduate of a two year college-level program approved by the American Physical Therapy association;
 - vii. a psychologist who has at least a Master's degree in psychology, from an accredited program;
 - viii. a social worker who:
 - (a). is licensed, if applicable by the state in which practicing;
 - (b). has a degree from a school of social work accredited or approved by the Council on Social Work Education; or
 - (c). has graduated from a college or university with a Bachelor of Social Work degree accredited or approved by the Council on Social Work Education;
 - ix. a speech-language pathologist or audiologist who:
 - (a). is licensed, if applicable, by the state in which practicing; and
 - (b). is eligible for a certificate of clinical competence in speech and language pathology or audiology granted by the American Speech, Language, and Hearing Association under its requirements in effect on the publication of this provision; or
 - (c). meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification;
 - x. a recreation staff member with a bachelor's degree in recreation, or in a specialty area such as art, dance, music or physical education;
 - xi. a music therapist who:
 - (a). has a four year undergraduate degree in music therapy;
 - (b). has at least 6 months experience in the field of music therapy; and
 - (c). is registered with the National Association for Music Therapy or the American Association for Music Therapy; or
 - xii. a human services professional with at least a bachelor's degree in a human services field (such as

psychology, sociology, special education, rehabilitation counseling, juvenile justice, corrections, etc.); or

- c. a person in a field other than social work and at least three years of social work experience under the supervision of a qualified social worker;
 - 5. a physical or occupational therapist as defined in federal regulations;
 - 6. a speech pathologist or audiologist as defined by federal regulations;
 - 7. a registered nurse;
 - 8. a therapeutic recreation specialist who:
 - a. is a graduate of an accredited program; and
 - b. is licensed by the state; or
 - 9. a rehabilitation counselor who is certified by the Committee on Rehabilitation Counselor Certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3202 (December 2012).

§8581. Record Keeping

A. Accounting and Record Keeping

1. An ICF/DD shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books and records.

2. An ICF/DD shall demonstrate fiscal accountability through regular recording of its finances and an annual external audit.

3. An ICF/DD 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 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 ICF/DD. The ICF/DD 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.

4. An ICF/DD 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.

5. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of according to state laws.

6. An ICF/DD shall have sufficient space, facilities and supplies for providing effective record keeping services.

B. Confidentiality and Security of Files

1. An ICF/DD shall have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of the records and to whom records may be released. Records shall be the property of the ICF/DD and the ICF/DD, as custodian, shall secure records against loss, tampering or unauthorized use.

2. An ICF/DD shall maintain all individuals' case records in accordance with federal and state law, rule, and regulation regarding confidentiality, privacy and retention. Employees of the ICF/DD shall not disclose or knowingly permit the disclosure of any information concerning the individual receiving services or his/her family, directly or indirectly, to any unauthorized person.

3. When the individual receiving services is of majority age and non-interdicted, an ICF/DD shall obtain the individual's written, informed permission prior to releasing any information from which the individual receiving services or his/her family might be identified except for authorized State and Federal agencies and another ICF/DD with professional interest in the individual.

4. When the individual is a minor or is interdicted, the ICF/DD shall obtain written, informed consent from the parent(s), tutor or curator prior to releasing any information from which the individual receiving services might be identified except for authorized state and Federal agencies and another ICF/DD with professional interest in the individual.

5. An ICF/DD shall, upon request, make available information in the case record to the individual receiving services, the legally responsible person or legal counsel of the individual. If, in the professional judgment of the administration of the ICF/DD, it is felt that information contained in the record would be damaging to an individual receiving services, that information may be withheld from the individual requesting the information except under court order.

6. An ICF/DD may use material from case records for teaching or research purposes, development of the governing body's understanding and knowledge of the ICF/DD's services, or similar educational purposes, provided that names are deleted and other identifying information is disguised or deleted.

7. Individual records shall be retained in accordance with state and/or federal regulations.

C. Individual's Case Record. An ICF/DD shall have a written record for each individual receiving services, which shall include administrative, treatment, and educational data from the time of admission until the time the individual leaves the ICF/DD. An individual's case record shall include:

1. the name, sex, race, religion, birth date and birthplace of the individual;

2. the individual's history including, where applicable, family data, educational background, employment record, prior medical history and prior placement history;

3. a copy of the individual's service plan and any modifications thereto and an appropriate summary to guide and assist direct service workers in implementing the individual receiving services program;

4. the findings made in periodic reviews of the plan, including a summary of the successes and failures of the individual receiving services program and recommendations for any modifications deemed necessary;

5. monthly status reports;

6. a copy of the aftercare plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan;

7. 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;

8. critical incident reports;

9. reports of any individual's grievances and the conclusions or dispositions of these reports;

10. a summary of family visits and contacts; and

11. a summary of attendance and leaves of absence from the ICF/DD.

D. Medical and Dental Records

1. An ICF/DD shall maintain complete health records of an individual receiving services, which shall include:

a. a complete record of all immunizations provided; a record of any medication;

b. records of vision, physical or dental examinations; and

c. a complete record of any treatment provided for specific illness or medical emergencies.

2. Upon discharge, the ICF/DD shall provide a summary of the individual's health record to the person or agency responsible for the future planning and care of the individual receiving services.

3. An ICF/DD shall make every effort to compile a complete past medical history on every individual receiving services. 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 non-prescribed drugs;

and

g. medical history.

E. Retention of Records. The ICF/DD provider shall retain all client records for a period of six years after the date of the client's discharge, transfer or death.

F. Staff Personnel File

1. An ICF/DD shall maintain a personnel file for each employee. At a minimum, this file shall contain the following:

a. the application for employment and/or resume;

b. a criminal history check, prior to an offer of employment, in accordance with state law;

c. reference letters from former employer(s) and personal references or phone notes on such references;

d. documentation of any state or federally required medical examinations or medical testing;

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;

h. employee's hire and termination dates; and

i. documentation of orientation and annual training of staff.

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. An ICF/DD shall retain the personnel file of an employee for at least three years after the employee's termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3203 (December 2012).

§8583. Client Funds and Assets

A. Money and Personal Belongings

1. An ICF/DD shall permit and encourage an individual to possess his/her own money either by giving an allowance and/or by providing opportunities for paid work, unless otherwise indicated by the individual's service plan and reviewed every 30 days by the QMRP.

2. Money earned, received as a gift or received as allowance by an individual shall be deemed to be that individual's personal property.

3. Limitations may be placed on the amount of money an individual may possess or have unencumbered access to when such limitations are considered to be in the individual's best interests and are duly recorded in the individual's service plan.

4. An ICF/DD shall, as appropriate to the individual's age and abilities, provide training in budgeting, shopping and money management.

5. An ICF/DD shall allow an individual to bring his/her personal belongings to the program and to acquire belongings of his/her own in accordance with the individual's service plan. However, the ICF/DD shall, as necessary, limit or supervise the use of these items while the individual is in care. Where extraordinary limitations are imposed, the individual shall be informed by staff of the reasons, and the decision and reasons shall be recorded in the individual's case record. Reasonable provisions shall be made for the protection of the individual's property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3205 (December 2012).

§8585. Abuse and Neglect

A. An ICF/DD shall have comprehensive, written procedure concerning individual abuse and neglect including:

1. a description of ongoing communication strategies used by the ICF/DD to maintain staff awareness of abuse prevention, current definitions of abuse and neglect, reporting requirements and applicable laws;

2. a procedure ensuring immediate reporting of any suspected incident to the administrator or his/her designee and mandating an initial written summary on the incident to the administrator or his/her designee within 24 hours;

3. a procedure for ensuring that the individual is protected from potential harassment during the investigation and which accused staff shall be removed from direct care of individuals during the investigation; and

4. a procedure for disciplining staff members who abuse or neglect individuals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3205 (December 2012).

§8587 Abuse/Neglect Reporting

A. An ICF/DD shall have written procedures for the reporting and documentation of deaths of individuals, injuries, fights or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incident and other

situations or circumstances affecting the health, safety or well-being of an individual or individuals.

B. Such procedures shall ensure timely verbal and written reports to the administrator.

C. When an incident involves abuse or neglect of an individual, death of an individual, or entails any serious threat to the individual's health, safety or well-being, an ICF/DD shall:

1. ensure immediate verbal reporting to the administrator or his/her designee and a preliminary written report within 24 hours of the incident;

2. ensure notification to designated representatives of the DHH Health Standards Section within 24 hours of occurrence or discovery of the incident. A final report must be submitted to HSS within five working days. Extensions may be granted on a case by case basis with good cause. The ICF/DD shall utilize the department's Online Tracking Incident System (OTIS). This requires that the ICF/DD maintain internet access and keeps the department informed of an active e-mail address. Reports to Health Standards Section utilizing OTIS should include the following:

a. abuse and allegations of abuse;

b. neglect and allegations of neglect; and

c. major injuries of unknown source including, but not limited to, fractures, burns, suspicious contusions, head injuries and unanticipated deaths;

3. ensure that other appropriate authorities are notified, according to state law;

4. ensure immediate, documented attempts to notify the legally responsible person of the individual;

5. ensure immediate attempts to notify other involved agencies and parties, as appropriate; and

6. ensure immediate notification of the appropriate law enforcement authority whenever warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3205 (December 2012).

§8589. Quality of Life

A. Family Involvement

1. An ICF/DD shall have a written description of strategies used by the ICF/DD's program to foster ongoing positive communication and contact between individuals and their families, their friends and others significant people in their lives.

2. An ICF/DD shall have evidence that the individual's family and, where appropriate, the legally responsible person have been informed of:

a. the philosophy and goals of the ICF/DD;

b. behavior management and disciplinary practices of the ICF/DD;

c. the ICF/DD's arrangements for individuals' participation in religious observances;

d. any specific treatment or treatment strategy employed by the ICF/DD to be implemented for a particular individual;

e. visiting hours, visiting rules and procedures, arrangements for home visits and procedures for communicating with individuals by mail or telephone;

f. a procedure for registering complaints concerning the individual's care or treatment; and

g. 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.

B. Community Involvement. An ICF/DD shall have a written plan to foster participation by individuals in normal community activities to the degree possible considering the individual's level of functioning.

C. Communication and Visits. An ICF/DD shall have a written description of rules and procedures concerning telephone communications by individuals, sending and receiving of mail by individuals and visits to and from an individual's family and friends.

1. Telephone Communication

a. An ICF/DD shall allow an individual to receive and originate telephone calls subject only to reasonable rules and to any specific restrictions in the individual's service plan.

b. Any restriction on telephone communication in an individual's service plan must be formally approved by the QMRP and shall be reviewed every 30 days by the QMRP.

2. Mail

a. An ICF/DD shall allow individuals to send and receive mail unopened and unread by staff unless contraindicated by the individual's service plan and reviewed every 30 days by the QMRP.

b. An ICF/DD shall ensure that individuals have access to all materials necessary for writing and sending letters and shall, when necessary ensure that individuals who wish to correspond with others are given any required assistance.

3. Visits

a. An ICF/DD shall allow an individual to visit or be visited by family and friends subject only to reasonable rules and to any specific restrictions in the individual's service plan.

b. Special restrictions shall be imposed only to prevent serious harm to the individual. The reasons for any special restrictions shall be recorded in the individual's service plan. Special restrictions must be reviewed every 30 days by the QMRP and, if restrictions are renewed, the reasons for renewal shall be recorded in the individual's service plan.

D. Clothing

1. An ICF/DD shall ensure that individuals are provided with clean, well-fitted clothing appropriate to the season and to the individual's age, sex and individual needs.

2. Clothing shall be maintained in good repair.

3. All clothing provided to an individual shall go with the individual at discharge.

4. Clothing shall belong to the individual and not be shared in common.

E. Religion

1. An ICF/DD 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 individual, and where appropriate, the legally responsible person and the responsible agency.

2. Every individual shall be permitted to attend religious services in accordance with his/her faith. The

ICF/DD shall, whenever possible, arrange transportation and encourage participation by those individuals who desire to participate in religious activities in the community.

3. Individuals shall not be forced to attend religious services.

4. When the individual is a minor, the ICF/DD 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.

F. Work

1. An ICF/DD shall have a written description of the ICF/DD's approach to involving individuals in work including:

a. a description of any unpaid tasks required of individuals;

b. a description of any paid work assignments including the pay scales for such assignments;

c. a description of the ICF/DD's approach to supervising work assignments; and

d. assurance that the conditions and compensation of such work are in compliance with applicable state and federal laws.

2. An ICF/DD shall demonstrate that any individual work assignments are designed to provide a constructive experience for individuals and are not used as a means of performing vital ICF/DD functions at low cost.

3. All work assignments shall be in accordance with the individual's service plan.

4. An ICF/DD shall assign as unpaid work for individuals only housekeeping tasks similar to those performed in a normal home setting.

5. When an individual engages in off-grounds work, the ICF/DD shall document that:

a. such work is voluntary and in accordance with the individual's service plan;

b. the QMRP approved such work;

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 individual's program.

G. Recreation and Activities Programs

1. An ICF/DD shall have a written plan for providing recreational services based on the individual needs, interests and functioning levels of individuals served. This plan shall ensure that a range of indoor and outdoor recreational and leisure opportunities are provided for individuals.

2. An ICF/DD shall utilize the recreational resources of the community whenever appropriate. The ICF/DD shall arrange the transportation and supervision required for maximum usage of community resources.

3. An ICF/DD shall have sufficient, adequately trained staff to carry out the stated objectives of the ICF/DD's recreation plan.

4. An ICF/DD which has recreation staff shall ensure that recreation staff are apprised of and, when appropriate, involved in the development and review of service plans.

H. Personal Care and Hygiene. An ICF/DD shall establish procedures to ensure that individuals receive training in good habits of personal care, hygiene and grooming.

I. Safety. An ICF/DD shall establish procedures to ensure that individuals receive training in safety and self protection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3205 (December 2012).

Subchapter G. Emergency Preparedness

§8595. Emergency Preparedness Plan

A. The ICF/DD shall have an emergency preparedness plan designed to manage the consequences of medical emergencies, power failures, fire, natural disasters, declared disasters or other emergencies that disrupt the facility's ability to provide care and treatment or threatens the lives or safety of the residents. The facility shall follow and execute its emergency preparedness plan in the event or occurrence of a disaster or emergency. Upon the department's request, a facility shall present its emergency preparedness plan for review.

B. At a minimum the emergency preparedness plan shall include and address the following.

1. The emergency preparedness plan shall be individualized and site specific. All information contained in plan shall be current and correct. The plan shall be made available to representatives of the Office of the State Fire Marshal and the Office of Public Health upon request of either of these offices. The facility's plan shall follow all current applicable laws, standards, rules or regulations.

2. The facility's plan shall contain census information, including transportation requirements for the ICF/DD residents as to the need for:

- a. wheelchair accessible or para-transit vehicle transport; or
- b. the numbers of ICF/DD residents that do not have any special transport needs.

3. The plan shall contain a clearly labeled and legible master floor plan(s) that indicate the following:

- a. the areas in the facility that is to be used by residents as shelter or safe zones during emergencies;
- b. the location of emergency power outlets;
- c. the locations of posted, accessible, emergency information; and
- d. the detail of what will be powered by emergency generator(s), if applicable.

4. The facility's plan shall be viable and promote the health, safety and welfare of facility's residents.

5. The facility shall provide a plan for monitoring weather warnings and watches and evacuation orders from local and state emergency preparedness officials. This plan will include who will monitor, what equipment will be used, and procedures for notifying the administrator or responsible persons.

6. The plan shall provide for the delivery of essential care and services to residents during emergencies, who are housed in the facility or by the facility at another location, during an emergency.

7. The plan shall contain information about staffing for when the ICF/DD is sheltering in place or when there is an evacuation of the ICF/DD. Planning shall include documentation about staff that have agreed to work during an emergency and contact information for such staff. Plan shall include provisions for adequate, qualified staff as well

as provisions for the assignment of responsibilities and duties to staff.

8. The facility shall have transportation or arrangements for transportation for evacuation, hospitalization, or any other services which are appropriate. Transportation or arrangements for transportation shall be adequate for the current census and meet the ambulatory needs of the residents.

9. The plan shall include procedures to notify the resident's family or responsible representative whether the facility is sheltering in place or evacuating to another site. The plan shall include which staff are responsible for providing this notification. If the facility evacuates, notification shall include:

- a. the date and approximate time that the facility is evacuating; and
- b. the place or location to which the facility is evacuating, including the:
 - i. name;
 - ii. address; and
 - iii. telephone number.

10. The plan shall include the procedure or method whereby each facility resident has a manner of identification attached to his person which remains with him at all times in the event of sheltering in place or evacuation, and whose duty and responsibility this will be; the following minimum information shall be included with him:

- a. current and active diagnosis;
- b. medications, including dosage and times administered;
- c. allergies;
- d. special dietary needs or restrictions; and
- e. next of kin or responsible person and contact information.

11. The plan shall include an evaluation of the building and necessary systems to determine the ability to withstand wind, flood, and other local hazards that may affect the facility and should also include:

- a. if applicable, an evaluation of each generator's fuel source(s), including refueling plans and fuel consumption; and
- b. an evaluation of the facility's surroundings to determine lay-down hazards, objects that could fall on facility, and hazardous materials in or around the facility, such as:
 - i. trees;
 - ii. towers;
 - iii. storage tanks;
 - iv. other buildings;
 - v. pipe lines;
 - vi. chemicals;
 - vii. fuels; and
 - viii. biologics.

12. For ICF/DDs that are geographically located south of Interstate 10 or Interstate 12, the plan shall include the determinations of when the facility will shelter in place and when the facility will evacuate for a hurricane and the conditions that guide these determinations.

a. A facility is considered to be sheltering in place for a storm if the facility elects to stay in place rather than evacuate when located in the projected path of an approaching storm of tropical storm strength, or a tropical

cyclone. The facility has elected to take this action after reviewing all available and required information on the storm, the facility, the facility's surroundings and consultation with the local or parish Office of Homeland Security and Emergency Preparedness (OHSEP). The facility shall accept all responsibility for the health and well being of all residents that shelter with the facility before during and after the storm. In making the decision to shelter in place or evacuate the facility shall consider the following:

- i. what conditions will facility shelter for;
 - ii. what conditions will facility close or evacuate for; and
 - iii. when will these decisions be made.
- b. If the facility shelters in place, the facility's plan shall include provisions for seven days of necessary supplies to be provided by the facility prior to emergency event, to include:

- i. drinking water or fluids; and
- ii. non-perishable food.

13. The facility's emergency plan shall include a posted communications plan for contacting emergency services and monitoring emergency broadcasts and whose duty and responsibility this will be.

14. The facility's plan shall include how the ICF/DD will notify OHSEP and DHH when the decision is made to shelter in place and whose responsibility it is to provide this notification.

15. The facility shall have a plan for an ongoing safety program to include:

- a. continuous inspection of the facility for possible hazards;
- b. continuous monitoring of safety equipment and maintenance or repair when needed;
- c. investigation and documentation of all accidents or emergencies;
- d. fire control and evacuation planning with documentation of all emergency drills (residents can be informed of emergency drills);
- e. all aspects of the facility's plan, planning, and drills shall meet the current requirements of the Office of the State Fire Marshal, and the Life Safety Code NFPA 101; and
- f. the facility shall inform the resident and/or responsible party of the facility's emergency plan and the actions to be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3207 (December 2012).

§8597. Emergency Plan Activation, Review and Summary

A. The facility's emergency plan(s) shall be activated at least annually, either in response to an emergency or in a planned drill. All staff shall be trained and have knowledge of the emergency plan.

B. ICF/DDs must conduct a minimum of 12 fire drills annually with at least one every three months on each shift. In addition to drills for emergencies due to fire, the facility shall conduct at least one drill per year for emergencies due to a disaster other than fire, such as storm, flood, and other natural disaster.

1. All staff shall participate in at least one drill annually. Residents shall be encouraged to participate, but the provider may not infringe upon the right of the resident to refuse to participate.

2. The facility shall test at least one manual pull alarm each month of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

C. Fire extinguishers shall be conspicuously hung, kept easily accessible, shall be visually examined monthly and the examination shall be recorded on a tag which is attached to the fire extinguisher. Fire extinguishers shall also be inspected and maintained in accordance with manufacturers' and applicable NFPA requirements. Each fire extinguisher shall be labeled to show the date of such inspection and maintenance.

D. The facility's performance during the activation of the plan shall be evaluated annually by the facility and the findings shall be documented in the plan.

E. The plan shall be revised if indicated by the facility's performance during the emergency event or the planned drill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3208 (December 2012).

§8599. Notification of Evacuation, Relocation, or Temporary Cessation of Operations

A. In the event that an ICF/DD evacuates, temporarily relocates or temporarily ceases operations at its licensed location as a result of an evacuation order issued by the state, local or parish OHSEP, the ICF/DD must immediately give notice to the Health Standards Section as well as the Office for Citizens with Developmental Disabilities (OCDD) and OHSEP as directed by facsimile or email of the following:

1. the date and approximate time of the evacuation; and
2. the locations of where the residents have been placed and whether this location is an ICF/DD or other alternate host site for one or more of the ICF/DD residents.

B. In the event that an ICF/DD evacuates, temporarily relocates or temporarily ceases operations at its licensed location for any reason other than an evacuation order, the ICF/DD must immediately give notice to the Health Standards Section by facsimile or email of the following:

1. the date and approximate time of the evacuation; and
2. the locations of where the residents have been placed and whether this location is an ICF/DD or other alternate host site for one or more of the ICF/DD residents.

C. If there are any deviations or changes made to the locations of the residents that was given to the Health Standards Section, OCDD and OHSEP, then both Health Standards, OCDD and OHSEP shall be notified of the changes within 48 hours of their occurrence.

D. Procedures for emergencies shall specify persons to be notified, process of notification and verification of notification, locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating

residents, procedures for reentry and recovery, frequency of fire drills, tasks and responsibilities assigned to all personnel, and shall specify medications and records to be taken from the facility upon evacuation and to be returned following the emergency.

E. An ICF/DD shall immediately notify the department and other appropriate agencies of any fire, disaster or other emergency that may present a danger to residents or require their evacuation from the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3208 (December 2012).

Chapter 86. Intermediate Care Facilities for Persons with Developmental Disabilities

§8601. Authority to Re-open After an Evacuation, Temporary Relocation or Temporary Cessation of Operation

A. In the event that an ICF/DD evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the state, local or parish OHSEP due to a declared disaster or other emergency and that facility sustains damages due to wind, flooding, precipitation, fire, power outages or other causes, the facility 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 Department of Health and Hospitals, Health Standards Section and the facility has received a letter of approval from the department for reopening the facility. The purpose of these surveys is to assure that the facility is in compliance with the licensing standards including, but not limited to, the structural soundness of the building, the sanitation code, staffing requirements and the execution of emergency plans.

B. If an ICF/DD evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the state or parish OHSEP due to a declared disaster or other emergency and the facility does not sustain damages due to wind, flooding, precipitation, fire, power outages or other causes, the facility may be reopened without the necessity of the required surveys. Prior to reopening, the facility shall notify the Health Standards Section in writing that the facility is reopening.

C. The facility shall submit a written initial summary report upon request to the department's Health Standards Section. This report shall be submitted within 14 days from the date of evacuation which led to the facility having to evacuate, temporarily relocate or temporarily cease operations. The report shall indicate how the facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;
2. plan provisions that were not followed;
3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
4. contingency arrangements made for those plan provisions not followed; and

5. a list of all injuries and deaths of residents that occurred during the execution of the plan, including the date, time, causes and circumstances of the injuries and deaths.

D. If a facility shelters in place at its licensed location during a declared disaster or other emergency, the facility shall submit a written initial summary report upon request to the department's Health Standards Section. The report shall indicate how the facility's emergency preparedness plan was followed and executed. This report shall be submitted within 14 days from the date of the event which caused the facility to shelter in place. The initial summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;
2. plan provisions that were not followed;
3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
4. contingency arrangements made for those plan provisions not followed; and
5. a list of all injuries and deaths of residents that occurred during the execution of the plan, including the date, time, causes and circumstances of these injuries and deaths.

E. Upon request by the department's Health Standards Section, a report that is more specific and detailed regarding the facility's execution of their emergency plan shall be submitted to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3209 (December 2012).

§8603. General Emergency Preparedness Training

A. All employees shall be trained in procedures to be followed in the event of any emergency situations. All employees shall be instructed in the use of fire-fighting equipment and resident evacuation as part of their initial orientation and at least annually thereafter. The ICF/DD shall instruct all employees on the emergency evacuation procedures. The ICF/DD shall review the procedures with existing staff at least once in each 12 month period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3209 (December 2012).

§8605. Inactivation of License Due to Declared Disaster or Emergency

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

1. the licensed 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 ICF/DD has experienced an interruption in the provision 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 licensed ICF/DD intends to resume operation as an ICF/DD in the same service area;

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

d. includes an attestation that all clients have been properly transferred to another provider; and

e. provides a list of each client and where that client is discharged or transferred to;

2. the licensed ICF/DD resumes operating as an ICF/DD in the same service area within one year of issuance of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

3. the licensed ICF/DD continues to pay all fees and costs due and owed to the department, including, but not limited to, annual licensing fees and outstanding civil monetary penalties; and

4. the licensed ICF/DD continues to submit required documentation and information to the department, including, but not limited to cost reports.

B. Upon receiving a completed written request to inactivate an ICF/DD license, the department shall issue a notice of inactivation of license to the ICF/DD.

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

1. the ICF/DD must submit a written license reinstatement request to the licensing agency of the department within one year of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

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

3. the license reinstatement request must include a completed licensing application with appropriate licensing fees.

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

E. No change of ownership in the ICF/DD shall occur until such ICF/DD has completed repairs, renovations, rebuilding or replacement construction and has resumed operation as an ICF/DD.

F. The provisions of the subsection shall not apply to an ICF/DD which has voluntarily surrendered its license and ceased operation.

G. Failure to comply with any of the provisions of this subsection shall be deemed a voluntary surrender of the ICF/DD license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3209 (December 2012).

Subchapter H. Physical Environment

§8609. Physical Plant

A. Accessibility. An ICF/DD's building, parking lots and facilities shall be accessible to and functional for individuals, staff members and the public, as required by applicable federal and state laws and regulations to include individuals with limited mobility and assistive devices.

B. New Construction or Renovation of Existing Facilities

1. Before beginning renovations or new construction, Health Standards Section must be notified. Plans and specifications must be prepared by a licensed architect or engineer and must be submitted for approval to the Office of State Fire Marshal and any other office/entity designated by the department to review and approve the facility's architectural plans, if the facility must go through plan review, and the Office of Public Health.

2. Health Standards Section, the Office of Public Health, and the Office of State Fire Marshal, shall have the authority to inspect the project at any stage to insure that the approved plans and specifications are being followed. Final approval of the building must be obtained from these agencies after renovation or construction is completed and before it is occupied. A license shall be issued by Health Standards Section only after these final approvals have been obtained.

3. It shall be the responsibility of the ICF/DD to obtain any approvals from local authorities (such as zoning, building, fire, etc), that may be needed in the particular city or parish.

4. All ICF/DDs must be in conformity with the American National Standards Institute (ANSI) standards.

C. Facility Building Codes

1. These requirements shall not apply to facility construction documents approved for new construction, modification, renovation, alteration or repair of structures when:

a. approval of the construction document was acquired prior to promulgation of this rule; and

b. the actual start of construction commenced within 180 days of the construction document's approval and permitting date. The approval and permitting date shall be the date identified as the latest approval date either by the local/parish authorities or the Louisiana State Facility Planning and Control and the Office of State Fire Marshal.

2. All construction of new ICF/DD facilities, including new replacement facilities, and all construction of additions, alterations, reestablishments, refurbishments, and renovations to existing ICF/DD facilities shall comply with the following codes and standards:

a. the minimum standards as described in the Guidelines for Design and Construction of Health Care Facilities, Current Edition, published by the Facility Guidelines Institute (FGI) or any successor publication;

b. the latest editions of the Louisiana State Uniform Construction Codes currently adopted by the Louisiana Department of Public Safety, Louisiana State Uniform Construction Code Council (LSUCCC), LAC 55, Part VI, §301 as follows:

i. International Building Code (IBC);

ii. International Existing Building Code (IEBC);

- iii. International Residential Code (IRC);
 - iv. International Mechanical Code (IMC);
 - v. The Louisiana Plumbing Code [Part XIV (Plumbing) of the State Sanitary Code];
 - vi. International Fuel Gas Code (IFGC);
 - vii. National Electrical Code (NEC);
- viii. for all state owned licensed buildings the Louisiana Building Codes in RS 40:1722;
- ix. The Advisory Base Flood Elevation (ABFE), published by FEMA; and
 - x. The National Fire Protection Association (NFPA) Life Safety Code NFPA 101 promulgated by the Louisiana Department of Public Safety and Corrections, Office of the State Fire Marshal.

3. As additional guidance for all construction of new ICF/DD facilities, including new replacement facilities, and all construction of additions, alterations, reestablishments, refurbishments, and renovations to existing ICF/DD facilities, the following design publications may be used, as necessary, to achieve the final product:

- a. the Design and Construction Guidance for Community Shelters, published by FEMA, number 361;
- b. the Design Guide for Improving Critical Facility Safety from Flooding and High Winds, published by FEMA, number 543;
- c. the ICC 500-2008: ICC/NSSA Standard for the Design and Construction of Storm Shelters, published by the International Code Council and National Storm shelter Association, 2008 Edition; and
- d. the American Society for Testing and Materials (ASTM), E84.

4. All existing licensed facilities which have sustained damage from an act of God shall be evaluated for re-occupancy and shall have its condition evaluated by a Louisiana registered architect or civil engineer.

a. The owner shall provide a written evaluation report to the department on the condition of the structure, signed and sealed by a licensed Louisiana architect or civil engineer, prior to any reestablishment of occupancy. The evaluation shall be in accordance with the Louisiana State Uniform Construction Codes and acceptable engineering practices and standards. A plan of action to correct any problem shall also be submitted. The report and the plan of action shall be reviewed and accepted by the department prior to proceeding with any proposed modifications. Acceptance by the department will be on a case by case basis.

5. Waivers

a. The secretary of the department may, within his sole discretion, grant waivers to building and construction guidelines. The facility must submit a waiver request in writing to the Office of the State Fire Marshall and any other office/entity designated by the department to review and approve the facility's architectural plans. The facility must demonstrate how patient safety and the quality of care offered are not compromised by the waiver. The facility must demonstrate their ability to completely fulfill all other requirements of the service. The department shall make a written determination of the request. Waivers are not transferable in an ownership change and are subject to review or revocation upon any change in circumstances related to the waiver.

b. The secretary, in exercising his discretion, shall at a minimum, require the applicant to comply with the edition of the building and construction guidelines which immediately proceed the most current edition of the Guidelines for Design and Construction of Health Care Facilities.

6. Any proposed new ICF/DD facility or any existing structure with 50 percent or greater substantial structural damage seeking to be licensed by DHH shall not be constructed or renovated in areas identified to be within the 140 mph or greater wind speed zones as established by the latest Louisiana Department of Public Works, Louisiana State Uniform Construction Code Council, Wind Speed by Parish Data. Links for wind speed data can be found on websites of the LSUCCC or the Office of the State Fire Marshall (OSFM) and any other office/entity designated by the department to review and approve the facility's architectural plans.

7. No new facility or any existing structure with substantial structural damage shall be constructed or renovated in any coastal high hazard area (CHHA) that is subject to high velocity wave action from storms or seismic sources.

8. Any new construction or any replacement structure seeking to be licensed shall comply fully with this rule.

9. No structure shall be converted to ICF/DD use unless it complies with the standards and codes set forth herein including the building systems necessary for full compliance.

10. Separate buildings acquired or constructed for essential use by the facility and included under the ICF/DD facility license, whether on the premises or off, shall comply with the applicable portions of this rule. This requirement includes modular and prefabricated buildings.

11. Any temporary use of an existing building or structure for short term emergency purposes shall be reviewed and approved on a case by case basis for an approved limited time. The temporary use of these facilities shall be approved by the Louisiana Office of Public Health; Department of Public Safety, Office of the State Fire Marshal; and this department.

12. Work must be completed within a compliance time period not to exceed three years from date of acceptance. The department may grant an extension of time to a facility to achieve compliance. A written application requesting an extension must be submitted to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3210 (December 2012).

§8611. Exterior Space

A. An ICF/DD shall ensure that all structures on the grounds of the facility accessible to individuals are maintained in good repair and are free from excessive hazard to health or safety.

B. An ICF/DD 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.

C. Garbage and rubbish which is stored outside shall be stored securely in non-combustible, covered containers and shall be removed on a regular basis. Trash collection

receptacles shall be separate from the recreational area and be located as to avoid being a nuisance to neighbors.

D. Areas determined to be unsafe including, but not limited to, steep grades, cliffs, open pits, swimming pools, high voltage boosters or high speed roads shall be fenced off. All fences shall be in good repair.

E. An ICF/DD shall have at least 75 square feet of accessible exterior recreational space for each client. The recreational space shall be enclosed with secure fencing if necessary to protect clients. Recreational equipment, if used, shall be so located, installed and maintained as to ensure the safety of individuals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3211 (December 2012).

§8613. Interior Space

A. Each living unit of an ICF/DD shall contain a space for the free and informal use of individuals. This space shall be constructed and equipped in a manner consonant with the programmatic goals of the ICF/DD. An appropriate variety of interior recreational spaces shall be provided. An ICF/DD shall ensure that there is evidence of routine maintenance and cleaning programs in all areas of the ICF/DD.

B. Dining Areas

1. An ICF/DD shall provide dining areas which permit individuals, staff and as appropriate, guests to eat together at a table, counter or in a manner which accommodates wheelchairs or other assisted devices. As a minimum, the dining area shall provide 15 square feet per person. If usage is by shifts the number of persons in each shift and the number of shifts shall be indicated in the functional program.

2. An ICF/DD shall provide dining areas which are clean, comfortable, home-like, well-lighted, ventilated and attractively furnished.

C. Sleeping Accommodations

1. An ICF/DD 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. An ICF/DD shall not use a room with a ceiling height of less than seven feet six inches as a bedroom space, unless, in a room with varying ceiling height, the portions of the room where the ceiling is at least seven feet six inches allow a usable space with floor areas as required above.

3. An ICF/DD shall not permit more than four individuals to occupy a designated bedroom space.

4. No individual 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.

5. An ICF/DD shall not use any room which does not have an operable window as a bedroom space.

6. Each individual in the care of an ICF/DD shall have his/her own bed. A double bed may be provided for a married couple. An individual's bed shall be no shorter than the individual's height and no less than 30 inches wide and shall have a clean, comfortable, non-toxic, fire-retardant mattress. The bed shall be solidly constructed, include a mattress and box spring and be in good repair.

7. An ICF/DD shall ensure that sheets, pillow and blankets are provided for each individual.

8. Enuretic individuals shall have mattresses with moisture-resistant covers.

9. Sheets and pillow cases shall be changed at least weekly but shall be changed more frequently, if necessary.

10. Cots or other portable beds are not to be used.

11. An ICF/DD shall provide each individual in care with his/her own dresser or other adequate storage space for private use and a designated space for hanging clothing in proximity to the bedroom occupied by the individual.

12. Each individual in care of an ICF/DD shall have his/her own designated area for rest and sleep.

13. The decoration of sleeping areas for individuals shall allow for the personal tastes and expressions of the individuals.

D. Bathrooms

1. An ICF/DD shall have an adequate number of properly equipped bathroom facilities, accommodating individual care needs.

2. Bathrooms shall be so placed as to allow access without disturbing other individuals during sleeping hours.

3. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene.

4. Tubs and showers shall have slip-proof surfaces.

5. An ICF/DD shall provide toilets and baths or showers which allow for individual privacy.

6. An ICF/DD shall ensure that bathrooms have a safe and adequate supply of hot and cold running water. Hot water temperatures shall not exceed 110 degrees F. where individuals are not able to regulate temperature independently.

7. An ICF/DD shall ensure that bathrooms contain mirrors secured to the walls at convenient heights and other furnishings necessary to meet the individual's basic hygienic needs.

8. An ICF/DD shall ensure that bathrooms are equipped to facilitate maximum self-help by individuals. Bathrooms shall be large enough to permit staff assistance of individuals receiving services, as necessary.

9. 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.

E. 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 individuals and staff regularly served by such kitchen. All equipment shall be maintained in working order.

2. An ICF/DD 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 individuals in care.

3. An ICF/DD shall ensure that all dishes, cups and glasses used by individuals in care are free from chips, cracks or other defects.

4. All reusable eating and drinking utensils shall be sanitized after a thorough washing and rinsing.

5. Animals shall not be permitted in food storage, preparation, and dining areas.

F. Staff Quarters

1. An ICF/DD utilizing live-in staff shall provide adequate, separate living space with a private bathroom for these staff.

G. Administrative and Counseling Space

1. An ICF/DD shall provide a space which is distinct from individuals' living areas to serve as an administrative office for records, secretarial work and bookkeeping.

2. An ICF/DD shall have a designated space to allow private discussions and counseling sessions between individuals and staff.

H. Furnishings

1. An ICF/DD shall have comfortable customary furniture as appropriate for all living areas. Furniture for the use of individuals shall be appropriately designed to suit the size and capabilities of individuals.

2. An ICF/DD shall replace or repair broken, run-down or defective furnishings and equipment promptly.

I. Doors and Windows

1. An ICF/DD shall ensure that any designated bedroom shall have functional windows that can be opened.

2. An ICF/DD shall provide insect screens for all opened windows. This screening shall be readily removable in emergencies and shall be in good repair.

3. An ICF/DD shall ensure that all closets, bedrooms and bathrooms which have doors are provided with doors that can be readily opened from both sides.

4. Outside doors, windows and other features of the structure necessary for the safety and comfort of individuals shall be secured for safety within 24 hours of being found to be in a state of disrepair. Total repair shall be completed as soon as possible.

J. Storage

1. An ICF/DD shall ensure that there are sufficient and appropriate storage facilities.

2. An ICF/DD shall securely lock storage spaces containing all potentially harmful materials. Keys to such storage spaces shall only be available to authorized individuals.

K. Electrical Systems

1. An ICF/DD shall ensure that all electrical equipment, wiring, switches, sockets and outlets are maintained in good order and safe condition.

2. An ICF/DD shall ensure that any room, corridor or stairway within an ICF/DD shall be sufficiently illuminated.

3. An ICF/DD shall provide adequate lighting of exterior areas to ensure the safety of individuals and staff during the night.

L. Temperature

1. An ICF/DD 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 individuals.

2. An ICF/DD shall maintain the spaces used by individuals at a temperature range of 71-81 degrees F.

3. An ICF/DD shall not use open flame heating equipment.

4. Water. Hot water temperatures shall not exceed 110 degrees F. where individuals are not able to regulate temperature independently.

M. Finishes and Surfaces

1. An ICF/DD shall not utilize any excessively rough surface or finish where this surface or finish may present a safety hazard to individuals.

2. An ICF/DD shall not have walls or ceilings surfaced with materials containing asbestos.

3. An ICF/DD shall not use lead paint for any purpose within the ICF/DD or on the exterior or grounds of the ICF/DD, nor shall the ICF/DD purchase any equipment, furnishings or decoration with lead paint. If an existing facility is to be converted to an ICF/DD, the facility shall be tested and certified to be free of asbestos or lead paint materials.

4. An ICF/DD which accepts individuals for placement who are under six years of age, mentally retarded or severely emotionally disturbed shall have evidence that the ICF/DD has been found to be free of lead paint hazards.

N. Laundry Space. An ICF/DD shall have a laundry space complete with washer(s) and dryer(s).

O. An ICF/DD shall have a minimum of 60 square feet of interior floor area for each client that is accessible to clients excluding hallways, closets, bathrooms, bedrooms, 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. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3212 (December 2012).

§8615. General Facility Safety Practices

A. An ICF/DD shall not maintain any firearm or chemical weapon in the living units of the facility.

B. An ICF/DD 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 individuals, staff and visitors.

C. An ICF/DD shall ensure that an appropriately equipped first-aid kit is available in the ICF/DD's buildings and in all vehicles used to transport individuals.

D. An ICF/DD shall ensure that porches, elevated walkways and elevated recreational areas within the facility meet ANSI standards.

E. Every required exit in an ICF/DD's buildings shall be continuously maintained free of all obstructions or impediments to immediate use in the case of fire or other emergency.

F. An ICF/DD shall prohibit the use of candles in sleeping areas of the individuals.

G. Power driven equipment used by an ICF/DD shall be kept in safe and good repair. Such equipment shall be used by individuals only under the direct supervision of a staff member and according to state law.

H. An ICF/DD shall have procedures to prevent insect and rodent infestation.

I. An ICF/DD shall allow individuals to swim only in areas determined to be safe and only under the supervision of a person with a current water safety instructor certificate

or senior lifesaving certificate from the Red Cross or its equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:3213 (December 2012).

Bruce D. Greenstein
Secretary

1212#110

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Medical Transportation
Public Transit Services (LAC 50:XXVII.573)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended 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 Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 5. Non-Emergency Medical Transportation

Subchapter D. Reimbursement

§573. Non-Emergency, Non-Ambulance Transportation

A. - E.1. ...

F. Public Transit Services

1. Effective for dates of service on or after December 20, 2011, the Medicaid Program shall provide reimbursement for non-emergency medical transportation services rendered by public transit providers.

2. Qualifying providers shall be reimbursed their cost through a certified public expenditure (CPE) program approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

a. Only public transit providers with local funding available to use for the CPE program shall qualify to receive payments.

3. Public transit providers shall be required to submit a DHH-approved cost report to the department outlining their costs in order to determine payment amounts.

4. Exclusions. Payments shall not be made to public transit providers for NEMT services rendered to Medicaid recipients enrolled in a BAYOU HEALTH prepaid health plan.

5. It is the responsibility of the public transit provider to verify a Medicaid recipient's eligibility status and to determine whether the recipient is enrolled in a BAYOU HEALTH prepaid health plan.

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 37:3030 (October 2011), amended LR 38:3214 (December 2012).

Bruce D. Greenstein
Secretary

1212#105

RULE

Department of Health and Hospitals Bureau of Health Services Financing and Office of Behavioral Health

Standards for Community Mental Health—Physical Space
Requirements Exemption (LAC 48:III.537)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health have amended LAC 48:III.537 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 28:567-573. 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 III. Mental Health Services

Chapter 5. Standards for Community Mental Health

Subchapter A. Centers and Clinics

§537. Facilities Management

A. - C. ...

D. Exemption. A state- or district-owned or operated mental health clinic operating in or with a state- or district-owned or operated substance abuse/addictive disorders facility shall be exempt from the physical space requirements for operating as separate entities.

1. This exemption shall apply to facilities created under the provisions of R.S. 28:911-920 or R.S. 28:831(c).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:567-573.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Mental Health, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 38:3214 (December 2012).

Bruce D. Greenstein
Secretary

1212064

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Behavioral Health**

Substance Abuse/Addictive Disorders Facilities
Minimum Licensing Standards
Physical Space Requirements Exemption
(LAC 48:I.7403)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 48:I.7403 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:1058.1-9. 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

**Chapter 74. Substance Abuse/Addictive Disorders
Treatment Facilities**

Subchapter A. General Provisions

§7403. Licensing

A. - C.4.f. ...

5. A state- or district-owned or operated substance abuse/addictive disorders facility operating in or with a state- or district-owned or operated mental health clinic shall be exempt from the physical space requirements for operating as separate entities.

a. This exemption shall apply to facilities created under the provisions of R.S. 28:911-920 or R.S. 28:831(c).

D. - L.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:1058.1-9.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:1453 (July 2000), LR 31:669 (March 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 38:3215 (December 2012).

Bruce D. Greenstein
Secretary

1212#107

RULE

**Department of Health and Hospitals
Office of Public Health**

Accreditation of Laboratories Conducting
Drinking Water Analyses
(LAC 48:V.Chapter 80 and LAC 51:XII.101 and 301)

Under the authority of R.S. 36:254(B)(7), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Department of Health and Hospitals, Office of Public Health (DHH-OPH) hereby adopts a set of new regulations governing the accreditation of laboratories performing

drinking water analyses for public water systems and for other potable water supplies. Currently, DHH-OPH accredits laboratories performing drinking water analyses pursuant to DHH's "Laboratory Certification Manual" dated September 1989 and adopted effective November 20, 1989 (see LR 15:968). The purpose of the proposed rulemaking is to repeal the September 1989 DHH "Laboratory Certification Manual" in its entirety and replace it with a new, updated document. The need for a new set of regulations is spurred by the institution of new national environmental laboratory certification standards known as the 2009 The NELAC Institute (TNI) Standard (previously referred to as the National Environmental Laboratory Accreditation Conference). Such new standards include the National Environmental Laboratory Accreditation Program (NELAP). The major purpose of this rulemaking is to ensure that water samples collected and analyzed pursuant to the federal Safe Drinking Water Act regulations (40 CFR 141 and 40 CFR 143) meet quality control and quality assurance requirements. Sample results which meet the quality control and quality assurance requirements are used by public water systems and DHH-OPH's Safe Drinking Water Program to ensure that the health of the citizens and visitors to the State of Louisiana are being protected. These regulations govern the laboratory accreditation and standards of performance for laboratories conducting drinking water analyses for public water systems and for other potable water supplies located in the State of Louisiana.

In addition, the state health officer acting through the DHH, OPH, pursuant to the authority in R.S. 40:4(A)(8) and R.S. 40:5, hereby amends LAC, Title 51 (Public Health—Sanitary Code), Part XII (Water Supplies). Part XII (Water Supplies) of LAC 51 (the State Sanitary Code) generally is the major Part of the LAC which regulates potable water supply systems from a public health standpoint, including public water systems. Sections 101 and 301 of LAC 51:XII are hereby amended to make the current Sanitary Code regulations comport with the laboratory accreditation regulations proposed to now be housed in LAC 48:V.Chapter 80.

Title 48

PUBLIC HEALTH—GENERAL

Part V. Preventive Health Services

Subpart 28. Drinking Water Laboratories

**Chapter 80. Accreditation of Laboratories Performing
Drinking Water Analyses**

Subchapter A. General Provisions

§8001. Scope and Authority

A. This Chapter, adopted pursuant to R.S. 36:254(B)(7), the federal Safe Drinking Water Act (42 USC 300f et seq.) and its implementing regulations (40 CFR Parts 141 and 143), the 2009 The NELAC Institute (TNI) Standard, the National Environmental Laboratory Accreditation Program (NELAP), and the Louisiana State Sanitary Code (LAC 51) constitutes the Department of Health and Hospitals, Office of Public Health (hereinafter referred to as "department") regulations governing the accreditation of laboratories performing drinking water analyses required to be performed by regulations or orders issued pursuant to those acts and regulations. The authority of the department to grant, maintain or revoke a laboratory's TNI NELAP or State Accreditation shall not be delegated to an outside person or

body. Portions of the accreditation process may be contracted out by the department but the authority to grant, maintain, suspend or revoke accreditation remains with the department. This Chapter establishes the procedures for obtaining and maintaining accreditation, and the criteria and procedures laboratories shall follow in analyzing drinking water samples.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3215 (December 2012).

§8003. Construction

A. These rules shall be liberally construed to permit the department to discharge its statutory functions, and to effectuate the purposes of the laboratory accreditation program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3216 (December 2012).

§8005. Purpose of the Regulations

A. This Chapter is promulgated for the following purposes:

1. to establish an accreditation program for laboratories performing analyses of drinking water samples;

2. to establish the administrative procedures to be followed by laboratories seeking accreditation and by laboratories maintaining accreditation;

3. to establish the categories and parameters for which laboratories may be accredited;

4. to require that the accreditation status of a laboratory be contingent upon that laboratory's continued compliance with the standards set forth herein and with the standards established by The NELAC Institute National Environmental Laboratory Accreditation Program (TNI NELAP); and

5. to establish the enforcement procedures the department shall follow to ensure that all accredited laboratories or laboratories seeking accreditation are in compliance with this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3216 (December 2012).

§8007. Accreditation Program Requirements

A. The laboratory accreditation program is voluntary and open to any laboratory to apply for accreditation. However any laboratory wishing to analyze drinking water samples for compliance with regulations adopted or orders issued pursuant to the Safe Drinking Water Act, or R.S. 36:254(B)(7), R.S. 36:254(B)(8), R.S.40:4(A)(8), R.S.40:5(6), R.S.40:5.9, or Part XII of the department's Sanitary Code (LAC 51) shall follow the procedures set forth herein in order to obtain and maintain accreditation.

B. Accredited laboratories and laboratories seeking accreditation shall analyze all drinking water samples in accordance with the procedures and methods required by this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3216 (December 2012).

§8009. Incorporation by Reference

A. The department hereby adopts and incorporates into these regulations:

1. the "National Primary Drinking Water Regulations," 40 CFR 141, as amended;

2. the "National Secondary Drinking Water Regulations," 40 CFR 143, as amended;

3. the NELAC Institute 2009 Standard (TNI Standard); and

4. the Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures Quality Assurance Fifth Edition (EPA 815-R-05-04) January 2005 including Supplement 1(EPA 815-F-08-006), June 2008, both published by the United States Environmental Protection Agency (USEPA or EPA).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3216 (December 2012).

§8011. Program Information

A. Unless otherwise specified, any questions concerning the requirements of this program as detailed in this Chapter should be directed to:

Laboratory Accreditation Section
Louisiana Department of Health and Hospitals
Office of Public Health
3101 West Napoleon Avenue – Room 201
Metairie, Louisiana 70001
504-219-4662
www.lab.dhh.louisiana.gov

1. All requests for information, applications for laboratory accreditation, and submittals of fees and performance testing data shall be submitted to the address above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3216 (December 2012).

§8013. Severability

A. If any Section, Subsection, Paragraph, Clause, Subclause, Division, or other portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3216.

Subchapter B. Program Procedures and Requirements

§8015. Scope

A. This Subchapter establishes the following:

1. requirements of accreditation;

2. categories for which accreditation is available;

3. procedures for becoming an accredited drinking water laboratory;

4. procedures for an accredited drinking water laboratory to renew or modify its accreditation;

5. procedures for cancellation, suspension, and revocation of accreditation; and,

6. fees for accreditation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3216 (December 2012).

§8017. Requirements of Accreditation

A. All water sample analyses performed for the purpose of determining compliance with the chemical, physical, or radiological requirements of the State's primary and secondary drinking water regulations, or when required by order issued by the department pursuant to the authority of the federal Safe Drinking Water Act, or any other regulations adopted pursuant to those acts, shall be performed in laboratories accredited for this purpose pursuant to this Chapter. Analyses performed in laboratories not so accredited shall not be accepted by the department as being in compliance with the requirements, regulations or orders of the federal Safe Drinking Water Act. Effective July 1, 2011 or the effective date of this rule, whichever occurs later, any laboratory accredited or seeking accreditation in one or more of the categories specified in §8019 of this Chapter shall comply with the following modules (as appropriate for the category or categories which the laboratory is seeking accreditation) which are contained in Volume 1, Management and Technical Requirements for Laboratories Performing Environmental Analysis of the TNI Standard:

1. Module 1–Proficiency Testing [Environmental Laboratory (EL)-Volume (V) 1 Module (M) 1 - 2009];
2. Module 2–Quality Systems General Requirements [EL-VIM2-International Standards Organization (ISO)-2009];
3. Module 3–Asbestos Testing (EL-VIM3-2009);
4. Module 4–Chemical Testing (EL-VIM4-2009); and,
5. Module 6–Radiochemical Testing (EL-VIM6-2009).

B. To be clear, the requirements of LAC 48:V.8009.A.1 and 8009.A.2 shall apply to all laboratories regardless of the number of categories specified in §8019 for which the laboratory is seeking accreditation. The requirements of Paragraphs 8019.A.1, 8019.A.2 and 8019.A.3 shall apply dependent upon the particular category or categories for which the laboratory is seeking accreditation.

C. The department shall, in accord with the provisions of this Section, grant reciprocity to a laboratory located outside of the State of Louisiana if the laboratory requesting accreditation also meets each of the following requirements:

1. the laboratory is accredited by a TNI NELAP-recognized primary accreditation body;
2. the laboratory submits an acceptable application for accreditation to the State; and
3. the laboratory pays all applicable fees;

D. The department shall consider only the current certification of accreditation issued by the TNI NELAP recognized primary accreditation body and shall grant reciprocal accreditation for the fields of testing, methods and analytes for which the laboratory holds primary TNI NELAP accreditation. The department will issue a Louisiana accreditation certificate within thirty calendar days of receipt of the laboratory's application if all the above reciprocity requirements are met by the laboratory. The department, as a TNI NELAP-recognized secondary accreditation body, does

not require any additional proficiency testing, quality assurance, or on-site assessment requirements for fields of testing for which the laboratory holds primary TNI NELAP accreditation.

E. A laboratory that is TNI NELAP-accredited by the department that has lost recognition may seek renewal of TNI NELAP accreditation through any TNI NELAP-recognized federal or state accreditation body. The laboratory's TNI NELAP accreditation from an accreditation body that has lost TNI NELAP recognition shall remain valid throughout its current certificate of accreditation.

F. TNI NELAP accredited laboratories whose home state becomes a recognized TNI NELAP accreditation body may retain their primary accreditation through the state that holds their current accreditation. The laboratory may retain their existing certificate of accreditation through to the date on the certificate, or until such time that they choose to renew. Depending on the regulations of their home state, the laboratory may still be required to apply for secondary accreditation from their home state until time for renewal for their primary accreditation. At the time of renewal, they must apply for their primary accreditation through their home state accreditation body as applicable based on requested fields of accreditation.

G. Only laboratories accredited pursuant to these regulations may be called a TNI NELAP or State Accredited Drinking Water laboratory and no laboratory may adopt any name or make any oral or written statement intended or likely to mislead the public with the respect to its accreditation status.

H. Once a laboratory is accredited, the period of accreditation shall extend to the end of the calendar year in which accreditation is received. For laboratories seeking to renew accreditation, the period of accreditation shall be one year beginning on January 1 and shall be considered to be ongoing if the appropriate fees are timely received by the department.

I. The TNI Standard is examined periodically and is subject to being amended or changed. If an accredited laboratory seeks to renew its accreditation under TNI NELAP, the laboratory shall be re-evaluated using the current TNI Standard adopted in this Chapter along with any of these TNI-NELAP adopted minor amendments/adjustments to such standard.

J. If there is a difference in the drinking water regulations of the USEPA, the regulations of the department or the requirements of the TNI Standard, a laboratory must follow the more stringent requirement(s).

1. Notwithstanding the general requirements of Subsection J above, a laboratory seeking State of Louisiana drinking water laboratory certification only may be allowed, at the discretion of the department, to meet less than the more stringent requirement(s) [e.g., see Subsection 8031.A wherein a lesser frequency of proficiency analyses is acceptable as compared to Subsection 8031.C's frequency of proficiency analyses requirements (which is applicable to a laboratory seeking TNI certification)]. The department shall require laboratories seeking or maintaining only a State of Louisiana drinking water laboratory certification to comply with Paragraphs 8009.A.1, 8009.A.2 and 8009.A.4. Paragraph 8009.A.3 is applied only when a laboratory is seeking or maintaining a TNI certification.

K. Applications shall be processed in the chronological order in which they have been received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3217 (December 2012).

§8019. Categories for Accreditation

A. A laboratory may apply for accreditation in any one or more of the following accreditation categories and shall be accredited in those fields of accreditation within the category for which it demonstrates acceptable performance on proficiency samples and meets all other requirements of this Chapter. The laboratory certificate shall specify the categories and the fields of accreditation within each category for which the laboratory is accredited and shall be conspicuously displayed in the laboratory in a location visible to the public. In addition, the current laboratory certificate specifying the accreditation categories, the fields of accreditation, and the expiration date of the certificate shall be posted on its publicly accessible website. The certificate must be removed and returned to the department if the laboratory's accreditation has been revoked. In addition, the laboratory shall post such revocation or suspension of the laboratory's accreditation on its publicly accessible website. The certificate does not have to be returned if it simply expired (reached the expiration date). The following are the accreditation categories available.

1. Inorganic Chemistry. The inorganic chemistry category comprises chemical and/or physical tests or analyses required to determine compliance with the federal Safe Drinking Water Act regulations (40 CFR 141 and 40 CFR 143) and Part XII of the Louisiana Sanitary Code (LAC 51), except those analyses for which gas or liquid chromatography methods are specifically required. Tests or analyses for the inorganic chemistry category shall be conducted in accordance with the methods and procedures specified in 40 CFR 141 and 40 CFR 143 for compliance with the federal Safe Drinking Water Act and Part XII of the Louisiana Sanitary Code (LAC 51).

2. Organic Chemistry. The organic chemistry category comprises chemical tests or analyses required to determine compliance with the federal Safe Drinking Water Act regulations (40 CFR 141 and 40 CFR 143) and Part XII of the Louisiana Sanitary Code (LAC 51) for which the gas or liquid chromatography methods are applicable or required. Tests or analyses for the organic chemistry category shall be conducted in accordance with the methods and procedures specified in 40 CFR 141 and 40 CFR 143 for compliance with the federal Safe Drinking Water Act and Part XII of the Louisiana Sanitary Code (LAC 51).

3. Radiological Testing. The radiological testing category comprises those tests or analyses for radioactivity required to determine compliance with the federal Safe Drinking Water Act regulations (40 CFR 141 and 40 CFR 143) and Part XII of the Louisiana Sanitary Code (LAC 51). Tests or analyses for the radiological category shall be conducted in accordance with the methods and procedures specified in 40 CFR 141 and 40 CFR 143 for compliance with the federal Safe Drinking Water Act and Part XII of the Louisiana Sanitary Code (LAC 51).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3218 (December 2012).

§8021. Application Procedures for Laboratories Located in Louisiana

A. The owner or director of a laboratory who wishes an in-state laboratory to be accredited in any or all of the accreditation categories and fields of accreditation/parameters thereof, described in the federal Safe Drinking Water Act regulations or §8019 of this Chapter, shall apply for accreditation to the department in writing on forms provided by the department. Laboratories applying for accreditation may be fixed-base or mobile. The department shall determine what constitutes an individual fixed-base laboratory when noncontiguous laboratory facilities operate under the same ownership, technical directorship, and quality system as the parent laboratory. A separate accreditation is not required for a mobile laboratory that is owned by an accredited fixed-base laboratory, operates under the same quality system as the fixed-based laboratory, performs a subset of the analyses for which the fixed-base laboratory is accredited, and analyzes samples exclusively from within the state. Separate accreditation is required for a mobile laboratory that is owned by a fixed-base laboratory but operates under a different quality system or performs analyses for which the parent fixed-base laboratory is not accredited.

B. If the applicant fails to submit all the information requested or fails to submit the appropriate fees, the department shall reject the application without prejudice and the applicant notified. The application fee is nonrefundable.

C. If the applicant submits a complete, signed application, the appropriate fee, proficiency data (if required), quality manual (if required), and the information submitted meets the minimum requirements of this Chapter for the category or categories for which accreditation is requested, the application shall be accepted. Acceptance of the application does not authorize the laboratory to perform water analyses regulated by this Chapter. The applicant shall be notified of the acceptance and shall be subject to an evaluation including but not limited to the following:

1. personnel;
2. proficiency testing;
3. on-site assessment; and
4. quality assurance/quality control procedures.

D. Neither accredited nor interim accredited status will be granted to any laboratory which has not met the performance criteria specified in any federal Safe Drinking Water Act regulations or, for those chemicals or other analyses wherein performance criteria may not be specified under the federal Safe Drinking Water regulations, by the performance criteria specified under a written policy of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3218 (December 2012).

§8023. Application Procedures for Laboratories Not Located in Louisiana

A. Laboratories located in a state that does not offer TNI NELAP accreditation and have not obtained TNI NELAP accreditation from another source (i.e., a third state or the

federal government) and desiring to perform water analyses in any or all of the categories described in §8019 for public water systems (PWSs) and for other potable water supplies located in Louisiana, or as required by the federal Safe Drinking Water Act regulations or Part XII of the Louisiana Sanitary Code (LAC 51), shall apply for accreditation in accordance with the procedures set forth in §8021 and shall submit the standard fee amount(s) specified under §8027 for the category or categories being applied for. In addition, the laboratory shall submit to the department, as an additional fee, the sum the department determines to be sufficient to cover the transportation costs (including airfare, mileage, tolls, car rental, public transportation and parking) and room and board expenses of the department's accreditation assessors.

B. Laboratories possessing TNI NELAP accreditation from an approved NELAP accreditation body and desiring to perform water analyses in any or all of the categories described in §8019 for PWSs and for other potable water supplies located in Louisiana, or as required by the federal Safe Drinking Water Act regulations or Part XII of the Louisiana Sanitary Code (LAC 51), shall apply for accreditation in accordance with the procedures set forth in §8021. Any out of state laboratory located in a state that has a NELAP recognized accreditation body may not apply for accreditation from the department for any field of accreditation that is offered by the home state accreditation body.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3218 (December 2012).

§8025. Renewal of Accreditation

A. Applications for renewals of accreditation will be accepted by the department during November of each year and shall be submitted at least 30 calendar days prior to the expiration date of the current certificate on forms provided by the department. The appropriate application fee must accompany the application in accordance with §8027.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3219 (December 2012).

§8027. Fees

A. Owners of laboratories applying for accreditation or renewal of accreditation, for the calendar year commencing January 1, 1990 and for subsequent calendar years shall submit the appropriate fee obtained from the annual fee schedule below along with the required application materials. Fees are nonrefundable.

Annual Laboratory Accreditation Fee Schedule	
Chemistry Category/Categories	Fee
Inorganic	\$750
Organic	\$800
Both Inorganic and Organic	\$1000
Radiological Testing	\$800

B. The annual fees shall not be prorated and shall apply in full to any portion of the calendar year which remains prior to the annual renewal date, November 1.

C. This Section is also applicable to interimly approved laboratories.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7) [the same fee schedule amounts initially adopted in LR 15:968 (November 20, 1989) under this statute's authority].

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3219 (December 2012).

§8029. Required Laboratory Personnel Policies

A. Every accredited laboratory and laboratories seeking accreditation shall have sufficient properly qualified personnel commensurate with the workload and types of tests or analyses required to be performed for the parameters for which the laboratory is accredited, or is seeking accreditation, pursuant to the requirements of this Chapter; Volume 1, Module 2, Section 5.2 of the TNI Standard; and Chapters IV and VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

1. General requirements for technical staff. The management of an accredited laboratory or laboratory seeking accreditation shall ensure the competency of all technical staff employed by the laboratory.

a. An environmental laboratory accredited under this Chapter or seeking accreditation under this Chapter shall have sufficient personnel with the necessary education, training, technical knowledge, and experience for their assigned functions.

b. Each technical staff member of the environmental laboratory accredited under this Chapter or seeking accreditation under this Chapter shall be responsible for complying with all quality assurance/quality control requirements that pertain to their organization/technical function.

c. Each technical staff member must have a combination of experience and education to adequately demonstrate a specific knowledge of their particular function, and a general knowledge of laboratory operations, analytical procedures, quality assurance/quality control, and records management.

d. The department will consider that the accountability for negligence, the falsification of data, records or instrument parameters will rest upon the analyst, the laboratory management and parent company.

B. Current employee records shall be maintained, which shall include a résumé documenting each employee's training, experience, duties, and date or dates of relevant employment.

1. Evidence must be on file that demonstrates all employees are aware of and are using the latest edition of the laboratory's in-house quality documentation.

2. Training courses or workshops on specific equipment, analytical techniques or laboratory procedures that relate to employee's job responsibilities shall all be documented.

3. Analyst training shall be considered up-to-date when documentation in the files indicate acceptable performance of a blind sample (singly blind to the analyst) at least once per year and a certification that technical personnel have read, understood, and agreed to perform the most recent version of the method, the approved method (if applicable) or standard operating procedure.

C. Data Integrity Training. Data integrity training shall be provided as a formal part of new employee orientation and shall also be provided on an annual basis for all current employees. The laboratory shall implement all of the data integrity training requirements in Section 4.3, Volume 1, Module 2 of the TNI Standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3219 (December 2012).

§8031. Proficiency Testing

A. At the time each laboratory applies for accreditation, it shall notify the department which field(s) of testing it chooses to become accredited for and shall participate in the appropriate proficiency test (PT) studies. Except when determined by the department that an appropriate proficiency test is not readily available, all accredited laboratories or laboratories seeking accreditation shall participate in a TNI Proficiency Testing Provider Accreditor (PTPA) approved proficiency testing program covering all tests, analytes and analytical methods as made available within the category and categories in which the laboratory is accredited or seeks accreditation. The laboratory shall purchase proficiency test studies from any PTPA accredited Proficiency Testing Provider (PTP) for the parameters for which accreditation is requested. For initial and continued accreditation, the laboratory shall meet the proficiency testing requirements pursuant to Volume 1, Module 1, Proficiency Testing of the TNI Standard. A laboratory seeking State of Louisiana drinking water laboratory certification only shall participate in proficiency studies at the frequency that meet the requirements of federal Safe Drinking Water Act regulations (40 CFR 141 and 40 CFR 143).

B. The laboratory shall meet all of the requirements for PT record retention as defined in Volume 1, Module 1, Section 5.3 of the TNI Standard. All PT records shall be retained for a minimum of five years and available for assessment by the department pursuant to Volume 2, Module 2, Section 6 of the TNI Standard.

C. To be accredited initially and to maintain accreditation the laboratory shall participate in two PT studies, where available, per year for each PT field of testing for which it seeks or wants to maintain accreditation. For a laboratory seeking to obtain accreditation, the most recent three rounds attempted shall have occurred within 18 months of the laboratory's application date for accreditation with the analysis date of the most recent PT sample having been no more than six months prior to the application date for accreditation. The department will complete the assessment of the final evaluation report for PT studies within 60 days of receipt of each study report pursuant to Volume 2, Module 2, Section 7 of the TNI Standard. The department shall suspend the accreditation of a laboratory for a field of proficiency testing pursuant to the conditions specified in Volume 2, Module 2, Section 10 of the TNI Standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3220 (December 2012).

§8033. On-Site Assessment

A. The department will perform an initial on-site assessment of an environmental laboratory seeking accreditation, except as provided in §8017, prior to granting accreditation, and reassessments at intervals of two years plus or minus six months and at such other times as the department deems necessary to determine continued compliance to this rule. All assessments performed by the department shall be pursuant to Volume 2, Module 3 of the TNI Standard.

B. The department may conduct announced or unannounced on-site assessments of an environmental laboratory to ensure compliance with this Chapter or orders issued by the department at any time.

C. The laboratory shall ensure that records including its quality manual, analytical methods, standard operating procedures, quality assurance/quality control data, proficiency testing data, and all records needed to verify compliance to the TNI Standard, the federal Safe Drinking Water Act (42 USC 300f et seq.) and its implementing regulations (40 CFR Parts 141 and 143); the Louisiana State Sanitary Code (LAC 51) and this rule are available for review during the on-site assessment. The laboratory shall allow the department's authorized personnel to examine records, observe laboratory procedures, facilities, equipment and to interview staff during the on-site assessment.

D. The department will provide the laboratory with a written assessment report documenting any findings found by the department, observations documenting competence and conformity, within 30 calendar days of the last day of the assessment.

E. The laboratory shall submit a corrective action plan to the department within 30 calendar days from receipt of the on-site assessment report from the department where the department has found deficiencies. The corrective action plan shall document the corrective action taken by the laboratory to correct each deficiency.

F. In addition to on-site assessments, the department shall perform other surveillance activities to monitor accredited laboratories' continued compliance to the provisions of this Chapter throughout the period of accreditation. Annually, the department shall review among other things, proficiency testing, internal audits, corrective action reports and any other accreditation-related laboratory records the department deems appropriate to establish continued compliance to the provisions of this Chapter.

G. Nothing in this Section shall be construed as requiring the department to reassess a laboratory prior to taking a regulatory or administrative action affecting the status of the laboratory's accreditation. Nothing in this Section shall be construed as limiting in anyway the department's ability to revoke or otherwise limit a laboratory's accreditation upon the identification of such deficiencies as to warrant such action.

H. Copies of all assessment reports, checklists, and laboratory responses shall be retained by the department for a period of at least 10 years, or longer if required by specific State or Federal regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3220 (December 2012).

§8035. Issuance and Display of Certificate and Use of Accreditation

A. The department will issue a certificate to each laboratory meeting the requirements of this Chapter indicating that the laboratory is accredited by the department. The department will issue the certificate of accreditation following the requirements in Volume 2, Module 1, Section 7.5 of the TNI Standard. The numbered certificate will be signed by a laboratory director of the department's Laboratory Services Section and the designated laboratory accreditation staff personnel and will be considered an official document. It will be transmitted as a sealed and dated (effective date and expiration date) document and contain the accreditation logo. Addenda or attachments to the certificate shall be considered official documents. Information on the addenda or attachments shall include the matrix, fields of accreditation, methods, analyte/analyte group and technologies.

1. The accredited laboratory shall display their most recent certificate of accreditation in a prominent place in the laboratory, visible to the public. The certificate shall include the accreditation status of the laboratory and a list all fields of testing for which the laboratory is accredited.

B. An accredited laboratory must not use its certificate, accreditation status and/or accreditation logo to imply, either orally or in any literature, endorsement of the laboratory by the State of Louisiana or the department. An accredited laboratory must not make any inaccurate statements concerning their fields of accreditation and accreditation status.

C. An accredited laboratory's accreditation number or other identifier shall be included when the accreditation body's name is used on general literature such as catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical reports or other material.

D. The laboratory must distinguish between proposed testing for which the laboratory is accredited and the proposed testing for which the laboratory is not accredited.

E. The laboratory must return to the department any revoked accreditation certificate(s) and must discontinue use of all catalogs, advertising, business solicitations, proposals, quotations, laboratory analytical results or other materials that contain reference to their past accreditation status and/or display their past accreditation logo.

F. The department shall take suitable actions including, but not limited to, legal action when incorrect references to the accreditation body's accreditation, misleading use of the laboratory's accreditation status and/or unauthorized use of the accreditation logo is found in catalogs, advertisements, business solicitations, proposals, quotations, laboratory analytical reports or other materials. All reports of questionable laboratory practices must be reported to the department's laboratory director and to the department's laboratory certification program manager. The department's laboratory certification program manager shall investigate the merits of the report and forward the findings to the department's laboratory director. If it is determined that a formal investigation is needed, the department's laboratory director shall contact the Bureau of Legal Services within the Department of Health and Hospitals (DHH) for guidance

and assistance in the investigation. If the investigation determines that action is merited, the laboratory shall be issued a revocation order via certified mail revoking the laboratory's accreditation. All legal actions taken by the department shall proceed in accordance with the Louisiana Administrative Procedure Act (R.S. 49:950 et seq.) and under the direction of DHH's Bureau of Legal Services. No laboratory's accreditation shall be revoked without the right to due process. The laboratory has a right to an administrative hearing thereon, if requested in writing within 20 days of receipt of the revocation order. Said hearing shall be held before an Administrative Law Judge and in accordance with the Louisiana Administrative Procedure Act (R.S. 49:950 et seq.) All documents related to the investigation(s), including the final disposition, shall be retained by the department for 10 years from the date of such final disposition.

G. Accreditation may be transferred when the legal status or ownership of an accredited laboratory changes without affecting its staff, equipment, and organization. The department may conduct an on-site assessment to verify the effects, if any, of such changes on laboratory performance.

H. The following conditions apply to the change in ownership and/or the change in location of a laboratory, as well as to a change in top management, key personnel, resources, or premises that is, or previously was, accredited by the department under a previous owner and/or at a previous location.

1. In the event there are any changes in the name, location, ownership, top management, key personnel, main polices, resources or premises of an accredited laboratory to which the provisions of this Chapter apply, written notice thereof shall be made within 30 days to:

Laboratory Certification Program
Laboratory Services
LA Department of Health and Hospitals,
Office of Public Health
3101 West Napoleon Avenue
Metairie, LA 70001

2. The department shall evaluate the significance of any change that might alter or impair the laboratory's capability and quality, and indicate to the affected laboratory the results of the evaluation in writing. The department shall retain records to indicate that such an evaluation was conducted.

3. A change in ownership and/or location will not necessarily require reaccreditation or reapplication in any or all of the categories in which the laboratory is currently accredited.

4. A change in ownership and/or location may require an on-site assessment with the elements of the assessment being determined by the assessor.

5. Any change in ownership shall assure historical traceability of the laboratory accreditation number(s).

6. For a change in ownership, the following additional conditions shall be in effect.

a. The previous owner (transferrer) shall agree in writing, before the transfer of ownership takes place, to be accountable and liable for any analyses, data and reports generated up to the time of legal transfer of ownership.

b. The buyer (transferee) must agree in writing to be accountable and liable for any analyses, data and reports generated after the legal transfer of ownership occurs.

c. All records and analyses performed pertaining to accreditation shall be kept for a minimum of 10 years and are subject to review and inspection by the department during this period without prior notification to the laboratory. This stipulation is applicable regardless of change in ownership, accountability or liability.

d. If ownership is transferred, the transferee shall not be responsible for payment of fees to the department during the remainder of the calendar year, provided that the previous owner has fully paid the required fees to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3221 (December 2012).

§8037. Management System Establishment

A. The laboratory shall establish and maintain a management system pursuant to and meeting the required elements contained in Volume 1 of the TNI Standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3222 (December 2012).

§8039. Denial, Suspension, Revocation and Voluntary Withdrawal of Accreditation

A. Denial of Accreditation. Denial means to refuse to accredit in part or in total a laboratory applying for initial accreditation or resubmission of initial application.

1. Reasons to deny an initial application may include:

- a. failure to submit a completed application;
- b. failure of laboratory staff to meet the personnel qualifications as required by the TNI Standard. These qualifications include, but are not limited to, education, training and experience requirements;
- c. failure to successfully analyze and report proficiency testing samples as required in Volume 1, Module 1; Volume 2, Module 2, and Volume 3 of the TNI Standard;
- d. failure to attest that analyses are performed by methodologies as required in Volume 1, Module 2, Section 5.4 of the TNI Standard;
- e. failure to implement a quality system as defined in Volume 1, Module 2 of the TNI Standard;
- f. failure to respond to a deficiency report from the on-site assessment with a corrective action report within 30 calendar days after receipt of the assessment report;
- g. failure to implement the corrective actions detailed in the corrective action report within the specified time frame as required by the department;
- h. failure to pay required fees;
- i. failure to pass required on-site assessment(s) as specified in §8033 of this Chapter;
- j. misrepresentation of any material fact pertinent to receiving or maintaining accreditation; or
- k. denial of entry during normal business hours for an on-site assessment as required in Volume 2, Module 1, Section 7.5 of the TNI Standard and as mentioned under §8033.B of this Chapter.

2. A laboratory shall have two opportunities to correct the areas of deficiencies which results in a denial of accreditation.

3. If the laboratory is not successful in correcting the deficiencies as required by §8033 of this Chapter and the TNI Standard, the laboratory must wait six months before again reapplying for accreditation.

4. Upon reapplication, the laboratory shall be responsible for all or part of the fees incurred as part of the initial application for accreditation.

5. No laboratory's accreditation will be denied without the right to due process. The laboratory has a right to an administrative hearing thereon, if requested in writing within 20 days of receipt of the denial letter. Said administrative hearing shall be held before an Administrative Law Judge and in accordance with the Louisiana Administrative Procedure Act (R.S. 49:950 et seq.).

B. Suspension of Accreditation. Suspension means the temporary removal of a laboratory's accreditation for a defined period of time which shall not exceed six months. The purpose of suspension is to allow a laboratory time to correct deficiencies or areas of non-compliance with this Chapter and the TNI Standard.

1. A laboratory's accreditation may be suspended in part or in total. The laboratory shall retain those areas of accreditation where it continues to meet the requirements of this Chapter and the TNI Standard.

2. Reasons for suspension may include:

- a. the department finds during the on-site assessment that the public interest, safety or welfare requires emergency action;
- b. failure to successfully complete PT studies and maintain a history of at least two successful PT studies for each affected accredited field of testing out of the most recent three PT studies;
- c. failure to notify the accreditation body of any changes in key accreditation criteria, as set forth in §8029 of this Chapter;
- d. failure to maintain a quality system as defined in §8037 of this Chapter; or
- e. failure of the laboratory to employ staff who meet the personnel qualifications including, but not limited to, education, training and experience as required by this Chapter and Volume 1, Module 2, Section 5.2 of the TNI Standard.

3. A laboratory under suspension will not have to reapply for accreditation if the cause/causes for suspension are corrected within six months. The laboratory's suspended accreditation status will change to accredited when the laboratory complies with this Chapter and the TNI standard.

4. A suspended laboratory:

- a. cannot continue to analyze samples for the affected fields of testing for which it holds accreditation; and
- b. shall remain suspended (without appeal rights) due to unacceptable proficiency testing sample results.

5. If the laboratory is unable to correct the reason for the suspension, the laboratory's accreditation shall be revoked in total or in part within six months after the effective date of the suspension.

6. No laboratory's accreditation will be suspended without the right to due process. The laboratory has a right to an administrative hearing thereon, if requested in writing within 20 days of receipt of the suspension order. Said administrative hearing shall be held before an Administrative

Law Judge and in accordance with the Louisiana Administrative Procedure Act (R.S.49:950 et seq.)

C. Revocation of Accreditation. Revocation means partial or total withdrawal of a laboratory's accreditation by the department.

1. The accreditation body shall revoke a laboratory's accreditation, in part or in total, for failure to correct the deficiencies after accreditation had been suspended. The laboratory shall retain those areas of accreditation where it continues to meet the requirements of this Chapter and the TNI Standard.

2. Reasons for revocation, in part or in total, include a laboratory's:

a. failure to submit an acceptable corrective action report in response to a deficiency report and failure to implement corrective action(s) related to any deficiencies found during a laboratory assessment(the laboratory may submit two corrective actions plans within the time limits specified by the department); or

b. failure to correctly analyze a parameter(s) in three consecutive PT studies. Should this occur, the laboratory's accreditation shall be revoked for each affected accredited field of testing(s), method(s) and analyte(s).

3. Reasons for total revocation include a laboratory's:

a. failure to respond with a corrective action report within the required 30 calendar days;

b. failure to participate in the proficiency testing program as required by §8031 of this Chapter and the TNI Standard;

c. submittal of proficiency test sample results generated by another laboratory as its own;

d. misrepresentation of any material fact pertinent to receiving or maintaining accreditation;

e. denial of entry during normal business hours for an on-site assessment as required by §8033 of this Chapter and the TNI Standard;

f. conviction of charges for the falsification of any report of or relating to a laboratory analysis; or

g. failure to remit the accreditation fees within the time limit as established by the department may be grounds for immediate revocation.

4. After correcting the reason/cause for revocation, the laboratory may reapply for accreditation sooner than six months from the official date of revocation.

5. No laboratory's accreditation will be revoked without the right to due process. The laboratory has a right to an administrative hearing thereon, if requested in writing within 20 days of receipt of the revocation order. Said administrative hearing shall be held before an Administrative Law Judge and in accordance with the Louisiana Administrative Procedure Act (R.S. 49:950 et seq.).

D. Voluntary Withdrawal of Accreditation. If an environmental laboratory wishes to withdraw from the laboratory accreditation program, it must submit written notification to the department no later than 30calendar days before the end of the accreditation year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3222 (December 2012).

§8041. Interim Accreditation

A. If a laboratory completes all of the requirements for accreditation except that of an on-site assessment because the department is unable to schedule the assessment in a timely manner, the department may issue an interim accreditation. Interim accreditation is not available for first time accreditation of a laboratory or after revocation of accreditation. Interim accreditation will allow a laboratory to perform analyses and report results with the same status as a fully accredited laboratory until the on-site assessment requirements have been completed. Interim accreditation status may not exceed 12 months. The interim accreditation status is a matter of public record and will be entered into the national database.

B. Revocation of Interim Accreditation. Revocation of interim accreditation may be initiated for due cause in accord with the requirements of §8039 of this Chapter.

C. The department may approve a laboratory application to add an analyte or method to its scope of accreditation by performing a data review without an on-site assessment. An addition to the scope of accreditation via a data review of PT performance (if available), quality control performance, and written standard operating procedure is at the discretion of the department. An addition of a new technology or test method requiring specific equipment may require an on-site assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3223 (December 2012).

§8043. Ethics, Standards of Professional Conduct and Conflict of Interest

A. Professional standards apply to every employee of the department including laboratory assessors, whether a government employee or an employee of a third party organization conducting assessments under an agreement with the department or other accreditation body.

1. Department employees, including assessors that knowingly engage in unprofessional activity, may be liable for punitive actions as initiated by the department. Standards for professional conduct outlined herein are based upon 5 CFR 2635 (Standards of Ethical Conduct for Employees of the Executive Branch) and will be followed in all laboratory accreditation related matters. Additionally, conformance with the Louisiana Code of Governmental Ethics, R.S. 42:1101 et seq., is required.

2. All employees including assessors representing the department or other accreditation body shall:

a. have no interest at play other than that of the department or other accreditation body and NELAP during the entire accreditation process;

b. act impartially and not give preferential treatment to any organization or individual;

c. provide equal treatment to all persons and organizations regardless of race, color, religion, sex, national origin, age and/or disability;

d. not use their position for private gain;

e. not solicit or accept any gift or other item of monetary value from any laboratory, laboratory representative or any other affected individual or

organization doing business with, or affected by, the actions of the assessor's employer or the department;

f. not hold financial interests that conflict with the conscientious performance of their duties;

g. not engage in financial transactions using information gained through their positions as assessors to further any private interest;

h. not engage in employment activities (seeking or negotiating for employment) or attempt to arrange contractual agreements with a laboratory that would conflict with their duties and responsibilities as an assessor;

i. not knowingly make unauthorized commitments or promises of any kind purporting to bind the department or other affected accreditation body; and

j. attempt to avoid any actions that could create even the appearance that they are violating any of the standards of professional conduct outlined in this Section.

3. It is the individual's responsibility to report to the department any personal issues or activities that constitute a conflict of interest before an assessment occurs. It is up to the department to determine if the reported issues and activities regarding a specific assessor constitute, or may be construed as, a conflict of interest. The department's laboratory director shall contact the Bureau of Legal Services within the Department of Health and Hospitals (DHH) for guidance and assistance in deciding a conflict of interest case and the course of action the department should take.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3223 (December 2012).

Subchapter C. Criteria and Procedures for Chemical Testing and Analysis

§8045. Scope

A. This Subchapter establishes the department's requirements which an accredited laboratory or laboratory seeking accreditation shall continually meet and follow when performing chemical analyses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3224 (December 2012).

§8047. Laboratory Facilities and Safety

A. All accredited laboratories or laboratories seeking accreditation pursuant to this Subchapter shall have laboratory facilities and safety procedures that meet the requirements in Volume 1, Module 2, Section 5.3 of the TNI Standard and Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. The analysis of compliance samples shall be conducted in a laboratory where the security and integrity of the samples and the data can be maintained.

C. The laboratory facilities must be clean, have adequate temperature and humidity control, have adequate lighting at the bench top and must meet applicable Occupational Safety and Health Administration (OSHA) standards.

D. The laboratory must have provisions for the proper storage and disposal of chemical wastes. The appropriate type of exhaust hood is required, where applicable.

E. There must be sufficient bench space for processing samples. Workbench space should be convenient to sink, water, gas, vacuum and electrical sources free from surges.

F. Instruments must be properly electrically grounded.

G. For safety reasons, facilities for inorganic and organic analyses shall be in separate rooms. Organic analysis and sample extraction should also be separated to prevent cross contamination.

H. The analytical and sample storage areas must be isolated from all potential sources of contamination.

I. There should be sufficient storage space for chemicals, glassware and portable equipment, sufficient floor and bench space for stationary equipment and areas for cleaning materials.

J. Volatile or corrosive chemicals and flammable solvents shall be stored in accordance with the federal Occupational Safety and Health Act and its attendant regulations.

K. Adequate fire precautions shall be taken including, but not limited to, having readily available a fire extinguisher rated for the types of fires that may reasonably be foreseen given the types of testing and analyses performed by and the types of materials handled by the laboratory.

L. Appropriate occupational safety and health laws and regulations shall be posted and observed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3224 (December 2012).

§8049. Specifications for Laboratory Equipment and Instrumentation

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall have on the premises and under the control of the technical manager, all of the equipment and instruments necessary to analyze each parameter in which the laboratory is accredited, or is seeking accreditation. All instruments shall be properly maintained and calibrated and such equipment and instruments including records shall meet the requirements in Volume 1, Module 2, Section 5.5 of the TNI Standard and Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3224 (December 2012).

§8051. Measurement Traceability

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall meet the measurement traceability requirements specified in Volume 1, Module 2, Section 5.6 of the TNI Standard and Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3224 (December 2012).

§8053. Sample Collection, Handling and Preservation

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall have procedures for sample collection, handling and preservation techniques that meet the requirements in Volume 1, Module 2, Sections 5.7 and 5.8 and Volume 1, Module 4, Section 1.7.5 of the TNI Standard as well as the requirements in Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. Samples requiring preservation shall be preserved at the time of collection. A laboratory that has interim approval or accreditation shall accept only samples which are properly labeled, and for which there is reasonable assurance that they have been collected, preserved, processed, stored and transported in such a manner as to identity and stability of the sample with respect to the requested tests or analyses. If the identity/stability of the sample has not been assured, the laboratory report shall clearly state that the result may be invalid due to an unsatisfactory sample.

C. All samples requiring thermal preservation shall be considered acceptable if the arrival temperature of a representative sample container is either within 2° Celsius (C) of the required temperature or the method's specified range. Additional acceptance criteria are specified in Volume 1, Module 4, Section 1.7.5 of the TNI Standard. The laboratory must measure and record the temperature of the sample when it arrives when temperature preservation is required by the method.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3225 (December 2012).

§8055. Methodology and Method Validation

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall use the test procedures specified in 40 CFR Parts 141 and 143 in the analysis of drinking water parameters. Additionally, the laboratories shall comply with the requirements in Volume 1, Module 2, Section 5.4 and Volume 1, Module 4, Section 1.4 of the TNI Standard as well as the requirements in Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. The laboratory shall list, in its quality manual, and have on-hand the standard operating procedures (SOPs) for each analytical method used. This listing should include the name of the method and a complete reference as to the source.

C. Applicable SOPs shall be available in the laboratory at the analyst's work station. All SOPs shall meet the requirements in Volume 1, Module 2, Section 4.2.8.5 of the TNI Standard.

D. The laboratory shall validate reference methods via the procedures specified in Volume 1, Module 4, Section 1.5 of the TNI Standard and the requirements in Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

E. Prior to the acceptance and institution of any method, a satisfactory initial Demonstration of Capability (DOC) shall be performed by the laboratory pursuant to the

requirements in Volume 1, Module 4, Section 1.6 of the TNI Standard. Documentation shall be maintained by the laboratory for the initial and any ongoing DOC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3225 (December 2012).

§8057. Quality Assurance for Environmental Testing

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall have established quality control procedures pursuant to Volume 1, Module 2, Sections 5.9.1 and 5.9.2 of the TNI Standard as well as the quality control procedures in Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. The laboratory shall implement the essential quality control procedures in Volume 1, Module 2, Section 5.9.3 and in Volume 1, Module 4, Section 1.7 of the TNI Standard, as well as implementing the essential quality control procedures in Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

C. The laboratory shall perform all quality control procedures at the frequency required in the approved reference method(s) specified in 40 CFR Parts 141 and 143 in the analysis of drinking water parameters. In addition, the laboratory shall meet the acceptance criteria specified in the applicable, approved reference method(s) specified in 40 CFR Parts 141 and 143 in the analysis of drinking water parameters.

D. Control charts, generated from the laboratory's control sample (however named), shall be maintained by the laboratory. Until sufficient data are available from the laboratory, usually a minimum of 20 to 30 test results on a specific analysis, the laboratory shall use the control limits (if specified) in the method. When sufficient data becomes available, the laboratory shall develop control charts from the mean percent recovery (\bar{x}) and the standard deviation (S) of the percent recovery for the Quality Control (QC) checks specified in the above Subsections of this Section (also, see Chapter VI of the *Handbook for Analytical QC in Water and Wastewater Laboratories*, EPA-600/4-79-019 or *Standard Methods for the Examination of Water and Wastewater*, 20th edition, Part 1020B, or similar laboratory analytical QC reference texts for further information). These data are used to establish upper and lower control limits as follows:

1. upper control limit = $\bar{x} + 3S$
(upper warning limit, use $+ 2S$ instead of $+ 3S$);
2. lower control limit = $\bar{x} - 3S$
(lower warning limit, use $- 2S$ instead of $- 3S$).

E. After each five to ten new recovery measurements, new control limits should be calculated using the most recent 20-30 data points. These calculated control limits shall not exceed those established in the method. If any of these calculated control limits are tighter than the control limits specified within the method, the laboratory shall use the tighter criteria.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3225 (December 2012).

§8059. Records and Data Reporting

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall meet the requirements for reporting results pursuant to Volume 1, Module 2, Section 5.10 of the TNI Standard and Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. Compliance monitoring data shall be made legally defensible by keeping thorough and accurate records. The quality manual and/or SOPs shall describe the policies and procedures used by the facility for record retention and storage. If samples are expected to become part of a legal action, chain of custody procedures shall be used.

C. Maintenance of Records. Public water systems are required to maintain records of chemical analyses of compliance samples for 10 years (40 CFR 141.33) and lead and copper for 12 years (40 CFR 141.91). The laboratory should maintain easily accessible records for 10 years. The client water system should be notified before disposing of records so they may request copies if needed. This includes all raw data, calculations, and quality control data. These data files may be either hard copy, microfiche or electronic. Electronic data shall always be backed up by protected tape or disk or hard copy. If the laboratory changes its computer hardware or software, it should make provisions for transferring old data to the new system so that it remains retrievable within the time frames specified above.

D. Sampling Records. Data should be recorded in ink with any changes lined through such that the original entry is visible. Changes shall be initialed and dated. The following information should be readily available in a summary or other record(s):

1. date of sampling, location (including name of utility and PWS ID # if the water system is a PWS), sampling site within the water system, time of sampling, name, organization and phone number of the sampler, and analyses required;

2. identification of the sample as to whether it is a routine distribution system sample, check sample, raw or finished water sample, repeat or confirmation sample or other special purpose sample;

3. date of receipt of the sample by the laboratory;

4. sample volume/weight, container type, preservation and holding time and condition on receipt;

5. pH (from plant records) and disinfectant residual at time of sampling (from on-site analysis by sampler at the time of sampling);

6. disinfectant residual by laboratory immediately prior to analysis; and

7. transportation and delivery of the sample (person/carrier, conditions).

E. Analytical Records. Data shall be recorded in ink with any changes lined through such that original entry is visible. Changes shall be initialed and dated. The following information shall be readily available:

1. laboratory and persons responsible for performing the analysis;

2. analytical techniques/methods used;

3. date and time of analysis;

4. results of sample and quality control analyses; and

5. calibration and standards information.

F. Personnel Records. Résumés and training records shall be maintained for all personnel.

Documentation of the initial demonstration of capability for analysts/technicians shall be kept on file as well as the results of proficiency testing.

G. Reconstruction of Data. Adequate information shall be available to allow the assessor to reconstruct the final results for compliance samples and performance evaluation samples.

H. Computer programs. Computer programs shall be verified initially and periodically by manual calculations and the calculations shall be available for inspection. Access to computer programs and electronic data shall be limited to appropriate personnel.

I. The original or true duplicate of the results of the test or analysis shall be sent promptly to the person who requested such tests or analysis. In addition, the results of compliance monitoring samples are to be sent to:

Louisiana Department of Health and Hospitals
Office of Public Health
Engineering Services Section - M/S #3
P O Box 4489
Baton Rouge, Louisiana 70821-4489

1. The results data shall be signed by the technical manager or a designee whose designation is in writing and whose name has been submitted to the department. Results submitted to the department shall be submitted electronically and in writing in the format specified by the Engineering Services Section of the department. Any sample result that exceeds the maximum contaminant level (MCL) or may cause a treatment technique requirement violation for any regulated contaminant listed in the federal Safe Drinking Water Act (42 USC 300f et seq.) and its implementing regulations (40 CFR Parts 141 and 143); an accredited laboratory shall report the result to the supplier of water and the department as soon as possible but no later than the end of the next business day after the result was determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3226 (December 2012).

§8061. General Laboratory Practices

A. Chemicals/Reagents. Chemicals and reagents used must meet the specifications in the referenced method. If not specified therein, then analytical reagent (AR) grade or American Chemical Society (ACS) grade chemicals or better shall be used for analyses in accredited laboratories.

B. Reagent Water. The laboratory shall have a source of reagent water having a resistance value of at least 0.5 megohms (conductivity less than 2.0 micromhos/cm) at 25°C. High quality water meeting such specifications may be purchased from commercial suppliers. Quality of reagent water is best maintained by sealing it from the atmosphere. Quality checks to meet specifications above shall be made and documented at planned intervals based on use. This planned interval should not exceed daily. Individual analytical methods may specify additional requirements for the reagent water to be used. Reagent water for organic analysis must be free from interferences for the analytes being measured. It may be necessary to treat water with activated carbon to eliminate all interferences. If individual

methods specify additional requirements for the reagent water to be used, these must be followed.

C. Glassware Preparation. Specific requirements in the methods for the cleaning of glassware must be followed. If no specifications are listed, then glassware should be washed in a warm detergent solution and thoroughly rinsed first with tap water and then with reagent water. This cleaning procedure is sufficient for general analytical needs. It is advantageous to maintain separate sets of suitably prepared glassware for the nitrate, mercury, and lead analyses due to the potential for contamination from the laboratory environment. For a summary of glassware cleaning procedures, refer to Chapter IV of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

D. Distilled and deionized water shall have at a minimum, resistivity values between 0.5 to 2.0 megohms-cm (2.0 to 0.5 micromhos/cm.) at 25° C. Preferably, distilled and deionized water should have resistivity values greater than 1.0 megohms-cm (less than 1.0 micromhos/cm) at 25°C. When purchasing distilled or deionized water, laboratories should request a list of quality specifications for the water purchased. Containers of distilled or deionized water should be capped when not in use and should be capped immediately after each use.

E. All solutions shall be properly labeled with identification of the compound, concentration, solvent, date, and analyst who prepared the solution.

F. All chemicals, solutions, and standards, shall be dated upon receipt by the laboratory; and the date opened by the laboratory shall also be noted.

G. Compositing of samples for inorganic and organic analyses must be done in the laboratory. Samples shall only be composited if the laboratory detection limit is adequate for the number of samples being composited (up to a maximum of five) and the holding times will not be exceeded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3226 (December 2012).

§8063. Management Systems General Requirements

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall establish, implement and maintain a management system as outlined in Volume 1, Module 2, Section 4.2 of the TNI Standard. The laboratory's management system policies related to quality, including a quality policy statement, shall be defined in a quality manual (however named). The quality manual shall include all the requirements in Volume 1, Module 2, Section 4.2 of the TNI Standard. The quality manual shall be made available to all laboratory personnel.

B. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall establish and maintain a documented data integrity system. There are four elements within a data integrity system. These are:

1. data integrity training;
2. signed data integrity documentation for all laboratory employees;
3. in-depth, periodic monitoring of data integrity; and

4. data integrity procedure documentation.

C. The procedures of the data integrity system required under Subsection B of this Section shall be signed by top management. The requirements for data integrity investigation are listed in Volume 1, Module 2, Section 4.16 of the TNI Standard. The requirements for data integrity training and documentation are listed in Volume 1, Module 2, Section 5.2.7 of the TNI Standard.

D. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses, shall maintain SOPs that accurately reflect all phases of current laboratory activities, such as assessing data integrity, corrective actions, handling customer complaints and all analytical methods. All of the requirements for the laboratory's SOPs are outlined in Section 4.2.8.5 of Volume 1, Module 2 of the TNI Standard. All quality control data and records required by this Section shall be retained by the laboratory for a minimum of 10 years and shall be made available for inspection by the department. Such retained data shall include, but shall not be limited to, the results of and raw data generated by proficiency test analyses.

E. Document Control. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall establish and maintain procedures to control all laboratory documents as specified in Volume 1, Module 2, Section 4.3, of the TNI Standard.

F. Review of Requests, Tenders and Contracts. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for review of requests, tenders and contracts pursuant to Volume 1, Module 2, Section 4.4 of the TNI Standard.

G. Subcontracting of Environmental Testing. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for subcontracting environmental testing pursuant to Volume 1, Module 2, Section 4.5 of the TNI Standard.

H. Purchasing Services and Supplies. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for purchasing services and supplies pursuant to Volume 1, Module 2, Section 4.6 of the TNI Standard.

I. Service to the Client and Complaints. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for service to the clients and complaint policy and processes pursuant to Volume 1, Module 2, Sections 4.7 and 4.8 of the TNI Standard.

J. Control of Nonconforming Environmental Testing Work. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for the control of nonconforming environmental testing pursuant to Volume 1, Module 2, Sections 4.9 of the TNI Standard.

K. Laboratory Improvement, Corrective Action and Preventive Action. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for improving the laboratory, corrective and preventive

actions pursuant to Volume 1, Module 2, Sections 4.10, 4.11, and 4.12 of the TNI Standard.

L. Internal Audits and Management Reviews. Laboratories which have received accreditation or are seeking accreditation to perform any of the required chemical analyses shall meet the requirements for establishing and conducting internal audits and management reviews of laboratory activities pursuant to Volume 1, Module 2, Sections 4.14 and 4.15 of the TNI Standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3227 (December 2012).

Subchapter D. Criteria and Procedures for Radiological/ Radiochemical Testing and Analysis

§8064. General

A. This Subchapter, in conjunction with other requirements contained in other portions of this Chapter, establishes the department's requirements to which an accredited laboratory or laboratory seeking accreditation shall continually meet and follow when performing radiological/radiochemical analyses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3228 (December 2012).

§8065. Laboratory Facilities and Safety

A. All accredited laboratories or laboratories seeking accreditation pursuant to this Subchapter shall have laboratory facilities and safety procedures that meet the requirements in Volume 1, Module 2, Section 5.3 of the TNI Standard and Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. The analysis of compliance samples shall be conducted in a laboratory where the security and integrity of the samples and the data can be maintained.

C. The laboratory facilities must be clean, have adequate temperature and humidity control, have adequate lighting at the bench top and must meet applicable OSHA standards.

D. The laboratory must have provisions for the proper storage and disposal of chemical and radiological wastes. The appropriate type of exhaust hood is required where applicable.

E. There must be sufficient bench space for processing samples. Workbench space should be convenient to sink, water, gas, vacuum and electrical sources free from surges.

F. Instruments must be properly electrically grounded.

G. Counting instruments must be located in a room other than one in which samples and standards are being prepared or where other types of chemical analyses are performed.

H. The analytical and sample storage areas must be isolated from all potential sources of contamination.

I. There should be sufficient storage space for chemicals, glassware and portable equipment, sufficient floor and bench space for stationary equipment and areas for cleaning materials.

J. Volatile or corrosive chemicals and flammable solvents shall be stored in accordance with the federal Occupational Safety and Health Act and attendant regulations.

K. Adequate fire precautions shall be taken including, but not limited to, having readily available a fire extinguisher rated for the types of fires that may reasonably be foreseen given the types of testing and analyses performed by and the types of materials handled by the laboratory.

L. Appropriate occupational safety and health laws and regulations shall be posted and observed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3228 (December 2012).

§8067. Specifications for Laboratory Equipment and Instrumentation

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses, shall have on the premises and under the control of the technical manager, all of the equipment and instruments necessary to analyze each parameter in which the laboratory is accredited, or is seeking accreditation. All instruments shall be properly maintained and calibrated and such equipment and instruments including records shall meet the requirements in Volume 1, Module 2, Section 5.5 of the TNI Standard and Volume 1, Module 6, Section 1.7.1 of the TNI Standard as well as the requirements in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3228 (December 2012).

§8069. Measurement Traceability

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the measurement traceability requirements specified in Volume 1, Module 2, Section 5.6 of the TNI Standard and Volume 1, Module 6 of the TNI Standard as well as the requirements in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3228 (December 2012).

§8071. Sample Collection, Handling and Preservation

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall have procedures for sample collection, handling and preservation techniques that meet the requirements in Volume 1, Module 2, Sections 5.7 and 5.8 and Volume 1, Module 6, Section 1.7.4 of the TNI Standard as well as the requirements in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. Samples requiring preservation shall be preserved at the time of collection. A laboratory that has interim approval or accreditation shall accept only samples which are properly labeled, and for which there is reasonable assurance that they have been collected, preserved, processed, stored

and transported in such a manner as to identity and stability of the sample with respect to the requested tests or analyses. If the identity/stability of the sample has not been assured, the laboratory report shall clearly state that the result may be invalid due to an unsatisfactory sample.

C. All samples requiring thermal preservation shall be considered acceptable if the arrival temperature of a representative sample container is either within 2°C of the required temperature or the method's specified range. Additional acceptance criteria are specified in Volume 1, Module 6, Section 1.7.4 of the TNI Standard. The laboratory must measure and record the temperature of the sample when it arrives when temperature preservation is required by the method.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3228 (December 2012).

§8073. Methodology and Method Validation

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall use the test procedures specified in 40 CFR Parts 141 and 143 in the analysis of drinking water parameters. Additionally, the laboratories shall comply with the requirements in Volume 1, Module 2, Section 5.4 and Volume 1, Module 6, Section 1.4 of the TNI Standard as well as the requirements in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. The laboratory shall list, in its quality manual, and have on hand the SOPs for each analytical method used. This listing should include the name of the method and a complete reference as to the source.

C. Applicable SOPs shall be available in the laboratory at the analyst's work station. All SOPs shall meet the requirements in Volume 1, Module 2, Section 4.2.8.5 of the TNI Standard.

D. The laboratory shall validate reference methods via the procedures specified in Volume 1, Module 6, Section 1.5 of the TNI Standard and the requirements in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

E. Prior to the acceptance and institution of any method, a satisfactory initial Demonstration of Capability (DOC) shall be performed by the laboratory pursuant to the requirements in Volume 1, Module 6, Section 1.6 of the TNI Standard and Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water. Documentation shall be maintained by the laboratory for the initial and any ongoing DOC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3229 (December 2012).

§8075. Quality Assurance for Radiochemical Testing

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses, shall have established quality control procedures pursuant to Volume 1, Module 2, Sections 5.9.1 and 5.9.2 of the TNI Standard and Volume 1, Module 6 of the TNI Standard as well as the quality control

procedures in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. The laboratory shall implement the essential quality controls procedures in Volume 1, Module 2, Section 5.9.3 and Volume 1, Module 6, Section 1.7.2 of the TNI Standard as well as implementing the essential quality control procedures in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

C. The laboratory shall perform all quality control procedures at the frequency required in the approved reference method(s) specified in 40 CFR Parts 141 and 143 in the analysis of drinking water parameters. In addition, the laboratory shall meet the acceptance criteria specified in the applicable, approved reference method(s) specified in 40 CFR Parts 141 and 143 in the analysis of drinking water parameters.

D. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses, shall maintain control charts for each instrument and method used by the laboratory for compliance monitoring sample measurements. Instrument initial calibrations and all efficiency and instrument background checks shall be maintained in a permanent record. Control charts shall be maintained as specified in Chapter VI of the USEPA *Manual for the Certification of Laboratories Analyzing Drinking Water*. Until sufficient data are available from the laboratory, usually a minimum of 20 to 30 test results on a specific analysis, the laboratory shall use the control limits (if specified) in the method. When sufficient data becomes available, the laboratory shall develop control charts from the mean percent recovery (\bar{x}) and the standard deviation (S) of the percent recovery for the Quality Control (QC) checks specified in the above Subsections of this Section (also, see Chapter VI of the *Handbook for Analytical QC in Water and Wastewater Laboratories*, EPA-600/4-79-019 or *Standard Methods for the Examination of Water and Wastewater*, 20th Edition, Part 1020B, or similar laboratory analytical QC reference texts for further information). These data are used to establish upper and lower control limits as follows:

1. upper control limit = $\bar{x} + 3S$
(upper warning limit, use + 2S instead of + 3S);
2. lower control limit = $\bar{x} - 3S$
(lower warning limit, use - 2S instead of - 3S).

E. After every 20 new recovery measurements, new control limits should be calculated using the most recent 20-30 data points. These calculated control limits shall not exceed those established in the method. If any of these calculated control limits are tighter than the control limits specified within the method, the laboratory shall use the tighter criteria.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3229 (December 2012).

§8077. Records and Data Reporting

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses, shall meet the requirements for reporting results pursuant to Volume 1, Module 2, Section 5.10, of the TNI Standard and Volume 1,

Module 6, Section 1.7 of the TNI Standard as well as meeting the requirements for reporting results in Chapter VI of the USEPA Manual for the Certification of Laboratories Analyzing Drinking Water.

B. Compliance monitoring data shall be made legally defensible by keeping thorough and accurate records. The quality manual and/or SOPs shall describe the policies and procedures used by the facility for record retention and storage. If samples are expected to become part of a legal action, chain of custody procedures shall be used.

C. Maintenance of Records. Public water systems are required to maintain records of radiological/radiochemical analyses of compliance samples for 10 years (40 CFR 141.33). The laboratory should maintain easily accessible records for 10 years. The client water system should be notified before disposing of records so they may request copies if needed. This includes all raw data, calculations, and quality control data. These data files may be either hard copy, microfiche or electronic. Electronic data shall always be backed up by protected tape or disk or hard copy. If the laboratory changes its computer hardware or software, it should make provisions for transferring old data to the new system so that it remains retrievable within the time frames specified above.

D. Sampling Records. Data should be recorded in ink with any changes lined through such that the original entry is visible. Changes shall be initialed and dated. The following information should be readily available in a summary or other record(s):

1. date of sampling, location (including name of utility and PWS ID #, if the water system is a PWS), sampling site within the water system, time of sampling, name, organization and phone number of the sampler, and analyses required;

2. identification of the sample as to whether it is a routine distribution system sample, check sample, raw or finished water sample, repeat or confirmation sample or other special purpose sample;

3. date of receipt of the sample by the laboratory;

4. sample volume/weight, container type, preservation and holding time and condition on receipt;

5. pH (from plant records) and disinfectant residual at time of sampling (from on-site analysis by sampler at the time of sampling);

6. disinfectant residual by laboratory immediately prior to analysis; and

7. transportation and delivery of the sample (person/carrier, conditions).

E. Analytical Records. Data shall be recorded in ink with any changes lined through such that the original entry is visible. Changes shall be initialed and dated. The following information shall be readily available:

1. laboratory and persons responsible for performing the analysis;

2. analytical techniques/methods used;

3. date and time of analysis;

4. results of sample and quality control analyses; and

5. calibration and standards information.

F. Personnel Records. Résumés and training records shall be maintained for all personnel.

Documentation of the initial demonstration of capability for analysts/technicians shall be kept on file as well as the results of proficiency testing.

G. Reconstruction of Data. Adequate information shall be available to allow the assessor to reconstruct the final results for compliance samples and performance evaluation samples.

H. Computer programs. Computer programs shall be verified initially and periodically by manual calculations and the calculations shall be available for inspection. Access to computer programs and electronic data shall be limited to appropriate personnel.

I. The original or true duplicate of the results of the test or analysis shall be sent promptly to the person who requested such tests or analysis. In addition the results of compliance monitoring samples are to be sent to:

Louisiana Department of Health and Hospitals
Office of Public Health
Engineering Services Section – M/S #3
P O Box 4489
Baton Rouge, Louisiana 70821-4489

1. The results data shall be signed by the technical manager or a designee whose designation is in writing and whose name has been submitted to the department. Results submitted to the department shall be submitted electronically and in writing in the format specified by the Engineering Services Section of the department. Any sample result that exceeds the maximum contaminant level (MCL) or may cause a treatment technique requirement violation for any regulated contaminant listed in the federal Safe Drinking Water Act (42 USC 300f et seq.) and its implementing regulations (40 CFR Parts 141 and 143); an accredited laboratory shall report the result to the supplier of water and the department as soon as possible but no later than the end of the next business day after the result was determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3229 (December 2012).

§8079. General Laboratory Practices

A. Chemicals/Reagents. Chemicals and reagents used must meet the specifications in the referenced method. If not specified therein, then analytical reagent (AR) grade or American Chemical Society (ACS) grade chemicals or better shall be used for analyses in accredited laboratories.

B. Reagent Water. The laboratory shall have a source of reagent water meeting the requirements of being an American Society of Testing Materials (ASTM) Type 1, 2, or 3 reagent water, having a minimum resistivity of 10 megohms/cm (conductivity less than 0.1 microhms/cm) at 25°C. It shall be monitored daily by measuring the reagent water's conductivity or resistivity and documented. Radioactive components have been known to break through reagent water manufacturing units before an increase in resistivity is noted. To monitor the background radioactivity of the reagent water, it is to be screened for radioactivity each time the treatment unit is serviced, and periodically thereafter depending on the volume of reagent water use at the laboratory between servicing units. C. Glassware Preparation. Specific requirements in the methods for the

cleaning of glassware must be followed. The purpose of these requirements are to minimize the possibility that glassware can contaminate samples, and should include acid rinsing. Acid rinsing not only mobilizes any metals remaining adhering to their surfaces, but also hydrates the outer silica layer on the glassware which inhibits contamination with radioactive materials. If there are no specifications for cleaning glassware in the method, then the glassware should first be washed in detergent solution, then thoroughly rinsed in tap water followed by a second rinse in a dilute acid solution, and finally rinsed with reagent water and dried. D. Distilled and deionized water shall have at a minimum, resistivity values between 0.5 to 2.0 megohms-cm (2.0 to 0.5 micromhos/cm.) at 25° C. Preferably, distilled and deionized water should have resistivity values greater than 1.0 megohms-cm (less than 1.0 micromhos/cm) at 25°C. When purchasing distilled or deionized water, laboratories should request a list of quality specifications for the water purchased. Containers of distilled or deionized water should be capped when not in use and should be capped immediately after each use.

E. All solutions shall be properly labeled with identification of the compound, concentration, solvent, date, and analyst who prepared the solution.

F. All chemicals, solutions, and standards, shall be dated upon receipt by the laboratory; and the date opened by the laboratory shall also be noted.

G. Compositing of Samples. If deemed acceptable by the department, samples may be composited by the utility or the laboratory, provided that all the sample aliquots are properly preserved at the time of collection. Since the required compliance protocol monitoring measurements is "total activity" (i.e., the composited sample is required to represent the maximum potential exposure from drinking water), samples shall not to be filtered before preservation. Samples must be drawn on a quarterly basis and where compositing is not done by the laboratory, there shall be documentation submitted with the composited sample detailing on what particular day(s) each aliquot was obtained, its volume, and when it was preserved. A sample of the preservative itself shall accompany the composited sample to the laboratory to determine the contribution of radioactivity, if any, from the addition of the preservative to the sample. Analysis of the composited sample shall be completed within 1 year after the first sample is collected or within normal holding times if the compositing period is less than 90 days. Wherever possible, the laboratory should be responsible for managing the compositing of samples.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3230 (December 2012).

§8081. Management System General Requirements

A. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall establish, implement and maintain a management system as outlined in Volume 1, Module 2, Section 4.2 of the TNI Standard. The laboratory's management system policies related to quality, including a quality policy statement, shall be defined in a quality manual (however named). The quality manual shall include all the requirements in Volume 1, Module 2, Section

4.2 of the TNI Standard. The quality manual shall be made available to all laboratory personnel.

B. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall establish and maintain a documented data integrity system. There are four elements within a data integrity system. These are:

1. data integrity training;
2. signed data integrity documentation for all laboratory employees;
3. in-depth, periodic monitoring of data integrity; and,
4. data integrity procedure documentation.

C. The procedures of the data integrity system required under Subsection B of this Section shall be signed by top management. The requirements for data integrity investigation are listed in Volume 1, Module 2, Section 4.16 of the TNI Standard. The requirements for data integrity training and documentation are listed in Volume 1, Module 2, Section 5.2.7 of the TNI Standard.

D. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall maintain SOPs that accurately reflect all phases of current laboratory activities, such as assessing data integrity, corrective actions, handling customer complaints and all analytical methods. All of the requirements for the laboratory's SOPs are outlined in Section 4.2.8.5 of Volume 1, Module 2 of the TNI Standard. All quality control data and records required by this Section shall be retained by the laboratory for a minimum of 10 years and shall be made available for inspection by the department. Such retained data shall include, but shall not be limited to, the results of and raw data generated by proficiency test analyses.

E. Document Control. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall establish and maintain procedures to control all laboratory documents as specified in Volume 1, Module 2, Section 4.3, of the TNI Standard.

F. Review of Requests, Tenders and Contracts. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for review of requests, tenders and contracts pursuant to Volume 1, Module 2, Section 4.4 of the TNI Standard.

G. Subcontracting of Environmental Testing. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for subcontracting environmental testing pursuant to Volume 1, Module 2, Section 4.5 of the TNI Standard.

H. Purchasing Services and Supplies. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for purchasing services and supplies pursuant to Volume 1, Module 2, Section 4.6 of the TNI Standard.

I. Service to the Client and Complaints. Laboratories which have received accreditation or are seeking accreditation to perform any of the required

radiological/radiochemical analyses shall meet the requirements for service to the clients and complaint policy and processes pursuant to Volume 1, Module 2, Sections 4.7 and 4.8 of the TNI Standard.

J. Control of Nonconforming Environmental Testing Work. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for the control of nonconforming environmental testing pursuant to Volume 1, Module 2, Sections 4.9 of the TNI Standard.

K. Laboratory Improvement, Corrective Action and Preventive Action. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for improving the laboratory, corrective and preventive actions pursuant to Volume 1, Module 2, Sections 4.10, 4.11, and 4.12 of the TNI Standard.

L. Internal Audits and Management Reviews. Laboratories which have received accreditation or are seeking accreditation to perform any of the required radiological/radiochemical analyses shall meet the requirements for establishing and conducting internal audits and management reviews of laboratory activities pursuant to Volume 1, Module 2, Sections 4.14 and 4.15 of the TNI Standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:3231 (December 2012).

Title 51

PUBLIC HEALTH—SANITARY CODE

Part XII. Water Supplies

Chapter 1. General

§101. Definitions [formerly paragraph 12:001]

A. Unless otherwise specifically provided herein, the following words and terms used in this Part of the Sanitary Code, and all other Parts which are adopted or may be adopted, are defined for the purposes thereof as follows:

Category—a group of physical, chemical, or radiological parameters associated with drinking water for which laboratory certification is offered under the *laboratory certification program*.

Certified Chemical Laboratory/Drinking Water—a laboratory meeting the requirements contained within the *laboratory certification regulations* and which has been officially certified by the state health officer to analyze and report compliance monitoring sample results for one or more physical, chemical, or radiological parameters associated with drinking water. Certification may be obtained on a parameter by parameter basis only.

Laboratory Certification Regulations—the regulations which govern laboratory certification and standards of performance for laboratories conducting drinking water analyses for public water systems and other potable water supply systems in the state of Louisiana. Such regulations are housed in LAC 48:V.Chapter 80.

Laboratory Certification Program—a program carried out by the Department of Health and Hospitals, Office of

Public Health to certify commercially and publicly owned laboratories to perform compliance monitoring analyses for public water systems and other potable water supply systems in accordance with the National Primary Drinking Water Regulations and this Part. The cost of the program will be recouped from the laboratories requesting certification.

AUTHORITY NOTE: The first source of authority for promulgation of the Sanitary Code is in R.S. 36:258(B), with more particular provisions found in Chapters 1 and 4 of Title 40 of the Louisiana Revised Statutes. This Part is promulgated in accordance with R.S. 36:254(B)(7), R.S. 40:4(A)(8), R.S. 40:5(2)(3)(5)(6)(17)(20), and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1318 (June 2002), amended LR 28:2513 (December 2002), LR 30:1194 (June 2004), LR 30:2326 (October 2004), LR 35:484 (March 2009), LR 35:2140 (July 2009), LR 38:3232 (December 2012).

Chapter 3. Water Quality Standards

§301. Mandatory Water Quality Standards for Public Water Systems

A. - B. ...

C. A laboratory certification program has been established to certify commercially and publicly owned laboratories to perform chemistry compliance monitoring analyses for public water systems and other potable water supply systems. Laboratories seeking certification in any chemistry category for which certification is offered must adhere to the rules and regulations governing laboratory certifications as contained in the Department of Health and Hospitals, Office of Public Health's *laboratory certification regulations* (see LAC 48:V.Chapter 80). An annual certification fee will be assessed laboratories seeking certification from the Department of Health and Hospitals, Office of Public Health.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254(B)(7), R.S. 40:4(A)(8) and R.S. 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1321 (June 2002), amended LR 30:2327 (October 2004), LR 38:3232 (December 2012).

Bruce D. Greenstein
Secretary

1212#027

RULE

Department of Health and Hospitals Office of Public Health

Sanitary Code—Plumbing (LAC 51:XIV.103; XVII.107; and XXI.105)

Editor's Note: These Sections are being repromulgated to correct typographical errors. The original Rule can be viewed in its entirety in the November 20, 2012 edition of the *Louisiana Register* on pages 2790-2927.

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Department of Health and Hospitals, Office of Public Health (DHH-OPH), amends Parts I, VI, VII, X, XII, XIV (Plumbing), XVI, XVII, XVIII, XXI, XXIII, and XXIV of the Louisiana state Sanitary Code

[LAC 51 (*Public Health—Sanitary Code*)]. These amendments update the current state plumbing code which was last promulgated on July 20, 2000 and had an effective date of October 20, 2000.

In that Part XIV (Plumbing) is referenced in various other Parts of LAC 51 and the whole of these Parts constitutes the entirety of the Louisiana state Sanitary Code, certain Sections of Parts I, VI, VII, X, XII, XVI, XVII, XVIII, XXI, XXIII, and XXIV of LAC 51 are also amended so that all of the Parts of the entire Louisiana state Sanitary Code comport with one another in respect to such plumbing references.

This Rule additionally implements House Concurrent Resolution No. 4 of the 2008 Regular Session regarding privacy wall or partition requirements for male urinals in public toilet rooms as well as implementing Act No. 362 of the 2011 Regular Session which effectively lowers the lead content of the wetted surfaces of certain pipe, plumbing fittings and fixtures which convey potable water. The specific provisions of Parts XII and XIV of the rule which implement Act No. 362 of the 2011 Regular Session shall become effective on January 1, 2013. Such specific provisions are identified with “effective date notes” contained within the text of the Rule.

Other than those specific portions of Parts XII and XIV of the Rule to implement Act No. 362 of the 2011 Regular Session (which will become effective on January 1, 2013), the remainder of this rule shall become effective on February 20, 2013.

For the reasons set forth above, Parts I, VI, VII, X, XII, XIV (Plumbing), XVI, XVII, XVIII, XXI, XXIII, and XXIV of the Louisiana state Sanitary Code (LAC 51) are amended as follows.

Title 51

PUBLIC HEALTH—SANITARY CODE

Part X. Game Bird and Small Animal Slaughter and Processing

Chapter 1. Required Permits

§115. Required Sanitary Facilities [formerly paragraph 10:024]

A. ...

B. [formerly paragraph 10:025] Toilet facilities shall be provided and installed in accordance with LAC 51:XIV.411. Facilities shall be conveniently located and shall be accessible to employees at all times.

C. [formerly paragraph 10:026] Hand washing lavatories shall be provided in food processing and other food handling areas and shall be installed in accordance with LAC 51:XIV.411. Hand washing lavatories shall be conveniently located and accessible to employees at all times. Hand washing lavatories shall also be located in or immediately adjacent to toilet rooms or vestibules. Sinks used for food preparation or for washing and sanitizing of equipment and utensils shall not be used for hand washing. Each hand-washing lavatory shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. An ample supply of hand cleansing soap or detergent shall be available at each lavatory. An ample supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each hand-washing lavatory. The use of common towels is prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the hand washing facilities.

D. - D.1. ...

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4.A(1)(a), (6), (8) and 40:5(5)(9). Also see R.S. 40:627.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1313 (June 2002), amended LR 38:2793 (November 2012), repromulgated LR 38:3233 (December 2012).

Part XIV. Plumbing

Chapter 1. Administration

Subchapter A. General

§103. Availability

[formerly paragraph 14:002]

A. Information concerning purchasing copies of this Part (LAC 51:XIV) may be obtained by contacting the Office of the State Register, P.O. Box 94095, Baton Rouge, LA 70804-9095, telephone (225) 342-5015 or fax (225) 342-0284. This Part is available to be viewed electronically on the Office of the State Register’s website at: <http://www.doa.louisiana.gov/osr/osr.htm>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(7) and R.S. 40:5(2)(3)(7)(9)(16)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1383 (June 2002), amended LR 38:2795 (November 2012), repromulgated LR 38:3233 (December 2012).

Part XVII. Public Buildings, Schools, and Other Institutions

§107. Drinking Water Provisions

[formerly paragraph 17:001]

A. ...

B. Drinking fountains shall be provided in public buildings and institutions in the quantities shown in Table 411 of the Louisiana State Plumbing Code (LSPC). Said drinking fountains shall be constructed and installed in accordance with the requirements of §415.C of the LSPC.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(10) and R.S. 40:5(2)(3)(4)(5)(16)(17)(19)(21).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1390 (June 2002), amended LR 37:2166 (July 2011), amended LR 38:2925 (November 2012), repromulgated LR 38:3233 (December 2012).

Part XXI. Day Care Centers and Residential Facilities

Chapter 1. General Requirements

§105. General

[formerly paragraph 21:002-1]

A. - C.5. ...

a. In child day care facilities, toilets (water closets) and lavatories shall be provided in accordance with Table 411 of Part XIV. Fixtures shall be of size appropriate for the age of children being cared for (toilets 11 inches maximum height and lavatories 22 inches maximum height), or if standard size fixtures are used, safe, cleanable step aids shall be provided.

b. Handwashing and bathing facilities shall be provided with hot and cold running water. Where such water will be in direct contact with children, the temperature shall not exceed 120°F utilizing an approved temperature control device(s) as required under LAC 51:XIV.623.

c. Residential facilities housing six residents or less may provide plumbing fixtures as a single family residence. All others must provide plumbing as required for dormitories in accordance with Table 411 of Part XIV.

D. - J.2. ...

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(10) and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1399 (June 2002), amended LR 37:2728 (September 2011), amended LR 38:2926 (November 2012), repromulgated LR 38:3233 (December 2012).

Bruce D. Greenstein
Secretary

1212#063

RULE

**Department of Public Safety and Corrections
Gaming Control Board**

Electronic Submission of Documents
(LAC 42:III.111, 401, 402, and 403; and
XI.2403, 2405, 2407, 2409, 2417 and 2424)

Editor's Note: This Section is being repromulgated to correct a citation error. The original Rule can be viewed in its entirety in the November 20, 2012 edition of the *Louisiana Register* on pages 2934-2936.

The Louisiana Gaming Control Board hereby gives notice that pursuant to R.S. 27:15 and R.S. 27:24 it has adopted LAC 42:III.401, 402, 403 and amends LAC 42:III.111 and 42:XI.2403, 2405, 2407, 2409, 2417 and 2424.

Title 42

LOUISIANA GAMING

Part XI. Video Poker

Chapter 24. Video Draw Poker

§2407. Operation of Video Draw Poker Devices

A. - B.2....

3. All video draw poker employee applications must be submitted on forms prescribed by the Louisiana Gaming Control Board.

a. All applications shall be submitted to the division by the United States Postal Service certified or registered mail, return receipt requested, commercial interstate carrier, electronic submission in accordance with Chapter 4 of Part III of this Title, hand delivery or other board approved method of delivery.

b. All applications shall contain an email address, a telephone number and permanent address for receipt of correspondence and service of documents by the division.

3.c. - 4. ...

5. All video draw poker employees or applicants shall notify the division in an electronic document or in writing of all changes of address, phone numbers, and other required information in the application within 10 calendar days of the effective date of the change.

B.6. - D.16. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 30:267 (February 2004), repromulgated LR 30:441 (March 2004), amended LR 33:857 (May 2007), LR 36:2046 (September 2010),

LR 36:2874 (December 2010), LR 38:2936 (November 2012), repromulgated LR 38:3234 (December 2012).

Dale A. Hall
Chairman

1212#072

RULE

**Department of Public Safety and Corrections
Office of Motor Vehicles**

Driver Education
(LAC 55:III.143, 149, 154, 155, 157, and 159)

Under the authority of R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Motor Vehicles, hereby amends Sections 143, 149, 154, 155, 157 and adopts Section 159 under Chapter 1 to implement Act 275 of the 2012 Regular Session which increased the age that first time driver's license applicants have to take the 30-hour classroom course and an 8-hour behind-the-wheel course to be licensed from 17 to 18 years of age. Furthermore, Act 275 limited the 8-hour behind-the-wheel instruction to four hours per day per student and added a requirement that those over the age of 18 must have eight hours of behind-the-wheel training in addition to the existing 6-hour classroom instruction. Furthermore, the Office of Motor Vehicles is adding a military exemption to allow for active duty military status persons to submit proof of successful completion of military driver training in lieu of the completion certificate currently required for third party testers. The Office of Motor Vehicles amends these rules to provide for an affidavit from secondary/alternative schools to submit in substitution for taking an additional criminal background check when they have already taken one as a result of their employment at the school when applying for a driving school instructor license for a secondary/alternative school. In addition, the Office of Motor Vehicles amends articles to provide further clarification to the third party tester requirement as mandated by Act 307 of the 2011 Regular Session.

Title 55

PUBLIC SAFETY

Part III. Motor Vehicles

Chapter 1. Driver's License

Subchapter A. General Requirements

§143. Commercial Driving Schools—36 Hours

A. As used in this Chapter, the following terms have the meanings described below.

30 Hour Classroom Course—a program which shall consist of a course of not less than 30 hours of classroom instruction required of first-time driver's license applicants' age 15 through 17 excluding lunch breaks. The classroom course may include a web based course equivalent to 30 hours of classroom instruction, which has been pre-approved by DPS. This course shall be conducted utilizing the curriculum contained in this Subchapter.

Six Hour Pre-licensing Course—a program which shall consist of six hours of classroom instruction required of first-time driver's license applicants eighteen years of age

and above, if a 30-hour classroom course and 8-hour behind-the-wheel course is not completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, 22:286 (April 1996), amended LR 38:1974 (August 2012), LR 38:3234 (December 2012).

§149. Application Process and Fees for Secondary/Alternative Schools and Instructors

A. - C.2. ...

3. Each applicant must successfully pass a fingerprint background check. The background check will be conducted in a manner set forth by DPS. The applicant may obtain an affidavit from the school where currently employed which provides that the applicant underwent a criminal background check pursuant to R.S. 17:15 and R.S. 15:587 and that according to the background check, the applicant has not been convicted of, or pled guilty or nolo contendere to, any of the criminal offenses set forth in R.S. 15:587.1(C);

C.4. - F.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) AND R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 22:286 (April 1996), amended LR 38:1979 (August 2012), LR 38:3235 (December 2012).

§154. Driver Education Curriculum

A. - C.10. ...

D. Eight-Hour Behind-the-Wheel Curriculum. The behind-the-wheel portion of the curriculum will be limited to no more than four hours behind the wheel for each student daily. There shall be no more than two students in the vehicle with the instructor. Upon completion of the behind-the-wheel portion a skills assessment shall be performed by the instructor. A road skills test shall be administered and the student shall attain a score of 70 percent or more to receive a certificate of successful completion.

1. - 5. ...

E. Six-Hour Pre-Licensing Course

1. - 3. ...

4. Eight-Hour Behind-the-Wheel Curriculum. The eight hour behind-the-wheel curriculum shall be done in the same manner and under the same conditions as provided in §154.D.

5. The driver education completion certificate shall be completed when a student has attained a score of 80 percent or better on the written knowledge test and a score of 70 percent or better on the eight-hour behind-the-wheel portion of the course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:1985 (August 2012), amended LR 38:3235 (December 2012).

§155. Third Party Tester/Examiner Requirements

A. Act 307 of the 2011 Legislative Session amended R.S. 32:408 to require all driver education providers to become certified as third party testers by June 30, 2012. Driver Education providers must become certified as third party testers but may opt not to perform as third party testers.

B. - C.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:1989 (August 2012), amended LR 38:3235 (December 2012).

§157. General Regulations for Third Party Testers

A. - G.2. ...

H. Although driving schools are required to be a third party tester, driving schools are not required to administer the road skills test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1), R.S. 32:408.1, and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:1990 (August 2012), amended LR 38:3235 (December 2010).

§159. Military Exemption

A. Any active duty military person who has not been previously licensed in this state or another state, upon proving his active duty status, may submit proof of successful completion of military driver training, which is essentially equivalent to the training required in this part, in lieu of providing the completion certificate required in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1), R.S. 32:408.1, and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:3235 (December 2012).

Jill P. Boudreaux
Undersecretary

1212#024

RULE

**Department of Public Safety and Corrections
Office of the State Fire Marshal**

Manufactured Housing (LAC 55:V.Chapters 5 and 7)

Under the authority of R.S. 51:911.26(E) and R.S. 51:911.32(A)(2), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of State Fire Marshal amends the manufactured housing commission regulations, LAC 55:V.Chapters 5 and 7. The rule makes technical changes to improve readability, eliminate duplicate items, and to codify current practice by the department regarding utilization of its statutory authority to regulate the manufactured housing industry. In addition, the rule repeals the issuance of temporary installer's licenses and civil penalties that are no longer enforced. It also repeals the rules regarding remanufactured housing as the commission no longer performs this function.

Title 55

PUBLIC SAFETY

Part V. Fire Protection

Chapter 5. Manufactured Housing (Installation)

Subchapter A. General Requirements

§501. Definitions

A. In the regulations which follow, unless contract otherwise requires.

Alteration—the replacement, addition, modification or removal of any equipment or installation after sale by a

manufacturer to a retailer or distributor but prior to sale by a retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat producing, or electrical system. It includes any modification made in the home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring connection to an electrical receptacle, where the replacement item is of the same configuration and ratings as the one being replaced. It also does not include an addition of an appliance requiring plug-in to an electrical receptacle, which appliance was not provided with the home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

* * *

Defect—a failure to comply with an applicable federal manufactured housing safety and construction standard that renders the home or any part or component thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected manufactured home. See related definitions of *Imminent Safety Hazard*, *Noncompliance*, and *Serious Defect*.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:17 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1693 (December 1997), amended LR 38:3235 (December 2012).

§503. Retailer Requirements

A. A retail location of new manufactured homes shall have a sign, a listed land line telephone, a public office, a minimum inventory of eight homes, and a product line. The office shall be staffed with at least one employee during all times that the office is opened for business.

B. A retail location of used manufactured homes shall have a sign, a listed land line telephone and a public office. The office shall be staffed with at least one employee during all times that the office is opened for business.

C. Retailers of used manufactured homes are any person engaged in the sale, leasing, or distribution of mobile homes or manufactured homes primarily to a person who in good faith purchases or leases mobile homes or manufactured homes for purposes other than resale.

D. The sign required by this section shall contain the full name of the retailer as appears on the current license issued by the Commission. The sign shall be visible to the public as they travel on the street or highway on which the retailer is located. No part of the sign shall be concealed or obstructed from view.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 38:3236 (December 2012).

§507. Handling of Consumer Complaints

A. All complaints concerning units constructed in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974 shall be handled in compliance with Subpart I of the federal regulations established pursuant to the Act.

1. Upon receipt of a consumer complaint or other information indicating the possible existence of a failure to conform or imminent safety hazard, the state fire marshal will review the complaint or information to determine where the home was manufactured and if a problem exists. All complaints shall be referred to the manufacturer or retailer if a problem is indicated. When there is information to indicate that homes with the same failure to conform, or imminent safety hazard may have been manufactured in more than one state, the complaint will simultaneously be forwarded to HUD and the home manufacturer.

2. - 6. ...

7. The manufacturer's plan for notification and correction, including contents of notice, time for implementation and completion of acts and reports, shall be made in accordance with the provisions of 24 CFR Section 3282.409 through 3282.413. When the manufactured home is in the hands of a distributor or retailers, it shall be handled in accordance with 24 CFR Section 3282.414.

8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:17 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1694 (December 1997), amended LR 38 3236 (December 2012).

§509. Notification and Correction Procedure

A. ...

B. Notification. The plan, including a copy of the notice as required by 24 CFR Section 3282.410, shall be submitted to the state fire marshal by the manufacturer and shall provide for notification by mail, to the first purchaser (not including any retailer or distributor of the affected manufacturer) of each manufactured home containing an imminent safety hazard, serious defect, defect or noncompliance and any subsequent purchaser to whom any warranty provided by the manufacturer or required by federal or state law has been transferred, to the extent feasible; by mail to any other person who is a registered owner of each manufactured home containing an imminent safety hazard, serious defect, defect or noncompliance and whose name has been returned to the manufacturer under the procedure of Record of Purchasers as provided for under 24 CFR Section 3282.410; by mail or other expeditious means to the retailers or distributors to whom such manufactured home was delivered. In the event the manufactured home has an imminent safety hazard or serious defect, the notification shall be forwarded by certified mail, if mailed.

C. - C.2. ...

3. The formal notification requirements which would result from any determination by the manufacturer under 24 CFR Section 3282.404 may be waived by the state fire marshal that would otherwise approve the plan upon receipt of satisfactory assurances from the manufacturer that:

a. the manufacturer has identified all possibly affected manufactured homes which have been sold to purchasers, retailers and distributors;

C.3.b. - C.3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:18 (January

1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1695 (December 1997), amended LR 38:3236 (December 2012).

Subchapter B. Manufactured Housing (Installation)

§521. Definitions

A. When used in these regulations, these terms shall have the following meanings.

Dealer—Repealed and Replace with *Retailer*.

* * *

Retailer—any person engaged in the sale, leasing, or distribution of mobile homes or manufactured housing primarily to a person who, in good faith, purchases or leases a mobile home or manufactured housing for purposes other than resale.

Salesman—any person employed by a retailer for purposes of selling manufactured housing to the public.

Transporter—an individual who transports the manufactured home or mobile home to the site of installation but does not perform the blocking and/or anchoring of the home. However, individuals who transport manufactured homes from the factory to the retailer's location are exempt from this definition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:695 (April 1998), amended LR 26:2009 (September 2000), LR 38:3237 (December 2012).

§523. General

A. - B. ...

C. An installer license shall be granted only to a person who bears a good reputation for honesty, trustworthiness, integrity, and competence to transact business in such a manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. If an applicant for a license is a partnership or a corporation, the qualifications of each member of the partnership or officer of the corporation may be considered by the commission in issuing or refusing to issue a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:696 (April 1998); amended LR 38:3237 (December 2012).

§525. License Exceptions

A. Notwithstanding the provisions of LAC 55:V.523, the following individuals are not required to have a license as provided therein:

1. when the individual installing the manufactured home is the owner thereof, or the manufactured home is owned by a member of the individual's immediate family, and the manufactured home is not intended for sale, exchange, lease, or rent;

2. an individual installing additional blocking for support;

3. an individual installing a manufactured home when the manufactured home is installed on a retailer's distributor's, or manufacturer's sales or storage lot or at a show and is not occupied or intended to be occupied. This exemption does not include those manufactured homes installed in manufactured homes parks or manufactured homes subdivisions;

4. an individual performing plumbing or electrical work when the individual doing the work is a licensed plumber or electrician;

5. an individual performing maintenance, repairs, or corrections to an installation for the purpose of customer service on behalf of manufacturers or retailers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:696 (April 1998), amended LR 38:3237 (December 2012).

§527. Manufactured Housing Installer's License

A. Effective May 1, 1998, a manufactured home may not be installed without a licensed manufactured housing installer supervising installation work being performed. The licensed manufactured housing installer is responsible for the reading, understanding, and following of the manufacturer's installation instructions and performance of nonlicensed workers engaged in the installation of the home.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:696 (April 1998), LR 38:3237 (December 2012).

§535. Monthly Report

A. An installer shall submit a monthly installation report to the Fire Marshal by the tenth day of the following month on forms provided by the fire marshal and provide all information requested thereon.

B. A report shall be filed every month, despite the fact that no homes were installed.

C. Reports shall be submitted on forms provided by the Office of the State Fire Marshal and provide all information requested thereon.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998), amended LR 26:2009 (September 2000), amended LR 38:3237 (December 2012).

§539. License Renewal

A. Licenses issued under LAC 55:V.Chapter 5 shall expire on December 31 of the year following issuance.

B. - D. ...

E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998), amended LR 38:3237 (December 2012).

§541. Issuance of the Temporary Installer's License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998), repealed LR 38:3237 (December 2012).

§543. License Suspension or Revocation; Imposition of Civil Penalties

A. The fire marshal may, after notice and hearing as required by R.S. 49:950 et seq., suspend or revoke an installer's license issued by this office, or impose a civil penalty as provided for by R.S. 40:1563.4, for violations of

applicable statutes, rules, regulations, adopted codes, or standards or lawful orders issued by the fire marshal.

B. The schedule of fines shall be as follows:

1. First offense of the following violations:
 - a. failure to timely renew license—\$125;
 - b. failure to timely file required report—\$100;

1.c. - 3. Repealed.

4. First offense of the following violations:

a. failure to properly set up and install the manufactured home—\$500.

b. - g. Repealed.

C. The schedule of fines shall be as follows.

1. Performance of any installation services under "Uniform Standards Code for mobile homes and manufactured housing" by a non-licensed person excluding a homeowner—\$1,000.

2. Repealed.

3. Failure to install the permit sticker on the mobile home or manufactured home—\$100.

4. Repealed.

5. Unauthorized or improper transfer of permit sticker—\$1,000.

6. Soliciting or contracting for service from unlicensed installer by a retailer, homeowner, or other party—\$1,000.

7. - 9. Repealed.

10. Holding oneself or one's business out for hire to perform any installation service or otherwise offering to perform any such task by an unlicensed installer—\$1,000.

11. Failure to properly complete timely monthly installation report with information required—\$100.

12. The re-inspection report indicates that the required corrections were not made to home after the installer notified the Office of the State Fire Marshal that the corrective work was done—\$750.

13. Installing home into an improper wind zone—\$1,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998), amended LR 26:2009 (September 2000), amended LR 38:3237 (December 2012).

§547. Course curriculum Requirements for Education Provider Training

A. ...

B. The course curriculum for manufactured house installers shall, at a minimum, include the following area of training:

B.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:698 (April 1998), amended LR 38:3238 (December 2012).

§549. Requirements for Education Provider Instructors

A. Instructors shall be employees of the Office of State Fire Marshal who have been authorized to teach installation classes by the State Fire Marshal.

B. Refresher classes may be offered by the LA Manufactured Housing Association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:698 (April 1998), amended LR 38:3238 (December 2012).

§551. Inspections by the Office of the State Fire Marshal

A. Upon request for inspection by a Louisiana-licensed retailer, manufacturer, installer, or the homeowner, the Office of the State Fire Marshal shall inspect the home to determine compliance with the applicable sections of R.S. 51:912.21 through R.S. 912.28 regarding installation.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:698 (April 1998), amended LR 38:3238 (December 2012).

Chapter 7. Remanufactured Housing §701. General Provisions and Scope

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:32 (January 1990), repealed LR 38:3238 (December 2012).

§703. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:32 (January 1990), repealed LR 38:3238 (December 2012).

§705. Inspection Information Plate

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:32 (January 1990), repealed LR 38:3238 (December 2012).

§707. Label

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:32 (January 1990), repealed LR 38:3238 (December 2012).

§709. Exit Facilities; Exterior Doors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:32 (January 1990), repealed LR 38:3238 (December 2012).

§711. Fire Safety

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:32 (January 1990), repealed LR 38:3238 (December 2012).

§713. Windows, Egress

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:33 (January 1990), repealed LR 38:3238 (December 2012).

§715. Water Distribution and Drainage

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:33 (January 1990), repealed LR 38:3239 (December 2012).

§717. Gas Piping

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:33 (January 1990), repealed LR 38:3239 (December 2012).

§719. Electrical Systems

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:33 (January 1990), repealed LR 38:3239 (December 2012).

§721. Quality Assurance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:33 (January 1990), repealed LR 38:3239 (December 2012).

§723. Inspections

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:33 (January 1990), repealed LR 38:3239 (December 2012).

Jill P. Boudreaux
Undersecretary

1212#049

RULE

**Department of Revenue
Tax Administration Division**

Alternative Fuel Credit (LAC 61:I.1913)

Under the authority of R.S. 47:6035(G), as enacted by Act 469 of the 2009 Regular Legislative Session, R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Department of Revenue (LDR), after consultation with the Department of Natural Resources, adopts LAC 61:I.1913 to provide guidance with respect to the income tax credit authorized by R.S. 47:6035 for taxpayers who purchase qualified clean-burning motor vehicle fuel property. *Qualified clean-burning motor vehicle fuel property* is defined as equipment necessary for vehicles to operate on an alternative fuel, and specifically excludes property that is necessary for vehicles to operate on petroleum gasoline or petroleum diesel. *Alternative fuels* are defined to include natural gas, liquefied natural gas, liquefied petroleum gas,

biofuel, biodiesel, methanol, ethanol, and electricity. The credit is equal to 50 percent of the cost of qualified clean-burning motor vehicle fuel property.

This Rule discusses the documentation that is required to claim the credit and provides information necessary to determine that certain types of alternative fuel vehicles are not eligible under the provisions of the statute to be treated as "qualified clean-burning motor vehicle fuel property" because the vehicles have only a single fuel storage and delivery system and retain the capability to be propelled by petroleum gasoline or petroleum diesel.

Title 61

REVENUE AND TAXATION

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

**Chapter 19. Miscellaneous Tax Exemptions, Credits
and Deductions Returns**

§1913. Alternative Fuel Tax Credit

A. The tax credit provided by R.S. 47:6035 authorizes an incentive to individuals or corporations to invest in qualified clean-burning motor vehicle fuel property. The tax credit is limited to a portion of the purchase price of qualified clean-burning motor vehicle fuel property. The statute specifically provides that "qualified clean-burning motor vehicle fuel property" does not include any equipment necessary for the operation of a motor vehicle on petroleum gasoline or petroleum diesel. For this reason, the credit provided by R.S. 47:6035 is not allowed for acquisitions of motor vehicles capable of being propelled by an alternative fuel, but that include only a single fuel storage and delivery system and that retain the capability to be propelled by petroleum gasoline or petroleum diesel.

B. The Alternative Fuel Tax Credit is available for:

1. a portion of the cost of the equipment and installation purchased to modify a vehicle originally propelled by petroleum gasoline or petroleum diesel to a vehicle capable of being propelled by an alternative fuel. If the modified vehicle retains the capability of being propelled by petroleum gasoline or petroleum diesel, the modified vehicle must have a separate fuel storage and delivery system for the alternative fuel that is capable of using only the alternative fuel;

2. a portion of the cost of a new vehicle that is capable of being propelled by an alternative fuel. If the vehicle has the capability of being propelled by petroleum gasoline or petroleum diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel that is capable of using only the alternative fuel;

3. a portion of the cost of property, excluding the installation of the property, that is directly related to the delivery of an alternative fuel into the fuel tanks of motor vehicles propelled by an alternative fuel.

C. As used in this Section, the following words and phrases shall have the meanings ascribed to them in this Subsection, unless the context clearly indicates otherwise.

1. *Alternative Fuel*—fuel which results in emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates, or any combination of these which are comparably lower than emissions from petroleum gasoline or petroleum diesel and which meets or exceeds federal clean air standards, including but not limited to compressed natural gas, liquefied natural gas, liquefied

petroleum gas, biofuel, biodiesel, methanol, ethanol, and electricity.

2. *Cost of Qualified Clean-burning Motor Vehicle Fuel Property* shall mean any of the following:

a. a portion of the retail cost paid by the owner of a motor vehicle for the purchase and installation by a technician of qualified clean-burning motor vehicle fuel property certified by the United States Environmental Protection Agency to modify a motor vehicle which is propelled by petroleum gasoline or petroleum diesel so that the motor vehicle can thereafter be propelled by an alternative fuel, provided the motor vehicle is registered in this state, and further provided that if the modified vehicle retains the capability of being propelled by petroleum gasoline or petroleum diesel, the modified vehicle must have a separate fuel storage and delivery system for the alternative fuel that is capable of using only the alternative fuel;

b. a portion of the retail cost to the owner of a new motor vehicle purchased at retail, that is originally equipped to be propelled by an alternative fuel, for the cost of that portion of the motor vehicle which is attributable to the storage of the alternative fuel, the delivery of the alternative fuel to the engine of the motor vehicle, and the exhaust of gases from combustion of the alternative fuel, provided the motor vehicle is registered in this state, and further provided that, if the vehicle has the capability of being propelled by petroleum gasoline or petroleum diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel that is capable of using only the alternative fuel:

i. for vehicles that are capable of being propelled, either partially or wholly, by electricity, such as hybrid-electric vehicles, plug-in hybrid-electric vehicles, all-electric vehicles, and low-speed electric vehicles, the credit is limited to the qualified clean-burning motor vehicle fuel property that stores and delivers the electricity to the motor, but is not authorized on another separate fuel storage and delivery system within the vehicle that uses petroleum gasoline or petroleum diesel as a fuel source;

c. a portion of the retail cost of property, excluding the installation cost of property, which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel, including compression equipment, storage tanks, and dispensing units for alternative fuel at the point where the fuel is delivered, provided the property is installed and located in this state and no credit has been previously claimed by any taxpayer on the cost of such property;

d. the cost of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel shall not include costs associated with exploration and development activities necessary for severing natural resources from the soil or ground.

3. *Qualified Clean-burning Motor Vehicle Fuel Property* shall not include:

a. equipment necessary for operation of a motor vehicle on petroleum gasoline or petroleum diesel;

b. motor vehicle fuel property that is capable of also being used with non-alternative fuels, such as petroleum gasoline or petroleum diesel;

c. repairs to or replacements of *qualified clean-burning motor vehicle fuel property* after the initial installation of such property into a vehicle by the vehicle's manufacturer or qualified technician.

D. The credit is equal to 50 percent of the cost of qualified clean-burning motor vehicle fuel property, and shall be claimed on the personal or corporate income tax return for the period when the taxpayer incurred the cost for the qualified clean-burning motor vehicle fuel property.

E. In order to receive the credit provided by R.S. 47:6035, the taxpayer must provide certain information and documentation to the LDR that is specific to the type of property upon which the credit is claimed.

1. To claim the credit for the cost of the purchase and installation of vehicle equipment to modify a vehicle to be capable of being propelled by an alternative fuel, required information shall include, but not be limited to, the following:

a. the year, make, model, and vehicle identification number (VIN) of the vehicle;

b. a certification that the installed qualified clean-burning motor vehicle fuel property is certified by the United States Environmental Protection Agency, and that the technician performing the installation is certified by the manufacturer of the equipment to perform the installation;

c. an itemization of the costs associated with the modification, including copies of all invoices for the materials and installation services for the modification;

d. a certification that the modified vehicle is registered in this state; and

e. a certification that, if the modified vehicle retains the capability of being propelled by petroleum gasoline or petroleum diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel.

2.a For the purchase of a new vehicle that is capable of being propelled by an alternative fuel, required information shall include:

i. the year, make, model, vehicle identification number (VIN), and price paid for of the vehicle;

ii. a certification that the vehicle is registered in this state; and

iii. a certification that, if the vehicle is capable of being propelled also by petroleum gasoline or petroleum diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel.

b. Once a motor vehicle is determined to contain qualified clean-burning motor vehicle fuel property, to claim the credit, the taxpayer can elect to determine the exact cost of the qualified clean-burning motor vehicle fuel property pre-installed by the manufacturer in the purchased vehicle. The cost of the qualified clean-burning motor vehicle fuel property for a new motor vehicle originally equipped to be propelled by an alternative fuel shall be the cost of that portion of the motor vehicle which is attributable to any of the following:

i. the storage of the alternative fuel;

ii. the delivery of the alternative fuel to the engine of the motor vehicle; and

iii. the exhaust of gases from combustion of the alternative fuel.

c.i. If the taxpayer is unable to or elects not to determine the exact cost of the qualified clean-burning motor vehicle property pre-installed by the manufacturer in the purchased vehicle, the taxpayer can claim a credit that is the lesser of:

(a). 10 percent of the cost of the motor vehicle;

or

(b). \$3,000.

ii. When determining the cost of a vehicle for this purpose, the cost shall exclude rebates and discounts provided by the manufacturer or seller of the vehicle, state and local sales taxes, and vehicle registration, title, and processing fees.

3. For the purchase of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel, required documentation shall include:

a. a listing of each purchased item including compression equipment, storage tanks, and dispensing units for alternative fuel at the point where the fuel is delivered, together with copies of invoices for each item;

b. a certification that the property is installed and located in this state; and

c. a certification that no credit has been previously claimed by any taxpayer on the cost of such property.

F.1. The credit provided by this Section is applicable to purchase transactions, including purchases of new eligible vehicles, purchases of eligible equipment and installations for fuel system conversions, and purchases of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel, but is not applicable to transactions for the lease or rental of vehicles or other tangible personal property, or to purchases of used vehicles.

2. The refundable income tax credit is available to persons and corporations on whom income taxes are imposed by law. The credit is not available to entities or other persons on whom income taxes are not imposed.

3. The credit is available only to persons and corporations who are the titled owners of eligible motor vehicles, as indicated in the records of the Office of Motor Vehicles of the Department of Public Safety and Corrections.

4. The secretary of the Department of Revenue is authorized to withhold the issuance of a credit to any taxpayer who is required to pay an alternative road use tax for his vehicle that operates on certain alternative fuels, such as liquefied natural gas (LNG), compressed natural gas (CNG), or liquefied petroleum gas (LPG), who has not paid the alternative road tax for that vehicle and received a decal from the secretary evidencing that payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 1514, and 6035(G).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Administration Division, LR 38:3239 (December 2012).

Tim Barfield
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1212#060

RULE

Department of the Treasury Board of Trustees of the Louisiana School Employees' Retirement System

Internal Revenue Code Provisions (LAC 58:VII.Chapter 4)

In accordance with R.S. 49:950 et seq. of the Administrative Procedure Act, notice is hereby given that the Board of Trustees of the Louisiana School Employees' Retirement System has adopted Chapter 4 of Part VII, included in Title 58, Retirement, of the Louisiana Administrative Code. The rules have been adopted pursuant to newly enacted R.S. 11:1165.1 (Acts 2011, No. 354), the effective date of *enactment* of which will be the formal adoption of these rules. Newly enacted R.S. 11:1165.1 provides that rules and regulations be adopted which will assure that the Louisiana School Employees' Retirement System will remain a tax-qualified retirement plan under the United States Internal Revenue Code and the Regulations thereunder.

Title 58 RETIREMENT

Part VII. Louisiana School Employees Retirement System

Chapter 4. Internal Revenue Code Provisions

§401. Limitation on Benefits

A. The limitations of this Chapter shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein.

B. The annual benefit otherwise payable to a member under the plan at any time shall not exceed the maximum permissible benefit. If the benefit the member would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the maximum permissible benefit.

C. If the member is, or has ever been, a Member in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the employer or a predecessor employer, the sum of the member's annual benefits from all such plans may not exceed the maximum permissible benefit.

D. The application of the provisions of this chapter shall not cause the maximum permissible benefit for any member to be less than the member's accrued benefit under all the defined benefit plans of the employer or a predecessor employer as of the end of the last limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of

statutory provisions, regulations, and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of the end of the last limitation year beginning before July 1, 2007, as described in Section 1.415(a)-1(g)(4) of the Income Tax Regulations.

E. The limitations of this chapter shall be determined and applied taking into account the rules in Section G.

F. Definitions

Annual Benefit—a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this article. For a member who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this chapter as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Section 1.401(a)-20, Q and A 10(d), and with regard to Section 1.415(b)1(b)1(iii)(B) and (C) of the Income Tax Regulations.

a. No actuarial adjustment to the benefit shall be made for:

i. survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form;

ii. benefits that are not directly related to retirement benefits (such as a disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or

iii. the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this chapter, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this chapter applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form. The determination of the annual benefit shall take into account social security supplements described in Section 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the Income Tax Regulations, but shall disregard benefits attributable to employee contributions or rollover contributions. Effective for distributions in plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with §§401.F.1.b. or 401.F.1.c.

b. Benefit Forms Not Subject to Section 417(e)(3).

i. The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this Subparagraph F.1.b, if the form of the member's benefit is either:

(a) a non-decreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse); or

(b) an annuity that decreases during the life of the member merely because of:

(i) the death of the survivor annuitant (but only if the reduction is not below 50 percent of the benefit payable before the death of the survivor annuitant); or

(ii) the cessation or reduction of Social Security supplements or qualified disability payments [as defined in Section 401(a)(11)].

ii. Limitation years beginning before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(a) the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171 for adjusting benefits in the same form; and

(b) a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date.

iii. Limitation Years beginning on or after July 1, 2007. For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

(a) the annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and

(b) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date.

c. Benefit Forms Subject to Section 417(e)(3). The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this paragraph if the form of the member's benefit is other than a benefit form described in §401.F.1.b. In this case, the actuarially equivalent straight life annuity shall be determined as follows:

i. Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the member's form of benefit is in a plan year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

(a) the annual amount of the straight life annuity commencing at the same annuity starting date that has the

same actuarial present value as the member's form of computed using the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171 for adjusting benefits in the same form;

(b). the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in R.S. 11:1171; and

(c). the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in R.S. 11:1171 and the applicable mortality table defined, divided by 1.05.

ii. Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the member's form of benefit is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using whichever of the following produces the greater annual amount:

(a). the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171 for adjusting benefits in the same form; and

(b). a 5.5 percent interest rate assumption and the applicable mortality table. If the annuity starting date of the member's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this §401.F.1.c. shall not cause the amount payable under the member's form of benefit to be less than the benefit calculated under the Plan, taking into account the limitations of this chapter, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using whichever of the following produces the greatest annual amount:

(i). the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171 for adjusting benefits in the same form;

(ii). the applicable interest rate defined in R.S. 11:1171 and the applicable mortality table; and

(iii). the applicable interest rate defined in R.S. 11:1171 (as in effect on the last day of the last plan year beginning before January 1, 2004, under provisions of the plan then adopted and in effect) and the applicable mortality table.

Applicable Mortality Table—the applicable mortality table within the meaning of Section 417(e)(3)(B) of the Internal Revenue Code.

415 Safe-Harbor Compensation—

a. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includible in gross income

(including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Section 1.62-2(c) of the Income Tax Regulations), and excluding the following:

i. Employer contributions [other than elective contributions described in Section 402(e)(3), Section 408(k)(6), Section 408(p)(2)(A)(i), or Section 457(b)] to a plan of deferred compensation (including a simplified employee pension described in Section 408(k) or a simple retirement account described in Section 408(p), and whether or not qualified) to the extent such contributions are not includible in the member's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified);

ii. Amounts realized from the exercise of a nonstatutory stock option (that is, an option other than a statutory stock option as defined in Section 1.421-1(b) of the Income Tax Regulations), or when restricted stock (or property) held by the member either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

iii. Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;

iv. Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the member and are not salary reduction amounts that are described in Section 125);

v. Other items of remuneration that are similar to any of the items listed in Clauses i through iv above.

b. For any self-employed individual, compensation shall mean earned income.

c. Except as provided herein, for limitation years beginning after December 31, 1991, compensation for a limitation year is the compensation actually paid or made available during such limitation year.

d. For limitation years beginning on or after July 1, 2007, compensation for a limitation year shall also include compensation paid by the later of 2 1/2 months after an member's severance from employment with the employer maintaining the plan or the end of the limitation year that includes the date of the member's severance from employment with the employer maintaining the plan, if:

i. the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer;

ii. the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

iii. the payment is received by the member pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if

employment had continued, but only to the extent includible in gross income.

e. Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2 1/2 months after the date of severance from employment or the end of the limitation year that includes the date of severance from employment. Back pay, within the meaning of Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

f. For limitation years beginning after December 31, 1997, compensation paid or made available during such limitation year shall include amounts that would otherwise be included in compensation but for an election under Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

g. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4).

Defined Benefit Compensation Limitation—100 percent of a member's high three-year average compensation, payable in the form of a straight life annuity. In the case of a member who is rehired after a severance from employment, the defined benefit compensation limitation is the greater of 100 percent of the member's high three-year average compensation, as determined prior to the severance from employment or 100 percent of the member's high three-year average compensation, as determined after the severance from employment under §401.G.

Defined Benefit Dollar Limitation—effective for limitation years ending after December 31, 2001, the defined benefit dollar limitation is \$160,000, automatically adjusted under Section 415(d) of the Internal Revenue Code, effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

Employer—for purposes of this chapter, employer shall mean the employer that adopts this plan, and all members of a controlled group of corporations, as defined in Section 414(b) of the Internal Revenue Code, as modified by Section 415(h), all commonly controlled trades or businesses [as defined in Section 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Section 415(h)], or affiliated service groups [as defined in Section 414(m)] of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to Section 414(o) of the Internal Revenue Code.

Formerly Affiliated Plan of the Employer—a plan that, immediately prior to the cessation of affiliation, was actually maintained by the employer and, immediately after the cessation of affiliation is not actually maintained by the employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered the employer, such as the sale of a member controlled group of

corporations, as defined in Section 414(b) of the Internal Revenue Code, as modified by Section 415(h), to an unrelated corporation, or that causes a plan to not actually be maintained by the employer, such as transfer of plan sponsorship outside a controlled group.

High Three-Year Average Compensation—the average compensation for the three consecutive years of service (or, if the member has less than three consecutive years of service, the member's longest consecutive period of service, including fractions of years, but not less than one year) with the employer that produces the highest average. A year of service with the employer is the 12 consecutive month period defined in R.S. 11:1131. In the case of a member who is rehired by the employer after a severance from employment, the member's high three-year average compensation shall be calculated by excluding all years for which the member performs no services for and receives no compensation from the employer (the break period) and by treating the years immediately preceding and following the break period as consecutive. A member's compensation for a year of service shall not include compensation in excess of the limitation under Section 401(a)(17) of the Internal Revenue Code that is in effect for the calendar year in which such year of service begins.

Limitation Year—a fiscal year, from July 1 to June 31. All qualified plans maintained by the employer must use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.

Maximum Permissible Benefit—the lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided below).

a. Adjustment for Less than 10 Years of Participation or Service. If the member has less than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction:

i. the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the plan; and

ii. the denominator of which is 10. In the case of a Member who has less than 10 years of service with the employer, the defined benefit compensation limitation shall be multiplied by a fraction:

(a). the numerator of which is the number of years (or part thereof, but not less than one year) of Service with the employer; and

(b). the denominator of which is 10.

b. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement before Age 62 or after Age 65. Effective for benefits commencing in limitation years ending after December 31, 2001, the defined benefit dollar limitation shall be adjusted if the annuity starting date of the member's benefit is before age 62 or after age 65. If the annuity starting date is before age 62, the defined benefit dollar limitation shall be adjusted under Clause b.i of this Paragraph, as modified by Clause b.iii of this Paragraph. If the annuity starting date is after age 65, the defined benefit dollar limitation shall be adjusted under Clause b.ii of this Paragraph, as modified by Clause b.iii of this Paragraph.

i. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement before Age 62

(a). Limitation Years Beginning before July 1, 2007. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under §401.F.10.a. for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i). the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171; or

(ii). a 5 percent interest rate assumption and the applicable mortality table as defined in R.S. 11:1171.

(b). Limitation Years Beginning on or After July 1, 2007

(i). Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the annuity starting date as defined in R.S. 11:1171 (and expressing the member's age based on completed calendar months as of the annuity starting date).

(ii). Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the member's annuity starting date is the lesser of the limitation determined under Division b.i.(b).(i) of this Paragraph and the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this article.

ii. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement after Age 65

(a). Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the member's benefit is

after age 65 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i). the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171; or

(ii). a 5-percent interest rate assumption and the applicable mortality table as defined in R.S. 11:1171.

(b). Limitation Years Beginning Before July 1, 2007

(i). Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date as defined in R.S. 11:1171 (and expressing the member's age based on completed calendar months as of the annuity starting date).

(ii). Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the member's annuity starting date is the lesser of the limitation determined under §401.F.10.b.ii.(b).(i). and the defined benefit dollar limitation (adjusted under §401.F.10.a. for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this article. For this purpose, the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan

to a hypothetical member who is age 65 and has the same accrued benefit as the member.

iii. Notwithstanding the other requirements of this Subparagraph F.10.b., no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a member's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the plan does not charge members for providing a qualified preretirement survivor annuity, as defined in Section 417(c) of the Internal Revenue Code, upon the member's death.

c. Minimum Benefit Permitted. Notwithstanding anything else in this section to the contrary, the benefit otherwise accrued or payable to a member under this plan shall be deemed not to exceed the maximum permissible benefit if:

i. the retirement benefits payable for a limitation year under any form of benefit with respect to such member under this plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the employer do not exceed \$10,000 multiplied by a fraction:

(a). the numerator of which is the member's number of years (or part thereof, but not less than one year) of service (not to exceed 10) with the employer; and

(b). the denominator of which is 10; and

ii. the employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the member participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Section 401(h), and accounts for postretirement medical benefits established under Section 419A(d)(1) are not considered a separate defined contribution plan).

Predecessor Employer—if the employer maintains a plan that provides a benefit which the member accrued while performing services for a former employer, the former employer is a predecessor employer with respect to the member in the plan. A former entity that antedates the employer is also a predecessor employer with respect to a member if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

Severance from Employment—an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan. An employee does not have a severance from employment if, in connection with a change of employment, the employee's new employer maintains the plan with respect to the employee.

Year of Participation—the member shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met:

a. the member is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under

the terms of the plan in order to accrue a benefit for the accrual computation period; and

b. the member is included as a member under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the member shall equal the amount of benefit accrual service credited to the member for such accrual computation period. A member who is permanently and totally disabled within the meaning of Section 415(c)(3)(C)(i) of the Internal Revenue Code for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a member to receive a year of participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event shall more than one Year of Participation be credited for any 12-month period.

Year of Service—for purposes of Section 401.G, the member shall be credited with a year of service (computed to fractional parts of a year) for each accrual computation period for which the member is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period, taking into account only service with the employer or a predecessor employer.

G. Other Rules

1. Benefits under Terminated Plans. If a defined benefit plan maintained by the employer has terminated with sufficient assets for the payment of benefit liabilities of all plan members and a member in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the member's benefits under the terminated plan at each possible annuity starting date shall be taken into account in applying the limitations of this article. If there are not sufficient assets for the payment of all Members' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Member under the terminated plan.

2. Benefits Transferred from the Plan. If a Member's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan maintained by the employer and the transfer is not a transfer of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the Income Tax Regulations, the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a member's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan that is not maintained by the employer and the transfer is not a transfer of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the Income Tax Regulations, the transferred benefits are treated by the employer's plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the employer that terminated immediately prior to the transfer with sufficient assets to pay all members' benefit liabilities under the plan. If a member's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant Section 1.411(d)-4,

Q and A-3(c), of the Income Tax Regulations, the amount transferred is treated as a benefit paid from the transferor plan.

3. Formerly Affiliated Plans of the Employer. A formerly affiliated plan of an employer shall be treated as a plan maintained by the employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay members' benefit liabilities under the plan and had purchased annuities to provide benefits.

4. Plans of a Predecessor Employer. If the employer maintains a defined benefit plan that provides benefits accrued by a member while performing services for a predecessor employer, the member's benefits under a plan maintained by the predecessor employer shall be treated as provided under a plan maintained by the employer. However, for this purpose, the plan of the predecessor employer shall be treated as if it had terminated immediately prior to the event giving rise to the predecessor employer relationship with sufficient assets to pay members' benefit liabilities under the plan, and had purchased annuities to provide benefits; the employer and the predecessor employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provided under the plan of the predecessor employer.

5. Special Rules. The limitations of this chapter shall be determined and applied taking into account the rules in Section 1.415(f)-1(d), (e) and (h) of the Income Tax Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1165.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees' Retirement System, LR 38:3241 (December 2012).

§403. Required Minimum Distributions

A.1. Unless the member has elected otherwise on or before December 31, 1983, the entire benefit of a member shall be distributed over a period not longer than the longest of the following periods:

- a. the member's life;
- b. if the member is married, the life of the member's designated beneficiary;
- c. the member's life expectancy;
- d. the joint life and last survivor life expectancy of the member and his designated beneficiary.

2. If the member is married and his spouse survives him, the designated beneficiary for at least a qualified joint and survivor annuity and 50 percent of his deferred retirement option plan account shall be his spouse, unless such spouse has consented to the contrary in writing before a notary public. For purposes of this Paragraph, *spouse* shall mean that person who is married to the member under a legal regime of community of acquets and gains on his effective date of retirement or effective date of participation in the deferred retirement option plan, whichever is earlier.

3. If the member was a member on or before December 31, 1983, he shall be deemed to have made the election referred to herein. If a member dies after the

commencement of his benefits, the remaining portion of his benefit shall be distributed at least as rapidly as before his death. Payment of survivor benefits shall not be considered to violate this provision.

B.1. If the member dies before his benefit has commenced the remainder of such interest shall be distributed to the member's beneficiary within five years after the date of such member's death.

2. Paragraph 1 of this Subsection shall not apply to any portion of a member's benefit which is payable to or for the benefit of a designated beneficiary or beneficiaries, over the life of or over the life expectancy of such beneficiary, so long as such distributions begin not later than one year after the date of the member's death, or, in the case of the member's surviving spouse, the date the member would have attained the age of 70 years and six months. If the designated beneficiary is a child of the member, for purposes of satisfying the requirement of Paragraph 1 of this Subsection, any amount paid to such child shall be treated as if paid to the member's surviving spouse if such amount would become payable to such surviving spouse, if alive, upon the child's reaching age eighteen or, if later, upon the child's completing a designated event. For purposes of the preceding sentence, a designated event shall be the later of the date the child is no longer disabled, or the date the child ceases to be a full-time student or attains age 23, if earlier.

3. Paragraph 1 of this Subsection shall not apply if the distribution of the member's interest has commenced and is for a term certain over a period permitted in Subsection A of this Section.

4. Paragraph 1 of this Subsection shall not apply if the member has elected otherwise on or before December 31, 1983, or such later date to which such election period shall be subject under Internal Revenue Code Section 401(a).

C. As to any benefit payable by the retirement system which is not optional as of December 31, 1983, the member shall be considered to have made the election referred to in Subsections A and B of this Section, if he was a member on or before such time.

D. If by operation of law or by action of the board of trustees, a survivor benefit is payable to a specified person or persons, the member shall be considered to have designated such person as an alternate beneficiary hereunder. If there is more than one such person, then the youngest disabled child shall be considered to have been so designated, or, if none, then the youngest person entitled to receive a survivor benefit shall be considered to have been so designated. The designation of a designated beneficiary hereunder shall not prevent payment to multiple beneficiaries but shall only establish the permitted period of payments.

E. Payment in accordance with the survivor benefit provisions of R.S. 11:1151 shall be deemed not to violate Subsections A and B of this Section.

F. This Section shall be effective for members of the system who complete any service under the system on or after July 1, 1992, with employers contributing to the system.

G. Distributions from the system shall be made in accordance with the requirements set forth in Internal Revenue Code Section 401(a)(9), including the minimum distribution incidental benefit rules applicable thereunder.

H.1. A member's benefits shall commence to be paid on or before the required beginning date.

2. The required beginning date shall be April 1 of the calendar year following the later of the calendar year in which the member attains 70 1/2 years of age, or the calendar year in which the employee retires. Effective for plan years beginning on or after January 1, 1998, the required beginning date shall be April 1 of the year following the later of the year the member attained 70 1/2 or the year he terminated employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees Retirement System, LR 38:3247 (December 2012).

§405. Direct Rollovers

A. Notwithstanding any other provision of law to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an "eligible rollover distribution", as specified by the distributee, paid directly to an "eligible retirement plan", as those terms are defined below.

B. The following definitions shall apply.

Eligible Rollover Distribution—any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

a. any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life or life expectancy of the member, or the joint lives or joint life expectancies of the member and the member's designated beneficiary, or for a specified period of ten years or more;

b. any distribution to the extent that such distribution is required under Section 401(a)(9) of the United States Internal Revenue Code; and

c. any distribution which is made upon hardship of the employee.

Eligible Retirement Plan—any of the following:

a. an individual retirement account described in Section 408(a) of the Internal Revenue Code;

b. an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;

c. an annuity plan described in Section 403(a) of the Internal Revenue Code;

d. a qualified trust as described in Section 401(a) of the Internal Revenue Code, provided that such trust accepts the member's eligible rollover distribution;

e. an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by an eligible governmental employer, provided the plan contains provisions to account separately for amounts transferred into such plan; and

f. an annuity contract described in Section 403(b) of the Internal Revenue Code.

Distributee—shall include:

a. a member or former member;

b. the member's or former member's surviving spouse, or the member's or former member's former spouse with whom a benefit or a return of employee contributions is to be divided pursuant to R.S. 11:291(B), with reference to an interest of the member or former spouse;

c. the member's or former member's non-spouse beneficiary, provided the specified distribution is to an eligible retirement plan as defined in Subparagraphs a and b of the definition of *eligible retirement plan* in this Section.

Direct Rollover—a payment by the system to the eligible retirement plan specified by the distributee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees Retirement System, LR 38:3248 (December 2012).

§407. Annual Compensation Limitation

A. Unless otherwise provided in this Chapter, the accrued benefit of each "Section 401(a)(17) employee" as that term is defined below shall be the greater of the following:

1. The employee's accrued benefit determined with respect to the benefit formula applicable for the plan year beginning on or after January 1, 1996, as applied to the employee's total years of service taken into account for purposes of benefit accruals.

2. The sum of:

a. the employee's accrued benefit as of the last day of the last plan year beginning before January 1, 1996, frozen in accordance with the provisions of Section 1.401(a)(4)-1 through 1.401(a)(4)-13 of the Code of Federal Regulations;

b. the employee's accrued benefit determined under the benefit formula applicable for the plan year beginning on or after January 1, 1996, as applied to the employee's years of service credited to the employee for plan years beginning on or after January 1, 1996, for purposes of benefit accruals.

B. A *Section 401(a)(17) employee* shall mean any employee whose current accrued benefit, as of a date on or after the first day of the first plan year beginning on or after January 1, 1996, is based on compensation for a year beginning prior to the first day of the first plan year beginning on or after January 1, 1996, that exceeded \$150,000.

C. If an employee is not a "Section 401(a)(17) employee", his accrued benefit in this system shall not be based upon compensation in excess of the annual limit of Section 401(a)(17) of the United States Internal Revenue Code as amended and revised.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees Retirement System, LR 38:3248 (December 2012).

Charles P. Bujol
Executive Director

1212#108

RULE

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

Charter Boat Fishing Guides and Operations—Liability
Insurance Requirements (LAC 76:VII.206)

The Wildlife and Fisheries Commission does hereby promulgate rules and regulations establishing liability insurance requirements for charter boat fishing guides and operations. Authority for promulgation of this Rule is included in R.S. 56:302.9(A) and R.S. 56:302.9.1(A).

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 2. General Provisions

§206. Charter Boat Fishing Guides and Operations—Liability Insurance Requirements

A. No person shall act as nor shall he represent himself to be a saltwater charter boat fishing guide unless that person has in his name proof of liability insurance that is currently in force and the following requirements shall be met.

1. The liability insurance required by this Section shall be written by an insurance company with at least an A-rating in the latest printing of the *A.M. Best's Key Rating Guide*.

2. The liability insurance must be of a commercial nature and not associated with a primary residential property.

3. The liability insurance coverage shall not be less than \$300,000 per occurrence.

4. Proof of liability insurance must be in possession, while on the water, and available for inspection by a duly authorized agent of the department.

B. For a charter fishing operation which does not have a charter boat fishing guide present and consists of a large motorized vessel carrying smaller vessels attached to it with such vessels to be used by no more than two people for fishing purposes, the main motorized vessel shall be required to carry, on board, proof of liability insurance that is currently in force and the following requirements shall be met.

1. The liability insurance required by this Section shall be written by an insurance company with at least an A-rating in the latest printing of the *A.M. Best's Key Rating Guide*.

2. The liability insurance must be of a commercial nature and not associated with a primary residential property.

3. The liability insurance coverage shall not be less than \$300,000 per occurrence.

4. Proof of liability insurance must be available for inspection by a duly authorized agent of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:302.9(A) and R.S. 56:302.9.1(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 38:3249 (December 2012).

Ann L. Taylor
Chairman

1212#038

RULE

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

Recreational Offshore Landing Permit (LAC 76:VII.377)

The Wildlife and Fisheries Commission does hereby amend a Rule, modifying existing recreational offshore landing permit regulations. Authority for adoption of this Rule is included in R.S. 56:6(34).

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

**Chapter 3. Saltwater Sport and Commercial Fishing
§377. Recreational Offshore Landing Permit**

A. Any person possessing any one of the following fish species or species groups on board a vessel taken from within or without Louisiana territorial waters shall be required to have obtained and have in their immediate possession a recreational offshore landing permit. The recreational offshore landing permit shall be available for inspection by a duly authorized agent of the department:

1. highly migratory species:

a. tunas—bluefin, albacore, yellowfin, skipjack, bigeye, blackfin;

b. billfish—blue marlin, white marlin, sailfish and longbill spearfish;

c. swordfish;

2. reef fish species:

a. any species of snapper other than gray snapper;

b. any species of amberjack;

c. any species of grouper or hind.

B. Permits may be obtained at no cost, from the Department of Wildlife and Fisheries, or authorized method, by persons who hold any valid license authorizing the taking and possessing of saltwater species of fish. Permits shall be valid for the same duration as the license authorizing saltwater fishing privileges. For those licenses that do not have to be renewed every year, the permit shall be valid for one year from the date it was obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(34).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 38:3249 (December 2012).

Ann L. Taylor
Chairman

1212#037

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Removal of Abandoned Crab Traps (LAC 76:VII.367)

The Wildlife and Fisheries Commission does hereby amend a Rule, LAC 76:VII.367, which provides for an abandoned crab trap removal program. Authority to establish these regulations is vested in the commission by R.S. 56:332(N).

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§367. Removal of Abandoned Crab Traps

A. The use of crab traps shall be prohibited from 6 a.m., February 16, 2013 through 6 a.m., February 25, 2013 within that portion of Plaquemines Parish as described below.

1. From a point originating along the eastern shore of the Mississippi River at 29 degrees 44 minutes 00 seconds north latitude; thence eastward along 29 degrees 44 minutes 00 seconds north latitude to 89 degrees 40 minutes 00 seconds west longitude; thence southward along 89 degrees 40 minutes 00 seconds west longitude to the eastern shore of the Mississippi River; thence northward along the eastern shore of the Mississippi River terminating at the point of beginning.

B. The use of crab traps shall be prohibited from 6 a.m., March 9, 2013 through 6 a.m., March 18, 2013 within that portion of St. Bernard Parish as described below.

1. From a point originating from the intersection of the northwestern shore of Bayou Yscloskey and the southern shore of the Mississippi River Gulf Outlet; thence northward to the southwestern shore of Shell Beach Cut; thence northward along the western shore of Shell Beach Cut to the southern shore of Lake Borgne; thence northward a distance of one-half mile from the southern shore of Lake Borgne; thence eastward and northward along a line extending one-half mile offshore along the southern and western shore of Lake Borgne to 29 degrees 58 minutes 00 seconds north latitude; thence eastward along 29 degrees 58 minutes 00 seconds north latitude to 89 degrees 22 minutes 00 seconds west longitude; thence southward along 89 degrees 22 minutes 00 seconds west longitude to the southern shoreline of the Mississippi River Gulf Outlet; thence westward along the southern shoreline of the Mississippi River Gulf Outlet to the eastern shore of Bayou La Loutre; thence southward along the eastern shore of Bayou La Loutre; thence westward along the southern shore of Bayou La Loutre to the western shore of Bayou Yscloskey; thence northward along the western shore of Bayou Yscloskey and terminating at the point of beginning.

C. All crab traps remaining in the closed area during the specified period shall be considered abandoned. These trap removal regulations do not provide authorization for access to private property; authorization to access private property can only be provided by individual landowners. Crab traps may be removed only between one-half hour before sunrise to one-half hour after sunset. Anyone is authorized to remove these abandoned crab traps within the closed area. No person removing crab traps from the designated closed

areas during the closure periods shall possess these traps outside of the closed area. The Wildlife and Fisheries Commission authorizes the secretary of the Department of Wildlife and Fisheries to designate disposal sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:332(N).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 30:101 (January 2004), amended LR 31:108 (January 2005), LR 32:266 (February 2006), LR 33:113 (January 2007), LR 34:97 (January 2008), LR 36:77 (January, 2010), LR 38:146 (January, 2012), LR 38:3250 (December 2012).

Ann L. Taylor
Chairman

1212#035

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Special Bait Dealer's Permit (LAC 76:VII.329)

The Wildlife and Fisheries Commission does hereby amend a Rule, LAC 76:VII.329, which provides for a special bait dealer's permit program. Authority to establish these regulations is vested in the commission by R.S. 56:497(C).

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§329. Special Bait Dealer's Permit

A. Policy. The special bait dealer's permit is intended solely for the benefit of the recreational fishing public which desires to use live shrimp and live croaker as bait during the closed shrimp seasons. Its purpose is to allow the uninterrupted operation of those commercial establishments which sell live bait shrimp and live croaker to the fishing public during the closed shrimp seasons. The permit is not intended for the direct use of recreational fishermen, charter boats, commercial fishermen who sell dead shrimp or croaker, or for any other entity which may wish to catch shrimp or croaker for their own use during the closed shrimp seasons.

B. Application

1. Applicants wishing to sell live shrimp or live croaker harvested from Louisiana waters during closed shrimp season must apply for a special bait dealer permit from the department for a fee of \$110.00.

2. The special bait dealer's permit shall be valid for one year beginning January 1 and ending December 31 of that same calendar year. The permit may be purchased at any time during the year for the current permit year and beginning November 15 for the immediately following permit year.

3. Applications will be accepted only from the owner of an onshore business which sells or plans to sell live shrimp or live croaker to recreational fisherman.

4. Applicant shall be responsible for acquiring and possessing all proper licenses including the wholesale/retail seafood dealers license.

5. Any person convicted of any class three or greater wildlife or fisheries violation within the previous three years

prior to the date of application shall not qualify to obtain a special bait dealer's permit or be onboard any vessel engaged in permitted activities.

6. Applicant must post a \$1,000 cash bond before the permit is issued. This bond will be forfeited if the permittee, his employee, or his contractor violates any provision of the rules and regulations concerning the special bait dealer's permit or if the permittee, his employee, or his contractor violates any commercial fishing law or regulation while operating under the permit.

7. All new applications shall require an inspection by the department of their onshore facility and vessel prior to permit being issued. Subsequent inspections may be required at renewal. Inspection requirements shall verify applicant is operating a commercial establishment which sells live shrimp or live croakers to the fishing public for use as bait and shall include:

a. onshore facility able to maintain live shrimp or live croakers;

b. onshore facilities and vessel tanks must have provisions for aeration and/or circulation of the water in which live shrimp or live croakers are held;

c. onshore facility holding tanks must have a minimal combined capacity of 300 gallons. Tanks having less than 30 gallon capacity will not be included in combined on shore facility capacity;

d. vessel tanks must be carried on or built into the vessel and have a minimum of one compartment or tank with a minimum capacity of 30 gallons;

e. notice to the public must be posted that live bait is available.

8. Only the vessel and those commercial fishermen specified at the time of application shall operate under the permit. Amendments to vessel or commercial fishermen listed under the permit must be submitted to the department and approved before the new vessel or commercial fisherman can operate under the permit. The permit is not transferable to any other person or vessel. The entire original permit must be carried on the vessel while in operation.

C. Operations

1. The entire original permit must be in the possession of the commercial fisherman while operating under the conditions of the permit. Only the vessel and those commercial fisherman specified at the time of application shall operate under the permit. No other vessel or commercial fisherman shall be used under this permit.

2. Live wells, aeration tanks, and other vessel facilities to maintain live shrimp or croaker must be carried on or built into this vessel while operating under the conditions of the permit.

3. No person shall transfer any shrimp or croaker taken under a permit from one vessel to another unless both vessels are permitted under the same wholesale/retail seafood dealer, and the captain of the harvesting vessel has signed a trip ticket for the harvested bait, and the bait is then transported directly to the wholesale/retail seafood dealer under which both vessels are operating; upon receiving the harvested bait the dealer shall complete the trip ticket.

4. While operating under the conditions of the permit, no shrimp or croaker may be sold from the vessel to anyone other than the licensed wholesale/retail seafood dealer listed on the permit during the closed shrimp seasons.

5. Signs which identify the vessel as working under the special bait dealer's permit shall be posted on the vessel. These signs shall be visible from either side of the vessel and from the air; the word "BAIT" and the permit number shall be placed on these signs in letters at least 12 inches high.

6. No more than two gallons of dead shrimp or croaker or combination thereof may be aboard the vessel while it is operating under the permit. All dead shrimp or croaker or combination thereof in excess of two gallons must be immediately returned to the water. Shrimp or croaker dying in onshore holding facilities may be sold for bait use only.

7. Permitted gear is limited to one trawl not to exceed 25 feet along the cork line 33 feet along the lead line or two skimmer nets having an individual net frame size not more than 16 feet measured horizontally or 12 feet measured vertically or 20 feet measured diagonally. These are the only commercial fishing gears which can be used or carried aboard the permitted vessel while the vessel is operating under the permit; no other commercial fishing gear other than unserviceable crab traps as described in R.S. 56:322(G) may be on the vessel when it is being used under the permit.

8. Bait shrimp or croaker may be taken only from official sunrise to official sunset; however, the department at its discretion, may designate the areas and hours of night time operations under the permit provided permitted vessels are equipped with a working vessel monitoring system as described in LAC 76:VII.371.

9. Each time the permit is used the permittee must notify the department by contacting the Communications Section on the designated toll free telephone number provided on the permit and recording the confirmation number received. Before the vessel departs the dock under the permit, the department must be advised of the time of departure and the sub-basin code corresponding to the department's trip ticket sub-basin map in which trawling or skimming will take place; immediately after the permitted vessel returns to the dock the department must be notified of the time of return by contacting the Communications Section on the designated toll free telephone number provided on the permit.

10. The permittee shall maintain an up-to-date record of the activities conducted under the permit on forms provided by the department for that purpose. These records shall be kept onboard the vessel and made available for inspection by agents of the department upon request by said agents at any time and shall include the permittee's name and permit number, date, departure time, fishing location, gear used, confirmation number, return time, and number of live shrimp or live croaker harvested. All applicable record information shall be completed before fishing operations begin. In addition, any agent of the department shall be allowed to make an onsite inspection of any facilities operating under the permit, at any time. Nothing herein this Section shall exempt the permittee from trip ticket reporting requirements as provided for in R.S. 56:306.4.

D. Penalties

1. No person shall violate any provision of this Section. Violations of any provision of this Section shall constitute a class 4 violation as defined in R.S. 56:34.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 56:326.3 and 56:497(C).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, and Wildlife and Fisheries Commission, LR 3:210 (April, 1977), amended LR 15:867 (October, 1989), LR 19:215 (February, 1993), LR 23:86 (January, 1997), LR 33:864 (May 2007), LR 36:77 (January 2010), LR 38:3250 (December

Ann L. Taylor
Chairman

1212#036

RULE
Workforce Commission
Office of Workers' Compensation

Employer's Report of Injury/Illness
Form LWC-WC-1A-1 (LAC 40:I:6647)

In accordance with R.S. 49:950, et seq., that the Louisiana Workforce Commission, Office of Workers' Compensation,

pursuant to the authority vested in the Director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative Procedure Act, has amended LAC 40:I:6647. The Rule creates the LWC-WC-IA-1 to replace the existing LWC-WC-1007. The rule allows for the electronic submission of first reports of injury to the OWCA on the LWC-WC-IA-1 in accordance with R.S. 23:1306 which went into effect August 1, 2012.

Title 40
LABOR AND EMPLOYMENT
Part I. Workers' Compensation Administration
Subpart 3. Hearing Rules
Chapter 66. Miscellaneous
Subchapter E. Forms
§6647. Employer's Report of Injury/Illness; Form LWC-WC-IA-1

Workers Compensation—First Report of Injury or Illness

EMPLOYER (NAME & ADDRESS INCL ZIP)		CARRIER/ADMINISTRATOR CLAIM NUMBER	OSHA LOG NUMBER	REPORT PURPOSE CODE	
INDUSTRY CODE		EMPLOYER FEIN	JURISDICTION		JURISDICTION CLAIM NUMBER
INSURED REPORT NUMBER					
EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)				LOCATION #	
				PHONE #	
CARRIER/CLAIMS ADMINISTRATOR					
CARRIER (NAME, ADDRESS, & PHONE #)		POLICY PERIOD		CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO)	
		TO			
		CHECK IF APPROPRIATE			
		SELF INSURANCE			
CARRIER FEIN		POLICY/SELF-INSURED NUMBER		ADMINISTRATOR FEIN	
AGENT NAME & CODE NUMBER					
EMPLOYEE/WAGE					
NAME (LAST, FIRST, MIDDLE)		DATE OF BIRTH	SOCIAL SECURITY NUMBER	DATE HIRED	STATE OF HIRE
ADDRESS (INCL ZIP)		SEX	MARITAL STATUS	OCCUPATION/JOB TITLE	
PHONE		M MALE F FEMALE U UNKNOWN	J UNMARRIED SINGLE/DIVORCED M MARRIED S SEPARATED K UNKNOWN	EMPLOYMENT STATUS	
		# OF DEPENDENTS		NCCI CLASS CODE	
RATE PER:	<input type="checkbox"/> DAY <input type="checkbox"/> WEEK	<input type="checkbox"/> MONTH <input type="checkbox"/> OTHER:	DAYS WORKED/WEEK	FULL PAY FOR DAY OF INJURY? DID SALARY CONTINUE?	<input type="checkbox"/> YES <input type="checkbox"/> NO
OCCURRENCE/TREATMENT					
TIME EMPLOYEE BEGAN WORK	<input type="checkbox"/> AM <input type="checkbox"/> PM	DATE OF INJURY/ILLNESS	TIME OF OCCURRENCE () CANNOT BE DETERMINED	<input type="checkbox"/> AM <input type="checkbox"/> PM	LAST WORK DATE
CONTACT NAME/PHONE NUMBER		TYPE OF INJURY/ILLNESS		DATE EMPLOYER NOTIFIED	
PART OF BODY AFFECTED				DATE DISABILITY BEGAN	
DID INJURY/ILLNESS/EXPOSURE OCCUR ON EMPLOYER'S PREMISES? <input type="checkbox"/> YES <input type="checkbox"/> NO		TYPE OF INJURY/ILLNESS CODE		PART OF BODY AFFECTED CODE	
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED			ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED		
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED			WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED		

HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL				CAUSE OF INJURY CODE	
DATE RETURN(ED) TO WORK	IF FATAL, GIVE DATE OF DEATH	WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED?	YES	NO	
		WERE THEY USED?	YES	NO	
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS)		HOSPITAL OR OFF SITE TREATMENT (NAME & ADDRESS)		INITIAL TREATMENT	
				0	NO MEDICAL TREATMENT
				1	MINOR: BY EMPLOYER
				2	MINOR CLINIC/HOSP
				3	EMERGENCY CARE
				4	HOSPITALIZED > 24 HOURS
				5	FUTURE MAJOR MEDICAL/ LOST TIME ANTICIPATED
OTHER					
WITNESSES (NAME & PHONE #)					
DATE ADMINISTRATOR NOTIFIED		DATE PREPARED	PREPARER'S NAME & TITLE	PHONE NUMBER	
FORM IA-1(r 1-1-02)				IAIABC 2002	

LWC-WC-IA-1-Rev 12/2012

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation, LR 38:3252 (December 2012).

Curt Eysink
Executive Director

1212#057

RULE

**Workforce Commission
Office of Workers' Compensation**

Form LWC-WC-1009 (LAC 40:I:2012, 2024, 2116, 2136, 2214, 2228, 2314, and 2328)

In accordance with R.S. 49:950 et seq., that the Louisiana Workforce Commission, Office of Workers' Compensation, pursuant to the authority vested in the director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the administrative provisions Act, has amended LAC 40:I:2012, 2024, 2116, 2136, 2214, 2228, 2314, 2328.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 2. Medical Guidelines

Chapter 20. Spine Medical Treatment Guidelines

Subchapter A. Cervical Spine Injury

Editor's Note: Form LWC-WC 1009. Disputed Claim for Medical Treatment has been moved to §2328 of this Part.

§2012. LWC-WC 1009. Disputed Claim for Medical Treatment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation

Administration, LR 37:1654 (June 2011), repealed LR 38:3253 (December 2012).

Subchapter B. Low Back Pain

Editor's Note: Form LWC-WC 1009. Disputed Claim for Medical Treatment has been moved to §2328 of this Part.

§2024. LWC-WC 1009. Disputed Claim for Medical Treatment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1681 (June 2011), repealed LR 38:3253 (December 2012).

Chapter 21. Pain Medical Treatment Guidelines

Subchapter A. Chronic Pain Disorder Medical Treatment Guidelines

Editor's Note: Form LWC-WC 1009. Disputed Claim for Medical Treatment has been moved to §2328 of this Part.

§2116. LWC-WC 1009. Disputed Claim for Medical Treatment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1715 (June 2011), repealed LR 38:3253 (December 2012).

Subchapter B. Complex Regional Pain Syndrome

Editor's Note: Form LWC-WC 1009. Disputed Claim for Medical Treatment has been moved to §2328 of this Part.

§2136. LWC-WC 1009. Disputed Claim for Medical Treatment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1736 (June 2011), repealed LR 38:3253 (December 2012).

Chapter 22. Neurological and Neuromuscular Disorder Medical Treatment Guidelines

Subchapter A. Carpal Tunnel Syndrome (CTS) Medical Treatment Guidelines

Editor's Note: Form LWC-WC 1009. Disputed Claim for Medical Treatment has been moved to §2328 of this Part.

§2214. LWC-WC 1009. Disputed Claim for Medical Treatment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1749 (June 2011), repealed LR 38:3254 (December 2012).

Subchapter B. Thoracic Outlet Syndrome

Editor's Note: Form LWC-WC 1009. Disputed Claim for Medical Treatment has been moved to §2328 of this Part.

§2228. LWC-WC 1009 Disputed Claim for Medical Treatment.

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1765 (June 2011), repealed LR 38:3254 (December 2012).

Chapter 23. Upper and Lower Extremities Medical Treatment Guidelines

Subchapter A. Lower Extremities

Editor's Note: Form LWC-WC 1009. Disputed Claim for Medical Treatment has been moved to §2328 of this Part.

§2314. LWC-WC 1009. Disputed Claim for Medical Treatment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1820 (June 2011), repealed LR 38:3254 (December 2012).

Subchapter B. Shoulder Injury Medical Treatment Guidelines

Editor's Note: Form LWC-WC 1009. Disputed Claim for Medical Treatment has been moved to §2328 of this Part.

§2328. LWC-WC 1009. Disputed Claim for Medical Treatment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1862 (June 2011), repealed LR 38:3254 (December 2012).

§2328. LWC-WC 1009. Disputed Claim for Medical Treatment

E-Mail to: medicalservices@LWC.la.gov

Fax to: OWCA—Medical Services
ATTN: Medical Director
(225) 342-6556

Mail to: Medical Services
P.O. Box 94040
Baton Rouge, LA 70804

1. Social Security No. _ _ - -
2. Date of Injury/Illness _ - - -
3. Parts of Body Injury _____
4. Date of Birth _ - - -
5. Date of This Request _ - - -
6. Claim Number _____

DISPUTED CLAIM FOR MEDICAL TREATMENT

NOTE: THIS REQUEST WILL NOT BE HONORED UNLESS THERE ARE MEDICAL SERVICES IN DISPUTE AS PER R.S. 23:1203.1 J AND THE FOLLOWING HAS OCCURRED:

- A. The insurer has issued a denial.
- B. The insurer has issues an approval with modification.
- C. The insurer's failure to act has resulted in a deemed denial.
- D. The aggrieved party is seeking a variance from the medical treatment schedule

DISPUTES RELATING TO COMPENSABILITY AND/OR CAUSATION ARE NOT ADDRESSED BY THE MEDICAL DIRECTOR.

GENERAL INFORMATION

Claimant files this dispute with the Office of Workers' Compensation – Medical Services Director. This office must be notified immediately in writing of changes in address. An employee may be represented by an attorney, but it is not required.

7. This request is submitted by
____ Employee ____ Health Care Provider ____ Other _____

The following records/documents MUST be attached to this request. Failure to do so may result in the rejection of the request by the OWCA director:

- A. Copies of all relevant information must be included with this request as per LAC 40:1.2715 J.
- B. If applicable, a copy of the denial letter issued by the insurance carrier must be attached to this request.
- C. A copy of this request with all supporting documentation must be mailed or emailed to all parties at their designated fax or email address.

EMPLOYEE

8. Name _____
Street or Box _____
City _____
State _____ Zip _____
Phone (____) _____

EMPLOYEE'S ATTORNEY

9. Name _____
Street or Box _____
City _____
State _____ Zip _____
Phone (____) _____
Fax (____) _____

EMPLOYER

10. Name _____
Street or Box _____
City _____
State _____ Zip _____
Phone (____) _____
Fax (____) _____

INSURER/ADMINISTRATOR

(circle one)
11. Name _____
Street or Box _____
City _____
State _____ Zip _____
Phone (____) _____
Fax (____) _____

TREATING/REQUESTING PHYSICIAN

12. Name _____
Street or Box _____
City _____
State _____ Zip _____
Phone (____) _____
Fax (____) _____

13. PLEASE PROVIDE A SUMMARY OF THE DETAILS REGARDING THE ISSUE AT DISPUTE:

SECTION 2. REQUEST FOR AUTHORIZATION - To Be Filled Out By Health Care Provider			
PROVIDER	Requesting Health Care Provider	Phone Number:	Fax Number:
	Street Address, City, State Zip:		Email:
	Diagnosis:	CPT/DRG Code:	ICD-9/DMS-4 Code:
	Requested Treatment or Testing (Attach Supplement If Needed):		
	Reason for Treatment or Testing (Attach Supplement If Needed):		
INFORMATION REQUIRED BY RULE TO BE INCLUDED WITH REQUEST FOR AUTHORIZATION - To Be Filled Out By Health Care Provider			
(Following is the required minimum information for Request of Authorization (LAC 40:2715 (C)))			
PROVIDER		History provided to the level of condition and as provided by Medical Treatment Schedule	
		Physical Findings/Clinical Tests	
		Documented functional improvements from prior treatment	
		Test/imaging results	
		Treatment Plan including services being requested along with the frequency and duration	
I hereby certify that this completed form and above required information was		<input type="checkbox"/>	to the Carrier/Self Insured Employer on this the _____ day of _____, _____ (day) (month) (year)
		<input type="checkbox"/>	
Signature of Health Care Provider:		Printed Name:	
SECTION 3. RESPONSE OF CARRIER/SELF INSURED EMPLOYER FOR AUTHORIZATION (Check appropriate box below and return to requesting Health Care Provider, Claimant and Claimant Attorney as provided by rule)			

CARRIER

The requested Treatment or Testing is **approved**

The requested Treatment or Testing is **approved with modifications** (Attach summary of reasons and explanation of any modifications)

The requested Treatment or Testing is **denied** because

Not in accordance with Medical Treatment Schedule or R.S.23:1203.1(D) (Attach summary of reasons)

The request, or a portion thereof, is not related to the on-the-job injury

The claim is being denied as non-compensable

Other (Attach brief explanation)

I hereby certify that this response of Carrier/Self Insured Employer for Authorization was	<input type="checkbox"/>	to the Health Care Provider (and to the Attorney of Claimant if one exists, if denied or approved with modification) on this the _____ day of _____, _____ (day) (month) (year)
	Faxed	
	<input type="checkbox"/>	
	Emailed	

Signature of Carrier/Self Insured Employer: _____ **Printed Name:** _____

The prior **denied** or **approved with modification** request is now **approved**

	I hereby certify that this response of Carrier/Self Insured Employer for Authorization was	<input type="checkbox"/>	to the Health Care Provider and Attorney of Claimant if one exists on this the _____ day of _____, _____ (day) (month) (year)
		Faxed	
		<input type="checkbox"/>	
		Emailed	
Signature of Carrier/Self Insured Employer:		Printed Name:	

SECTION 4. FIRST REQUEST

(Form 1010A is required to be filled out by Carrier/Self Insured Employer and Health Care Provider)

CARRIER	<input type="checkbox"/> The requested Treatment or Testing is delayed because minimum information required by rule was not provided		
	I hereby certify that this First Request and accompanying Form 1010A was	<input type="checkbox"/>	to the Health Care Provider on this the _____ day of _____, _____ (day) (month) (year)
		Faxed	
		<input type="checkbox"/>	
		Emailed	
Signature of Carrier/Self Insured Employer:			
PROVIDER	I hereby certify that a response to the First Request and accompanying Form 1010A was	<input type="checkbox"/>	to the Carrier/Self Insured Employer on this the _____ day of _____, _____ (day) (month) (year)
		Faxed	
			<input type="checkbox"/>
		Emailed	
Signature of Health Care Provider:		Printed Name:	

SECTION 5. SUSPENSION OF PRIOR AUTHORIZATION DUE TO LACK OF INFORMATION

CARRIER	Suspension of Prior Authorization Process due to Lack of Information		
	<input type="checkbox"/> The requested Treatment or Testing is delayed due to a Suspension of Prior Authorization Due to Lack of Information		

	I hereby certify that this Suspension of Prior Authorization was	<input type="checkbox"/>	to the Health Care Provider on this the _____ day of _____, _____ (day) (month) (year)
		Faxed	
		<input type="checkbox"/>	
		Emailed	
Signature of Carrier/Self Insured Employer:		Printed Name:	
PROVIDER	Appeal of Suspension to Medical Services Section by Health Care Provider		
	I hereby certify that this form and all information previously submitted to Carrier/Self Insured Employer was faxed to OWCA Medical Services (Fax Number: 225-342-9836) this _____ day of _____, _____.		
	I hereby certify that this Appeal of Suspension of Prior Authorization was	<input type="checkbox"/>	to the Carrier/Self Insured Employer on this the _____ day of _____, _____ (day) (month) (year)
		Faxed	
	<input type="checkbox"/>		
	Emailed		
Signature of Health Care Provider:		Printed Name:	
SECTION 6. DETERMINATION OF MEDICAL SERVICES SECTION			
OWCA	<input type="checkbox"/> The required information of LAC40:2715(C) <i>was not</i> provided		
	<input type="checkbox"/> The required information of LAC40:2715(C) <i>was</i> provided		
	I hereby certify that a written determination was	<input type="checkbox"/>	to the Health Care Provider & Carrier/Self Insured Employer on this the _____ day of _____, _____ (day) (month) (year)
	Faxed		
	<input type="checkbox"/>		
	Emailed		
Signature:		Printed Name:	

SECTION 7. HEALTH CARE PROVIDER RESPONSE TO MEDICAL SERVICES DETERMINATION

PROVIDER	I hereby certify that additional information, pursuant to the determination of Medical Services Section, was	<input type="checkbox"/> Faxed	to the Carrier/Self Insured Employer on this the _____ day of _____, _____ (day) (month) (year)
		<input type="checkbox"/> Emailed	
Signature of Health Care Provider:		Printed Name:	

B. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with RS 23:1203.1.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Workers' Compensation, LR 38:1037 (April 2012), amended LR 38:3255 (December 2012).

Curt Eysink
Executive Director

1212#059

Notices of Intent

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School,
District, and State Accountability System
(LAC 28:LXXXIII.3501, 3503, 3505 and 3507)

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* §3501. Alternative Education; §3503. Alternative Schools Including Alternative Charter Schools; §3505. Alternative Programs; and §3507. Alternative Schools for Adjudicated Youth. The proposed policy revisions require local educational agencies to provide alternative educational placement for students suspended for more than 10 days. The policies define alternative schools and alternative programs and establish how the assessment scores of students at alternative schools will be counted for school and district accountability.

Title 28

EDUCATION

Part LXXXIII. Bulletin 111—The Louisiana School, District and State Accountability System

Chapter 35. Inclusion of Alternative Education Schools and Students in Accountability

§3501. Alternative Education

A. Districts must provide an alternative education placement for all students suspended for a period of more than 10 consecutive school days or expelled. Districts shall either operate an alternative program or school (direct run or charter), or enter into an agreement with an education service provider to run a program or school.

B. Alternative schools and programs must be approved by BESE. Classifications must be submitted to the LDE prior to July 1 and cannot be changed until the following year.

C. For the purposes of school accountability alternative schools and programs are those that:

1. are established to meet the specific needs of students with special challenges that require educational environments that are alternatives to the regular classroom;
2. house one or more programs designed to address discipline, dropout prevention and recovery, credit recovery, etc; and
3. do not provide programs only for students who are academically advanced, gifted, talented, or pursuing specific areas of study (arts, engineering, medical, technical, etc.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1, R.S. 17:416, R.S. 17:416.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§3503. Alternative Schools Including Alternative Charter Schools [Formerly §3501]

A. For the purposes of school accountability, alternative schools are those schools that:

1. have a separate site code; and
2. enroll some or all students for 45 or more days.

B. A student placed at an alternative school for fewer than 45 days shall be considered to be attending an alternative program within the school, and as such, must remain enrolled in their sending school.

1. For the purposes of this chapter, a sending school is the last school a student attended. If the student's current grade level is not included in the configuration of the last school they attended, the LEA must enroll the student at school that includes the student's grade using a feeding pattern or attendance zone when possible.

C. The school performance scores and letter grades of alternative schools will be published with other schools.

1. Alternative schools will be clearly labeled as alternative schools in public releases.

2. Alternative schools with sufficient data shall also be evaluated in the subgroup component in the same manner as regular schools.

3. The school performance scores for alternative schools will exclude the assessment data for students who are not full academic year (FAY) enrollees.

D. Starting with the 2013-2014 academic year, all alternative schools will receive a performance report that shall include, but not be limited to, data pertaining to academic progress, credit accumulation, completion, and behavior modification.

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), LR 37:2119 (July 2011), LR 37:3202 (November 2011), LR 38:1213 (May 2012), LR 39:

§3505. Alternative Programs

A. For the purposes of school accountability, alternative programs are those programs that provide education to suspended and/or expelled student but:

1. do not enroll students; and
2. do not have a site code.

B. Scores for students attending alternative programs will be counted at the sending school at which the student is enrolled.

1. For the purposes of this chapter, a sending school is the last school a student attended. If the student's current grade level is not included in the configuration of the last school they attended, the LEA must enroll the student at school that includes the student's grade using a feeding pattern or attendance zone when possible.

C. Starting with the 2013-2014 academic year, all alternative programs will receive a performance report that shall include, but not be limited to, data pertaining to academic progress, credit accumulation, completion, and behavior modification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 39:

§3507. Alternative Schools for Adjudicated Youth [Formerly §3505]

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 program or school for accountability purposes, according to the provisions set forth in §3505 of this bulletin.

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. The site at which contracted educational services are provided may be considered an alternative program or alternative school, according to the provisions set forth in §3505 of this bulletin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1 and RS 17:100.1.

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), LR 39:

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.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed 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 proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 8, 2013 to Heather Cope, Executive Director, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Heather Cope
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 111—The Louisiana School, District, and State Accountability System

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will not result in an increase in costs or savings to state or local governmental units. The proposed revisions allow local educational agencies to provide either an alternative program or an alternative school as the educational placement for students suspended for more than ten days. The policies define alternative schools and alternative programs and establish how the assessment scores of students at alternative schools will be counted for school and district accountability.

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 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
1212#028

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools (LAC 28:CXXXIX.301, 401, 403, 405, 407, 409, 411, 417, 419, 421, 423, 521, and 707)

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 126—Charter Schools*: §301. Charter School Authorizers; Chapter 4. Local Charter Authorizers: §401. Local Charter Authorizers, §403. Certification of Local Charter Authorizers, §405. Open Meetings Laws, §407. Independent Financial Audit, §409. Local Charter Authorizers; Initial Certification Period and Initial Review, §411. Renewal of Certification for Local

Charter Authorizers, §417. Oversight of Charter Schools Authorized by Local Charter Authorizers, §419. Authorizer Fee, §421. Annual Report, and §423. Closure of Local Charter Authorizers; Chapter 5. Charter School Application and Approval Process: §521. Authorization of Schools by Local Charter Authorizers; Chapter 7. Charter School Performance Contract: §707. Contracts between Local Charter Authorizers and Charter Operators. The proposed policy revision will establish the framework by which Local Charter Authorizers are certified, operate, and are reviewed, as required by Act 2 of the 2012 Legislative Session.

**Title 28
EDUCATION**

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 3. Charter School Application and Approval Process

§301. Charter School Authorizers

A. The State Board of Elementary and Secondary Education authorizes the operation of Type 2, Type 4, and Type 5 charter schools.

B. Local school boards authorize the operation of Type 1 and Type 3 charter schools.

C. Local charter authorizers authorize the operation of Type 1B charter schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3982.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1359 (July 2008), amended LR 39:

Chapter 4. Local Charter Authorizers

§401. Local Charter Authorizers

Local Charter Authorizer—an entity certified by BESE to enter into agreements with chartering groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§403. Certification of Local Charter Authorizers

A. The LDE will create and run an annual application process by which entities will apply to the LDE to seek BESE approval. This process shall:

1. be conducted in a timely manner;
2. include assessments of whether each proposal is valid, complete, financially well-structured, educationally sound, provides for a master plan of academic excellence, and provides a plan for developing the capacity to authorize not fewer than five schools;
3. provide for an independent evaluation of proposals by a third party with educational, organizational, legal, and financial expertise;
4. not result in more than five local charter authorizers certified to operate in any regional labor market area, as defined by the Louisiana Workforce Commission, at any given time.

B. To be certified by BESE, a Local Charter Authorizer applicant must, at a minimum:

1. be a state agency, a nonprofit corporation, a Louisiana public postsecondary education institution, or a nonprofit corporation established by the governing authority of a parish or municipality;
2. have an educational mission;
3. not operate any charter schools;
4. have been incorporated for three or more years;

5. have in its possession not less than \$500,000 in assets net of liabilities as reported to the Louisiana Department of Revenue; and

6. have no officer, administrator, director, or any person having managerial authority who has been convicted of or has pled nolo contendere to any crime defined as a felony or has been convicted under the laws of any other state or of the United States or of any foreign government or country of a crime which, if committed in this state, would be a felony.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3981, R.S. 17:3981.1, R.S. 17:3982, and R.S. 17:3996.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§405. Open Meetings Laws

A. Any nonprofit corporation certified by BESE as a local charter authorizer shall be subject to the Open Meetings Law in accordance with R.S. 42:11 et seq., the Public Records Law in accordance with R.S. 44:1 et seq., and the Code of Governmental Ethics in accordance with R.S. 42:1101 et seq. when exercising its authority as a local charter authorizer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3982.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§407. Independent Financial Audit

A. A nonprofit corporation certified by BESE as a local charter authorizer shall submit to the LDE an annual independent financial audit performed by a certified public accountant who has been approved by the legislative auditor. The audit shall be performed in accordance with generally accepted governmental auditing standards and the Louisiana Governmental Audit Guide. The completed audit shall be submitted annually to the LDE and to the legislative auditor and shall be subject to the provisions of R.S. 24:513 in so far as it pertains to quasi-public agencies. The LDE shall develop the process and guidelines by which such audits will be conducted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3981.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§409. Local Charter Authorizers; Initial Certification Period and Initial Review

A. Local charter authorizers shall initially be certified for a period of five years.

B. Following the third year of operation of the first charter school authorized by the local charter authorizer, the LDE shall conduct a review of the Authorizer's activities and the performance of charter schools it has authorized. If the average performance of these schools is a "C," "D," or "F," or any variation thereof, the Local Charter Authorizer shall be placed on probation and shall submit a plan for improving the performance of the schools under its authority to the LDE.

C. The provisions of Subsection B shall not apply if such review would occur in the fifth year of a local charter authorizer's initial certification period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3981.1, R.S. 17:3981.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§411. Renewal of Certification for Local Charter Authorizers

A. In the fifth year of a local charter authorizer's initial certification period, the LDE shall conduct a review of performance of the charter schools authorized by the local charter authorizer, and recommend to BESE the renewal or non-renewal of the local charter authorizer's certification.

B. The term of any renewal of certification must be at least three years and no more than ten years. Every three years during the renewal certification term, the LDE shall conduct a review of the local charter authorizer's activities and the performance of the schools it has authorized.

C. If the average performance of the charter schools authorized by the local charter authorizer is a letter grade of "C" or any variation thereof after the initial certification period, the local charter authorizer may not authorize any additional schools until the average performance of the charter schools authorized by the local charter authorizer is a letter grade of "A" or "B" or any variation thereof.

D. If the average performance of the charter schools authorized by the local charter authorizer is a letter grade of "D" or "F" or any variation thereof after the initial certification period, BESE shall not recertify the local charter authorizer and shall provide for the transfer of the charter schools authorized by the local charter authorizer to the state board as Type 2 or Type 5 charter schools.

E. In determining whether to renew certification for a local charter authorizer, BESE shall consider all information it has obtained regarding the local charter authorizer and the schools it has authorized.

AUTHORITY NOTE: Promulgated in accordance with 17:3981, R.S. 17:3981.1, R.S. 17:3982, and R.S. 17: 3996.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§417. Oversight of Charter Schools Authorized by Local Charter Authorizers

A. The LDE shall monitor and evaluate the academic performance of charter schools authorized by local charter authorizers in accordance with BESE policy.

B. Each local charter authorizer shall monitor and evaluate, on an ongoing basis, the legal, contractual, financial, and academic performance of the schools it has authorized, and shall ensure the health and safety of all students in the schools it authorizes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3973, R.S. 17:3974, R.S. 17:3981, R.S. 17:3981.1, R.S. 17:3891.2, R.S. 17:3982, and R.S. 17: 3996.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§419. Authorizer Fee

A. A local charter authorizer may annually charge each charter school it authorizes a fee in an amount equal to two percent of the total per pupil amount that is received by a charter school for administrative overhead costs incurred by the local charter authorizer for considering the charter application and any amendment thereto, providing monitoring and oversight of the school, collecting and analyzing data of the school, and for reporting on school performance. Such fee amount shall be withheld from the per pupil amount in monthly increments and shall not be applicable to any federal money or grants received by the charter school. Administrative overhead costs shall not include any cost incurred by the chartering authority to

provide purchased services to the charter school. A local charter authorizer may provide other services for a charter school and charge the actual cost of providing such services, but no such arrangement shall be required as a condition for authorizing the charter school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17: 3995.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§421. Annual Report

A. Each Local Charter Authorizer shall report to BESE on the number of schools chartered, the status of those schools, and any recommendations by July first of each year.

B. Each charter school shall provide a comprehensive report to be reviewed by its local charter authorizer after the completion of the third year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1; R.S. 17:3998.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§423. Closure of Local Charter Authorizers

A. In the event that a Local Charter Authorizer ceases operations or loses its BESE certification, the LDE shall develop and oversee the process of transferring schools from that local charter authorizer to the state board as Type 2 or Type 5 charter schools.

B. If a local charter authorizer loses its certification from the state board or otherwise ceases to exist, all public assets which it has acquired as a local charter authorizer pursuant to this Chapter shall become the property of BESE; provided that the state board shall first afford the local school district within whose boundaries the assets are located the option to purchase or otherwise acquire such public assets. Each local charter school authorizer shall document all assets acquired with private funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3981.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

Chapter 5. Charter School Application and Approval Process

§521. Authorization of Schools by Local Charter Authorizers

A. Local charter authorizers shall conduct an annual charter school applications and approval process, using the same timelines established in Bulletin 126 by BESE for local school district charter school applications and approvals.

B. Each local charter authorizer shall use a common charter application developed by the LDE and approved by the state board, but may request additional information from applicants as needed.

C. Local charter authorizers must comply with all laws and regulations regarding the application and approval process when authorizing charter schools.

D. The charter school application and approval process conducted by a local charter authorizer must be in compliance with the latest Principles and Standards for Quality Charter School Authorizing, as promulgated by the National Association of Charter School Authorizers.

E. Local charter authorizers shall provide for an independent evaluation of charter proposals by a third party with educational, organizational, legal, and financial expertise.

F. The local charter authorizer shall make public through its website, and in printed form upon request, the following.

1. The guidelines for submitting a charter proposal in accordance with Subsections A - E of this Section.

2. All forms required for submission of a charter proposal.

3. The time lines established for accepting and reviewing charter proposals.

4. The process that will be used to review charter proposals submitted to the board.

5. The name and contact information for a primary point of contact for charter proposals.

G. In reviewing a charter proposal for approval, the local charter authorizer shall determine whether the proposal:

1. is valid;

2. is complete;

3. is financially well-structured;

4. is educationally sound;

5. provides for a master plan for improving behavior and discipline in accordance with R.S. 17:252;

6. provides a plan for collecting data in accordance with R.S. 17:3911; and

7. offers potential for fulfilling the purposes of this Bulletin.

H. Prior to approving a charter for a Type 1B school, the local charter authorizer considering the proposal shall hold a public meeting for the purpose of receiving public input. Such meeting shall be held in the geographic area to be served by the school after reasonable efforts have been made to notify the public of the meeting and its content.

I. Local charter authorizers shall provide written notification to all applicants whose charter proposals have been denied.

J. If a charter applicant believes that a local charter authorizer has not complied with Subsections A - F of this Section in its evaluation of an application, the charter applicant may submit its proposal to the LDE for its review and approval as a Type 2 charter. If the LDE determines that the local charter authorizer failed to comply with Subsections A - F of this Section, it shall notify the local charter authorizer of that determination and the LDE may proceed with its own review of the charter application.

K. Each approved charter may be approved subject to whatever other resolutive or suspensive conditions the chartering authority requires provided those entering into the charter agree with the conditions. If the local board or local charter authorizer seeks to amend the charter agreement in a manner that is unacceptable to the charter school or if the charter school finds requested terms for charter renewal to be unacceptable, the charter school may petition BESE to convert to a Type 2 charter school, pursuant to processes established by the LDE. Upon receipt of such request, BESE shall notify the local board or local charter authorizer of the request and shall permit the local board or local charter authorizer to provide a response prior to any action on such request.

L. BESE may rescind a charter approval or agreement between a local charter authorizer and a chartering group if the chartering group has been found by the state board to have a repeating pattern of abuse, neglect, and mistreatment of students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3973, R.S. 17:3974, R.S. 17:3981, R.S. 17:3981.1, R.S. 17:3981.2, R.S. 17:3982, and R.S. 17:3996.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

Chapter 7. Charter School Performance Contract §707. Contracts between Local Charter Authorizers and Charter Operators

A. Every charter contract between a local charter authorizers and the charter operator of a school authorized by the local charter authorizer shall include the following:

1. All clauses and exhibits required in charter school contracts by Title 17, Chapter 42 of the Louisiana Revised Statutes and by BESE Bulletin 126.

2. Requirements that the charter operator abide by all applicable federal and state law, and BESE policy.

3. A clause allowing all rights, responsibilities, and interests of the local charter authorizer in the contract to be assigned to BESE, in the event that the local charter authorizer ceases to operate or loses its BESE certification.

4. Provisions that no person who has been convicted of or has pled nolo contendere to a crime listed in R.S. 15:587.1(C) shall be hired by a charter school as a teacher, substitute teacher, bus driver, substitute bus driver, or janitor, or as a temporary, part time, or permanent school employee of any kind.

5. A clause acknowledging that BESE may rescind the charter contract if the chartering group has been found by the state board to have a repeating pattern of abuse, neglect, and mistreatment of students.

6. A clause acknowledging that if the charter is revoked or the school otherwise ceases to operate, all assets purchased with any public funds become the property of the local charter authorizer.

7. A clause requiring the charter operator and charter school to annually submit its budget to the local charter authorizer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3973, R.S. 17:3974, R.S. 17:3981, R.S. 17:3981.1, R.S. 17:3982, and R.S. 17:3996.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

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.

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators (LAC 28: CXV. Chapter 13)

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*: Chapter 13. The proposed revisions will add guidelines to control disorderly conduct on any school bus or at any school sponsored activity or function (§1301). The proposed Rule provides a clear definition of “bullying” in an effort to eliminate discrepancies and inconsistencies, and to amend verbiage as it relates to the student code of conduct (§1302). In addition, the proposed Rule establishes a procedure for reporting, investigating, and notifying parent and students of matters relative to bullying (§1303). The remaining changes are technical in nature.

Title 28 EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 13. Discipline

§1301. Disciplinary Regulations

A. Each LEA shall adopt such rules and regulations as it deems necessary to implement and control any disorderly conduct in the school or on the playground of the school, on any school bus, on the street or road while going to and from school, or during intermission and recess, or at any school sponsored activity or function.

1. The plan shall not prohibit a teacher from removing a pupil from the classroom for disciplinary reasons.

2. Each LEA shall adopt rules regarding the reporting and review of disciplinary actions.

B. Teachers, principals, and administrators may, subject to any rules as may be adopted by the LEA, apply reasonable disciplinary and corrective measures to maintain order in the schools. (Refer to R.S. 17:416 and R.S. 17:223.)

C. The disciplinary rules (regulations) shall be made known to teachers, parents, and students and shall be reasonably and consistently enforced.

D. Any principal who fails to act on a report of student violations of disciplinary regulations shall explain his/her reasons for such an action to the superintendent of the LEA by which he or she is employed, or to the superintendent's designee.

E. Students, who, through no fault of their parents or guardians or other persons having charge of them, regularly disrupt the orderly processes of the school to which they have been assigned, shall be considered as delinquents and may be reported by the visiting teacher or Supervisor of Child Welfare and Attendance, to the district or family court of the parish having jurisdiction in juvenile matters, there to be dealt with in the manner prescribed by law.

F. Schools shall provide due process prior to suspensions and expulsions.

G. Students who are removed from the classroom for disruptive, dangerous, or unruly behavior or who are

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed 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 proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 8, 2013 to Heather Cope, Executive Director, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Heather Cope
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 126—Charter Schools

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revision will establish the framework by which Local Charter Authorizers are certified, operate, and are reviewed, as required by Act 2 of the 2012 Legislative Session. The estimated implementation cost in the current fiscal year is approximately \$40,000. This cost includes operating expenses and expenses from increased workload of current Department of Education employees. The cost in subsequent fiscal years depends on the number of local charter authorizers that apply and are approved. The application process will be completed by the end of the current fiscal year. The Department of Education may hire an additional employee in FY 12-13 with a salary of approximately \$50,000 to \$60,000. The employee may dedicate approximately 20% of their time to work related to the ongoing oversight of approved Local Charter Authorizers.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy 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)

Local Charter Authorizers are allowed to charge each charter school it authorizes a fee up to two percent of the total per pupil amount that is received by a charter school for administrative overhead costs incurred by the Local Charter Authorizer. This fee may be charged by any charter authorizer as described in R.S. 17:3995.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1212#029

Evan Brasseaux
Staff Director
Legislative Fiscal Office

suspended for ten days or less shall be assigned school work missed and shall receive either full or partial credit for such work if it is completed satisfactorily and timely as determined by the principal or designee, upon the recommendation of the student's teacher. A student who is suspended for more than ten days or is expelled and receives educational services in an alternative school site, shall be assigned school work by a certified teacher and shall receive credit for school work if it is completed satisfactorily and timely as determined by the teacher. Such work shall be aligned with the curriculum used at the school from which the student was suspended or expelled.

H. Each local educational governing authority LEA shall adopt rules regarding the implementation of in-school suspension and detention.

I. Each LEA shall establish a discipline policy review committee comprised of sixteen members in accordance with the mandates of R.S. 17:416.8. The LEA shall establish procedures for appointing the two parent members.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:223-224; R.S. 17:416; 17:416.13.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1282 (June 2005), amended LR 36:1225 (June 2010), LR 37:1132, 1133 (April 2011), LR 39:

§1302. Student Code of Conduct

A. Each LEA shall adopt a student code of conduct for the students in the schools under its jurisdiction.

1. Such student code of conduct shall be in compliance with all existing rules, regulations, and policies of the board and of BESE and all state laws relative to student discipline and shall include any necessary disciplinary action to be taken against any student who violates the code of conduct.

2. Each LEA shall adopt and incorporate into its student code of conduct a policy prohibiting the bullying of a student by another student, which includes the definition of bullying and all other requirements listed in the following section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:223-224; R.S. 17:416; 17:416.13.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§1303. Bullying

A. Policy. Each LEA shall develop and adopt a policy that prohibits the bullying of a student by another student.

1. The bullying policy must be implemented in a manner that is ongoing throughout the year and integrated with a school's curriculum, a school's discipline policies, and other violence prevention efforts.

2. The policy shall contain the definition of bullying found in this section and shall address the following:

- a. behavior constituting bullying;
- b. the effect the behavior has on others, including bystanders; and
- c. the disciplinary and criminal consequences of bullying another student.

B. Training for School Personnel. Each LEA shall create a program to provide a minimum of four hours of training each year for all school employees, including bus drivers, with respect to bullying. The training shall specifically include the following:

1. how to recognize the behaviors defined as bullying;
2. how to identify students at each grade level who are most likely to become victims of bullying, while not excluding any student from protection from bullying;
3. how to use appropriate intervention and remediation techniques and procedures;
4. the procedures by which incidents of bullying are to be reported to school officials; and
5. information on suicide prevention, including the relationship between suicide risk factors and bullying.

C. Definition of Bullying

1. *Bullying* is defined as a pattern of one or more of the following behaviors:

- a. gestures, including but not limited to obscene gestures and making faces;
- b. written, electronic, or verbal communications, including but not limited to calling names, threatening harm, taunting, malicious teasing, or spreading untrue rumors;
- c. physical acts, including but not limited to hitting, kicking, pushing, tripping, choking, damaging personal property, or unauthorized use of personal property; and
- d. repeatedly and purposefully shunning or excluding from activities.

2. Behavior defined as bullying is exhibited toward a student, more than once, by another student or group of students and occurs, or is received by, a student while on school property, at a school-sponsored or school-related function or activity, in any school bus or van, at any designated school bus stop, in any other school or private vehicle used to transport students to and from schools, or any school-sponsored activity or event.

3. Bullying must have the effect of physically harming a student, placing the student in reasonable fear of physical harm, damaging a student's property, placing the student in reasonable fear of damage to the student's property, or must be sufficiently severe, persistent, and pervasive enough to either create an intimidating or threatening educational environment, have the effect of substantially interfering with a student's performance in school, or have the effect of substantially disrupting the orderly operation of the school.

D. Notice of Bullying Policy to students and parents. The LEA shall inform each student orally and in writing of the prohibition against the bullying of a student by another student, the nature and consequences of such actions, including the potential criminal consequences and loss of driver's license, and the proper process and procedure for reporting any incidents of bullying. A copy of the written notice shall also be delivered to each student's parent or legal guardian.

E. Reporting Incidents of Bullying. The LEA shall develop a procedure for the reporting of incidents of bullying using the bullying report form approved by BESE and available on the DOE website. The procedure shall include the following.

1. Students and Parents

a. Any student who believes that he or she is or has been the victim of bullying, or any student or parent or legal guardian, who witnesses bullying or has good reason to believe bullying is taking place, may report the bullying to a school official.

b. A student, or parent or guardian, may also report concerns regarding bullying to a teacher, counselor, other school employee, or to any parent chaperoning or supervising a school function or activity.

c. Any report of bullying shall remain confidential.

2. School Personnel and Chaperones. Any teacher, counselor, bus driver, or other school employee, whether full or part time, and any parent chaperoning or supervising a school function or activity, who witnesses or who learns of bullying from student, shall report the incident to a school official. A verbal report shall be submitted by the school employee or parent on the same day as the school employee or parent witnessed or otherwise learned of the bullying incident, and a written report must be filed no later than two days thereafter.

3. Retaliation. Retaliation against any person who reports bullying in good faith, who is thought to have reported bullying, who files a complaint, or who otherwise participates in an investigation or inquiry concerning allegations of bullying is prohibited conduct and subject to disciplinary action.

4. False Reports. Making false reports about bullying to school officials is prohibited conduct and will result in disciplinary action.

F. Investigation Procedure. When a report of the bullying of a student by another student is received, the school shall conduct an investigation using the following procedure

1. Timing. The investigation shall begin the next school day following the day on which the written report was received and shall be completed no later than 10 school days after receipt of the report. If additional information is received after the end of the 10-day period, the school official shall amend all documents and reports to reflect such information.

2. Parental Notification of Allegation of Bullying

a. Upon receiving a report of bullying, the school shall notify the parents or legal guardians of the alleged offender and the alleged victim no later than the following school day.

b. Under no circumstances shall the delivery of this notice to the parent or legal guardian, be the responsibility of an involved student. Delivery of notice by an involved student shall not constitute notice as is required by this Section.

c. Before any student under the age of 18 is interviewed, his parents or legal guardians shall be notified of the allegations made and shall have the opportunity to attend any interviews conducted with their child as part of the investigation.

d. All meetings with the parents or legal guardians of an alleged victim or an alleged offender shall be in compliance with the following:

i. separate meetings with the parents or legal guardians of the alleged victim and the alleged offender.

ii. parents or legal guardians of the alleged victim and alleged offender must be notified of the potential consequences, penalties and counseling options.

e. In any case where a school official is authorized to require a parent or legal guardian of a student under the age of 18 to attend a conference or meeting regarding the student's behavior, and after notice willfully refuses to

attend, the principal or designee shall file a complaint with a court of competent juvenile jurisdiction, pursuant to Children's Code Article 730(8) and 731.

f. A principal or designee may file a complaint pursuant to Children's Code Article 730(1) or any other applicable ground when, in his judgment, doing so is in the best interests of the student.

3. Scope

a. The investigation shall include documented interviews by the designated school official of the reporter, the alleged victim, the alleged offender, and any witnesses.

b. The school official shall collect and evaluate all facts using the bullying investigation form approved by BESE and available on the DOE website.

c. The school official shall obtain copies or photographs of any audio-visual evidence.

4. Documentation. At the conclusion of a bullying investigation, and after meeting with the parents or legal guardians, the school official or school board shall:

a. prepare a written report containing the findings of the investigation, including input from students' parents or legal guardians, and the decision by the school official or school system official. The document shall be placed in the school records of both students. If completed entirely, the bullying investigation form may serve as the report;

b. promptly notify the reporter/complainant of the findings of the investigation and whether remedial action has been taken, if such release of information does not violate the law;

c. keep reports/complaints and investigative reports confidential, except where disclosure is required by law;

d. maintain reports/complaints and investigative reports for three years;

e. provide a copy of any reports and investigative documents to the LEA, as necessary.

5. Disciplinary Action. If the school official has determined bullying has occurred, and after meeting with the parents or legal guardians of the students involved, the school official shall take prompt and appropriate disciplinary action against the offender and report criminal conduct to law enforcement, if appropriate.

6. LEA Reporting

a. The LEA shall electronically report all such documented incidences of bullying to the DOE using the DOE behavior report and incidence checklist to document the details of each reported incident of bullying.

7. Appeal

a. If the school official does not take timely and effective action, the student, parent, or school employee may report the bullying incident to the school board. The school board shall begin an investigation of any properly reported complaint of bullying no later than the next school day after the board receives the report.

b. If the school board does not take timely and effective action, the student, parent, or other school employee may report the bullying incident to the DOE. The DOE shall track the number of reports, shall notify the superintendent and the president of the LEA, and shall publish the number of reports by school district on its website.

8. Parental Relief. If four or more reports of separate incidents of bullying have been made, and no investigation

has occurred, the parent or legal guardian of the alleged victim shall have the option to request that the student be transferred to another school operated by the LEA.

a. In order to exercise this option, the parent or legal guardian shall file a request with the superintendent of the LEA for the transfer of the student to another school under the LEA's jurisdiction.

b. The LEA shall make a seat available at another of its schools within 10 school days of receipt of the request for a transfer. If the LEA has no other school serving the grade level of the student, then within 15 school days of receipt of the request, the superintendent of the LEA shall:

i. inform the student and the student's parents or legal guardians and facilitate the student's enrollment in a statewide virtual school;

ii. offer the student placement in a full-time virtual program or virtual school under the jurisdiction of the LEA;

iii. enter into a memorandum of understanding with the superintendent of another LEA to secure a placement and provide for the transfer of the student to a school serving the grade level of the student, pursuant to R.S. 17:105 and 105.1.

c. If no seat or other placement is made available within 30 calendar days of the receipt of the request by the superintendent, the parent or legal guardian may request a hearing with the school board, which shall be public or private at the option of the parent or legal guardian. The school board shall grant the hearing at its next scheduled meeting or within 60 calendar days, whichever is sooner.

d. At the end of any school year, the parent or legal guardian may request that the LEA transfer the student back to the original school. The LEA shall make a seat available at the school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:415; R.S. 17:416; 17:416.13.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

§1304. Classroom Management Training for School Staff [Formerly §1302]

A. The school master plans required of city, parish, and other local public school boards shall make provision for pre-service and ongoing grade appropriate classroom management training for teachers, principals, and other appropriate school personnel regarding positive behavioral supports and reinforcement, conflict resolution, mediation, cultural competence, restorative practices, guidance and discipline, and adolescent development.

B. City, parish, and other local public school boards shall provide ongoing classroom management courses and regularly review discipline data from each school to determine what additional classroom management training is needed, if any, and what additional classroom support activities should be provided by the principal and school administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:252

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:1380 (May 2011), repromulgated LR 39:

§1305. Reasons for Suspension [Formerly §1303]

A. School principals may suspend from school any student, including an exceptional student, for good cause in accordance with state law and local policy.

B. Students determined to be guilty of the following offenses may be suspended for the following reasons:

1. willful disobedience;
2. disrespect to a teacher, principal, superintendent, and/or member or employee of the local school board;
3. making an unfounded charge against a teacher, principal, superintendent, and/or member or employee of the local school board;
4. using unchaste or profane language;
5. immoral or vicious practices;
6. conduct or habits injurious to his/her associates;
7. using tobacco and/or using and possessing alcoholic beverages or any controlled dangerous substances governed by the Uniformed Controlled Dangerous Substance Law in any form in school buildings or on school grounds;
8. disturbing the school and habitually violating the rules;
9. cutting, defacing, or injuring any part of public school buildings;
10. writing profane or obscene language or drawing obscene pictures in or on any public school premises, or on any fence, sidewalk, or building on the way to or from school;
11. possessing firearms, knives, or other implements that can be used as weapons;
12. throwing missiles on the school grounds;
13. instigating or participating in fights while under school supervision;
14. violating traffic and safety regulations;
15. leaving the school premises without permission or his/her classroom or detention room without permission;
16. habitual tardiness or absenteeism; and
17. committing any other serious offense.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:416.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1283 (June 2005), repromulgated LR 39:

§1306. Due Process for Suspensions [Formerly §1305]

A. Prior to any suspension, the school principal or the principal's designee shall advise the student in question of the particular misconduct of which he or she is accused as well as the basis for such accusation, and the student shall be given an opportunity at that time to explain his or her version of the facts to the school principal or his or her designee.

B. The principal, or the principal's designee, shall contact by telephone at the telephone number shown on the pupil's registration card or send a certified letter at the address shown on the pupil's registration card to the parent or guardian of the student, giving notice of the suspension, the reasons therefore and establishing a date and time for a conference with the principal or his designee as a requirement for readmitting the student.

1. If the parent or guardian fails to attend the required conference within five school days of mailing the certified letter or other contact with the parent, the truancy laws shall become effective.

2. On not more than one occasion each school year when the parent or guardian refuses to respond, the principal may determine whether readmitting the student is in the best interest of the student.

3. On any subsequent occasions in the same year, the student shall not be readmitted unless the parent, guardian, or other appointed representative responds.

C. A student whose presence in or about a school poses a continued danger to any person or property or an ongoing threat of disruption to the academic process shall be immediately removed from the school premises without the benefit of the procedure described above; however, the necessary procedure shall follow as soon as is practicable.

D. Notice in writing of the suspension and the reasons thereof shall be given to the parent or parents of the suspended student.

E. Any parent, tutor, or legal guardian of a suspended student shall have the right to appeal to the superintendent or to a designee of the superintendent, who shall conduct a hearing on the merits of the case.

F. In all cases of suspensions, the parent, the superintendent of schools, and the visiting teacher and/or Supervisor of Child Welfare and Attendance shall be notified in writing of the facts concerning each suspension, including the reasons therefore and terms thereof.

G. The decision of the superintendent on the merit of the case, as well as the term of suspension, shall be final, reserving the right to the superintendent to remit any portion of the time of suspension.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:416.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1283 (June 2005), repromulgated LR 39:

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.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed 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 proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until January 8, 2013, to Heather Cope, Executive Director, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Heather Cope
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy changes to Bulletin 741 could potentially increase costs to school districts for professional development and training of school staff on bullying, and for revising and updating the Student Code of Conduct. The estimated implementation cost will vary across districts. The districts may use a combination of Minimum Foundation Program funds and local funds to implement the proposed policy.

The proposed policy changes are in accordance with Act 861 of the 2012 Regular Legislative Session. The proposed revisions will add guidelines to control disorderly conduct on any school bus or at any school sponsored activity or function. The rule provides a clear definition of “bullying” in an effort to eliminate discrepancies and inconsistencies, and to amend verbiage as it relates to the Student Code of Conduct. In addition, the rule establishes a procedure for reporting, investigating, and notifying parents and students of matters relative to bullying. The remaining changes are technical in nature.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed policy will have no effect on revenue collections at the state or local government level.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment as a result of this rule change.

Beth Scioneaux
Deputy Superintendent
1212#031

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Administration of Medication and Diabetes Management and Treatment (LAC 28: CXV.1129 and 1130)

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*: §1129. Administration of Medication and §1130. Diabetes Management and Treatment. The proposed policy revision will provide rules and regulations for school administrators who choose to use trained unlicensed diabetes care assistants in the management and treatment of students with diabetes at school. Use of trained unlicensed care assistants to manage care and administer treatments for students with diabetes is an optional for school districts, but if implemented, personnel training and assessment is mandatory prior to services being provided.

Title 28 EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 11. Student Services

§1129. Administration of Medication

A. - A.2. ...

B. Written Orders, Appropriate Containers, Labels and Information

1. Medication shall not be administered to any student without an order from a Louisiana, or adjacent state, licensed physician or dentist or other authorized health care prescriber licensed in Louisiana, and it shall include the following information:

B.1.a. - B.3.f. ...

C. Administration of Medication – General Provisions

1. ...

2. Except in the case of a trained unlicensed diabetes care assistant administering diabetes medications or in life threatening situations, trained unlicensed school employees may not administer injectable medications.

C.3. - I.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436.1; R.S. 17:436.1(J), R.S. 17:436.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1278 (June 2005), amended LR 35:1476 (August 2009), LR 36:481 (March 2010), LR 39:

§1130. Diabetes Management and Treatment

NOTE: This section was developed in coordination with the Louisiana State Board of Nursing (LSBN). Any waivers, deletions, additions, amendments, or alterations to this policy shall be approved by both BESE and LSBN.

A. Diabetes Treatment Plans

1. Any public elementary or secondary school student who seeks care for his diabetes while at school or participating in a school related activity shall submit a diabetes management and treatment plan on an annual basis.

2. Such plan shall be developed by a physician licensed in Louisiana or adjacent state, or other authorized health care prescriber licensed in Louisiana who is selected by the parent or guardian to be responsible for such student's diabetes treatment.

3. The diabetes management plan shall be kept on file in the school in which the child is enrolled and shall include:

a. an evaluation of the student's level of understanding of his condition and his ability to manage his diabetes;

b. the diabetes-related healthcare services the student may receive or self-administer at school or during a school-related activity;

c. a timetable, including dosage instructions, of any diabetes medications to be administered to the student or self-administered by the student; and

d. the signature of the student (if age appropriate), the student's parent or legal guardian, and the physician or other authorized health care prescriber responsible for the student's diabetes treatment.

4. The plan shall be submitted annually to the principal or appropriately designated school personnel:

a. prior to or within five school days after the beginning of each school year;

b. upon enrollment, if the student enrolls in the school after the beginning of the school year;

c. as soon as practicable following the student's receipt of a diagnosis of diabetes; or

d. as warranted by changes in the student's medical condition;

5. The school nurse will be given not less than five school days to develop the Individualized Healthcare Plan (IHP) and shall implement the IHP within 10 school days upon receipt of the diabetes treatment plan.

a. The school nurse must assess the stability of the student's diabetes both at home and in the school setting prior to the development of the IHP for care in the school setting.

6. The parent or legal guardian shall be responsible for all care related to the student's diabetes management and treatment plan until

a. the IHP is developed;

b. the parents or legal guardian have agreed and signed; and

c. the diabetes management and treatment plan is put into place by the school nurse.

7. The school nurse shall be responsible for implementing and/or supervising the diabetes management and treatment plan for the student on campus, during school related activities, and during school related transportation of the student for the current year.

B. Provision of Care – General Information

1. Upon receipt of the diabetes management and treatment plan, the school nurse shall conduct a nursing assessment of the student in his educational environment and develop the IHP.

2. The school nurse shall provide care to a student with diabetes, or assist a student with the self-care of his diabetes, in accordance with the student's diabetes management and treatment plan and IHP.

3. Diabetes management and treatment shall be provided to a student with diabetes during the school day and any school related activity. School related activities include but are not limited to extra curricular activities and sports.

4. No physician, nurse, school employee, school, or school district shall be liable for civil damages or subject to disciplinary action under professional licensing regulation or school disciplinary policies as a result of the activities of an unlicensed diabetes care assistant. Exception: If a professional licensing board has cause to believe that a licensee, within its jurisdiction, improperly trained an unlicensed diabetes care assistant or improperly assessed the ability of an unlicensed diabetes care assistant to perform his or her designated functions, then the professional licensing board may bring disciplinary action against the licensee.

5. With written permission from a student's parent or legal guardian, a school may provide a school employee with responsibility for providing transportation or supervision of a student with diabetes during an off-campus activity with an information sheet that provides the following information:

- a. the identity of the student;
- b. a description of potential emergencies that may occur as a result of the student's diabetes and the appropriate responses to such emergencies; and
- c. the telephone number of the person(s) to be contacted in case of an emergency.

C. Unlicensed Diabetes Care Assistants-- General Information

1. The use of unlicensed diabetes care assistants is optional. Schools shall not be required to utilize unlicensed diabetes care assistants.

2. An unlicensed diabetes care assistant is defined as a school employee who is not a healthcare professional, who is willing to complete training requirements established by this rule, and is determined competent by the school nurse to provide care and treatment to students with diabetes.

3. A school employee shall not be subject to any penalty or disciplinary action for refusing to volunteer or serve as an unlicensed diabetes care assistant.

4. If a school chooses to use unlicensed diabetes care assistants to provide care for students with diabetes at school or during a school-related activity, all of the rules of this section shall be followed.

5. Supervision requirements for unlicensed diabetes care assistants shall be as follows:

- a. unlicensed diabetes care assistants may serve under the supervision of the school nurse or school principal for diabetes management care.
- b. unlicensed diabetes care assistants shall serve under the supervision of a school nurse for medication administration.

i. where a school nurse is not physically present, he or she must be available by phone and within a reasonable mile radius for immediate access to the school.

6. Protocols for administration of medication for the treatment of diabetes shall be consistent with Bulletin 741, §1129.

D. Role of Unlicensed Diabetes Care Assistants

1. An unlicensed diabetes care assistant may provide diabetes care to a student only in accordance with the student's diabetes management and treatment plan.

a. the student's parent or legal guardian must sign an agreement authorizing such care.

b. the agreement must be on file with the school.

2. An unlicensed diabetes care assistant, in accordance with the diabetes management and treatment plan on file for a student, may provide diabetes care to a student, or assist a student in the self-care of his diabetes by:

a. checking and recording blood glucose and ketone levels;

b. responding to blood glucose and ketone levels;

c. administering emergency treatment as prescribed in the student's Diabetes treatment plan and/or IHP;

d. following carbohydrate counting guidelines established by the school district or school; and

e. following medication administration protocols established by the school district or school.

3. Methods for training unlicensed diabetes care assistants include:

a. at least six hours of diabetes management and treatment instruction;

b. at least five return demonstrations of 100% skill competency; and

c. annual skill competency demonstration.

4. The unlicensed diabetes care assistant must be monitored by the school nurse for compliance of treatment plan and skill level.

5. The unlicensed diabetes care assistant must notify the school nurse of any changes in the status of the student.

6. During the specific time spent on management and/or treatment of the student with diabetes, the unlicensed diabetes care assistant shall be relieved of all other duties.

7. In performance of their duties, unlicensed diabetes care assistants shall be exempt from any applicable state law or rule that restricts the activities that may be performed by a person who is not a healthcare professional.

E. The Role of the School Nurse

1. The school nurse, in collaboration with the principal, shall supervise the implementation of the school policies for diabetes management and treatment and for the administration of medications in the schools to ensure the safety, health, and welfare of the students.

2. The school nurse or other healthcare professional with expertise in caring for persons with diabetes, in accordance with their authorized scope of practice, shall be responsible for the training and competency evaluation of non-medical personnel who have volunteered to serve as a diabetes care assistant.

3. The curriculum for training the unlicensed diabetes care assistants shall include, but not be limited to the following topics:

a. Recognize the signs and symptoms of hyperglycemia and hypoglycemia.

b. Understand the details of the student's diabetes management treatment plan and when to contact the school

nurse for additional directions on how to treat the student's change in condition.

c. Understand the proper action to take if student's blood glucose levels are outside the target ranges specified in his diabetes management and treatment plan.

d. Perform finger sticks to check blood glucose levels, check urine ketones levels, properly record the results, and notify the school nurse.

e. Administration of medication as ordered by physician in accordance with school policies, procedures and the student's diabetes management treatment plan.

f. Recognize complications which require emergency assistance.

g. Understand carbohydrate counting, the recommended schedules and food intake for meals and snacks for a student with diabetes, the effect of physical activity on blood glucose levels, and the proper actions to be taken if a student's schedule is disrupted during school or any school related activity.

h. Review of school or school district policies related to confidentiality and blood borne pathogens.

F. The Role of the Student with Diabetes in Self Care

1. In accordance with a student's diabetes management and treatment plan the school shall permit the student to attend to the self-management, administration of medications, treatment and documentation as outlined in his diabetes management plan.

H. The Role of the Principal

1. In consultation with the school nurse, if one is available, the principal may:

a. receive diabetes management and treatment plan.

b. seek school employee who is willing to be trained to serve as the unlicensed diabetes care assistant.

c. ensure the school has at least one unlicensed diabetes care assistant, if the school has a full time nurse, or at least three unlicensed diabetes care assistants if the school has no full time nurse.

d. require the school to develop carbohydrate count standard guides for those students who eat school provided lunches.

e. supervise the implementation of the school policies for diabetes management and treatment and for the administration of medications in the schools to ensure the safety, health, and welfare of the students.

f. ensure appropriate supervision of the unlicensed diabetes care assistant.

I. The Role of the Parent/Legal Guardian

1. Annually submit a copy of the student's diabetes management and treatment plan to the principal of the school in which in student is enrolled.

2. Give consent to implementation of the diabetes management and treatment plan.

3. Work with appropriate school personnel in development of the Individualized Healthcare Plan and provision of care for the student until the Individualized Healthcare Plan and Diabetes Management and Treatment Plan can be implemented.

4. Provide written calculation of carbohydrates in meals when lunch is provided from home.

5. Provide necessary supplies and equipment to deliver diabetes management and treatment plan.

6. Follow protocols for administration of medication consistent with Bulletin 741, §1129.G.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

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.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed 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 proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m. January 8, 2013 to Heather Cope, Executive Director, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Heather Cope
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy will have no implementation cost for state governmental units. The estimated implementation cost to local school districts choosing to use trained unlicensed diabetes care assistants is indeterminable. The proposed policy will provide regulations for school administrators who choose to use trained unlicensed diabetes care assistants in the provision of diabetes management and treatment of students.

Use of trained unlicensed personnel to manage and administer treatments for students with diabetes is optional for school districts, but if implemented, training and assessment to determine competency of the unlicensed personnel is mandatory prior to services being provided.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy 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)

There are no costs and/or economic benefits to directly affected persons or non-governmental groups

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment as a result of this rule.

Beth Scioneaux
Deputy Superintendent
1212#030

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Programs of Study (LAC 28: LXXIX.1103)

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 (Nonpublic)—Louisiana Handbook for School Administrators: §1103. Diabetes Management and Treatment*. The policy allows for a diabetes management and treatment plan for any student seeking care for his or her diabetes while at school. The policy describes the components of the plan and the procedures for its implementation.

Title 28 EDUCATION

Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Programs of Study

Chapter 11. Student Services

§1103. Diabetes Management and Treatment

NOTE: This Section was developed in coordination with the Louisiana State Board of Nursing (LSBN). Any waivers, deletions, additions, amendments, or alterations to this policy shall be approved by both BESE and LSBN.

A. Diabetes Treatment Plans

1. Any elementary or secondary school student who seeks care for his diabetes while at school or participating in a school related activity shall submit a diabetes management and treatment plan on an annual basis.

2. Such plan shall be developed by a physician licensed in Louisiana or adjacent state, or other authorized health care prescriber licensed in Louisiana who is selected by the parent or guardian to be responsible for such student's diabetes treatment.

3. The diabetes management plan shall be kept on file in the school in which the child is enrolled and shall include:

a. an evaluation of the student's level of understanding of his condition and his ability to manage his diabetes;

b. the diabetes-related healthcare services the student may receive or self-administer at school or during a school-related activity;

c. a timetable, including dosage instructions, of any diabetes medications to be administered to the student or self-administered by the student; and

d. the signature of the student (if age appropriate), the student's parent or legal guardian, and the physician or other authorized health care prescriber responsible for the student's diabetes treatment.

4. The plan shall be submitted annually to the principal or appropriately designated school personnel:

a. prior to or within five school days after the beginning of each school year;

b. upon enrollment, if the student enrolls in the school after the beginning of the school year;

c. as soon as practicable following the student's receipt of a diagnosis of diabetes; or

d. as warranted by changes in the student's medical condition.

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, R.S. 17:170(D), R.S. 17:170(A)(1), and R.S. 17:436.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:

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.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed 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 proposed rule that will accomplish the

objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m. January 8, 2013 to Heather Cope, Executive Director, Board of Elementary and Secondary Education, box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Heather Cope
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741(Nonpublic)—Louisiana Handbook for Nonpublic School Administrators Programs of Study

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy will have no implementation cost for state or local governmental units. The proposed policy will provide regulations for nonpublic school administrators in the implementation of diabetes management and treatment of students. The policy allows for a diabetes management and treatment plan for any student seeking care for his or her diabetes while at school. The policy describes the components of the plan and the procedures for its implementation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy 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)

There are no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment as a result of this rule.

Beth Scioneaux
Deputy Superintendent
1212#032

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Capital Area Ground Water Conservation Commission**

Pumpage Fees (LAC 56:V.1107)

Notice is hereby given that the Board of Commissioners of the Capital Area Ground Water Conservation District, which consists of the Parishes of East and West Baton Rouge, East and West Feliciana, and Pointe Coupee, plan to increase the pumping charges for ground water users. The board has determined that this increase is necessary to meet the increased costs for the district to fund a comprehensive groundwater modeling study in cooperation with the US Geological Survey, Louisiana Department of Transportation and Development and East Baton Rouge City Parish. Over

ten years the total cost will be \$2,019,000. This action is in accordance with Louisiana Revised Statutes 38:3076(14) and 38:3079.

Title 56

PUBLIC WORKS

Part V. Capital Area Ground Water Conservation Commission

Chapter 11. Determination of and Payment of Accounts

§1107. Pumpage Fee

A. The pumping charges for ground water users shall be \$5 per million gallons and is to be paid quarterly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3076(14) and 38:3079.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Capital Area Ground Water Conservation Commission, LR 1:291 (July 20, 1975, amended LR 10:592 (August 1984), LR 34: effective January 1, 1985, repromulgated LR 33:2649 (December 2007), LR 34:435 (March 2008), effective April 1, 2008, LR 39:

Family Impact Statement

These proposed rules 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. a family's earnings and budget;
5. the behavior and personal responsibility of children; or
6. the family's ability or that of the local government to perform the function as contained in the proposed rules.

Public Comments

The commission will accept written comments until 11:30 a.m. January 29, 2013 if hand delivered or mailed to 3535 South Sherwood Forest Blvd., Suite 137, Baton Rouge, LA.

Public Hearing

A public hearing will be held on January 29, 2013 at 1 p.m. in the commission office, 3535 South Sherwood Forest Blvd., Suite 137, Baton Rouge, LA. Oral comments will be accepted at that meeting.

Anthony J. Duplechin, Jr.
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Pumpage Fees

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed rule change. The proposed rule raises the Capital Area Groundwater Conservation District's pumpage fee from \$4 per million gallons of groundwater pumped to \$5 per million gallons of groundwater pumped. The increased revenue is needed to fund a study projecting saltwater intrusion into groundwater in order to determine preventive measures. The Capital Area Groundwater Conservation District plans to do a

comprehensive groundwater modeling study over a 10-year period in cooperation with the U.S. Geological Survey, the Louisiana Department of Transportation and Development and East Baton Rouge City Parish Department of Public Works.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Capital Area Groundwater Conservation District will receive an estimated increase of \$18,667 for the period April 1, 2013 through June 30, 2013, and an estimated \$65,000 annually thereafter.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The 59 users, including municipalities and industries in East Baton Rouge, East Feliciana, Pointe Coupee, West Baton Rouge and West Feliciana, which are subject to the current \$4 per million gallons of groundwater pumped will be charged an additional \$1 per million gallons of groundwater pumped.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of this rule change.

Anthony J. Duplechin
Director
1212#071

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Office of Facility Planning and Control**

**Performance-Based Energy Efficiency Contracting
(LAC 34:V.105)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the provisions of R.S. 39:1490(B), the Division of Administration, Office of Facility Planning and Control hereby gives notice of its intent to amend Title 34, Government Contracts, Procurement and Property Control, Part V, Procurement of Professional, Personal, Consulting and Social Services, Chapter 1, Procurement and Property Control, Subchapter A, General Provisions. These rule changes amend the previous Rule so as to comply with requirements of RS 39:1496.1 as amended by Act No. 1021 of the 2010 Regular Legislative Session. The effect of these Rule changes is to institute the energy efficiency procurement support team to review performance contracting proposals and make a recommendation for the selection of an energy services company to the commissioner of administration, to require that negotiated contracts must be reviewed and approved by JLCB before award, to institute periodic performance audits of energy performance contracts by the legislative auditor and to require that the Joint Legislative Committee on the Budget ("JLCB") must review and approve performance contracting rules and regulations before they may be adopted and promulgated. The proposed Rule was approved by the JLCB at their meeting of 12/16/2011.

Title 34

**GOVERNMENT CONTRACTS, PROCUREMENT
AND PROPERTY CONTROL**

**Part V. Procurement of Professional, Personal,
Consulting and Social Services**

**Chapter 1. Procurement of Professional, Personal,
Consulting and Social Services**

Subchapter A. General Provisions

**§105. Performance-Based Energy Efficiency
Contracting**

A. Preparation of Requests for Proposals

1. Performance contracts shall be considered to be consulting services contracts under the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and shall be awarded in accordance with the provisions of that Chapter, the rules and regulations promulgated by Office of Contractual Review pursuant to that Chapter, and this Section.

2. Prior to its preparation of an RFP, a state agency, as defined in R.S. 39:2 (hereinafter, "user agency") shall perform a needs analysis in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and the rules and regulations promulgated by the Division of Administration, through its Office of Contractual Review ("OCR") pursuant to that Chapter. Such needs analysis shall be in a form approved by the commissioner of administration and shall include a detailed audit of energy use.

3. Prior to its preparation of an RFP a user agency shall submit its needs analysis to the Division of Administration, Office of Facility Planning and Control ("FPC") for approval.

4. Upon approval of a user agency's needs analysis pursuant to this Section, such user agency shall prepare an RFP in a form approved by OCR, which form shall require proposers to separately itemize the costs and savings associated with each proposed energy cost savings measure ("ECSM"). In accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and the rules and regulations promulgated by OCR pursuant to that Chapter, every RFP shall indicate the relative importance of price and other evaluation factors, shall clearly define the tasks to be performed under the performance contract, the criteria to be used in evaluating the proposals and the time frames within which the work must be completed. Prior to advertising its RFP, a user agency shall submit it to FPC and obtain written consent to the advertisement of the RFP.

5. Upon approval of a user agency's RFP, such user agency shall advertise its RFP in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and the rules and regulations promulgated by OCR pursuant to that Chapter.

B. Evaluation of Submitted Proposals

1. A user agency shall conduct an initial evaluation of any proposals it timely receives in response to its RFP and shall submit to the Office of Facility Planning and Control each proposal that is in accordance with the provisions of

Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section. As a part of its evaluation, a user agency shall score each responsive proposal in accordance with all of the evaluation factors contained in the published RFP and forward the result of its evaluation and its recommendation to the commissioner of administration. A user agency shall not make a final selection from among the proposals.

2. Prior to the award of any performance contract, the commissioner of administration shall retain an independent third-party consultant in accordance with this Section. Such independent third-party consultant shall evaluate all proposals forwarded to FPC by a user agency in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section. After completing its evaluation, the independent third-party consultant shall submit the results of its evaluation and its recommendation to FPC and to the energy efficiency procurement support team ("PST"). The independent third-party consultant shall not make a final selection from among the proposals.

3. Prior to the retaining of an independent third-party consultant pursuant to this Section, every proposed independent consultant shall execute a written certification verifying that they have no direct conflict of interest as to the agency, the proposals which the consultant is to evaluate or to any proposer. Such written certification shall be in a form approved by the legislative auditor. In order to assist the legislative auditor in verifying the independence of a proposed independent consultant, such proposed independent consultant shall provide to the legislative auditor any documentation or information the legislative auditor requests. A proposed independent consultant shall not be retained, unless the legislative auditor has determined that such proposed independent consultant has no direct conflict of interest as to the agency, the proposals which the consultant is to evaluate or to any proposer.

4. The evaluation of proposals by the independent third-party consultant shall include suggestions, if appropriate, for the resolution of any unique issues arising in connection with a particular proposed performance contract. The evaluation shall also include, but not be limited to, a consideration of the following:

- a. whether proposed ECSMs are in compliance with the provisions of R.S. 39:1496.1;
- b. whether proposed ECSMs will generate net savings, as those terms are defined in Subsection E of this Section; and
- c. whether the proposed protocol for measuring and verifying the energy savings guaranteed in the contract conforms to the latest standards set forth by the International Performance Measurement and Verification Protocol ("IPMVP").

5. The energy efficiency procurement support team shall review the evaluations and recommendations submitted by the independent third party consultant and the user agency. Upon completion of such review, the PST shall form a recommendation and submit its recommendation to the commissioner of administration.

6.a. The energy efficiency procurement support team shall consist of:

- i. an attorney chosen jointly by the Speaker of the House of Representatives and the President of the Senate from the legislative services staff of the House of Representatives or the staff of the Senate;
- ii. one or more representatives chosen by the Division of Administration, Office of Facility Planning and Control;
- iii. one or more representatives chosen by the user agency initiating the procurement action;
- iv. one or more representatives chosen by the Legislative Fiscal Office ("LFO").

b. At least four members, one from each office or agency designated, shall be present to constitute a quorum. A representative of Facility Planning and Control shall serve as the chairperson of the PST. The chairperson of the PST shall confer with each office or agency to set the number of persons who will comprise the PST, and shall notify each office or agency of the names of the persons selected at least five days prior to meeting.

7. The PST reserves the rights to seek clarification of any proposal for the purpose of identifying and eliminating any minor irregularities or informalities, to request any supporting documentation or information from one or more proposers and/or to require a presentation/interview with the proposers.

8. The commissioner of administration shall review the evaluation of the independent third-party consultant and the recommendation of the energy efficiency procurement support team. After completing his review pursuant to this Section, the commissioner of administration shall notify the user agency in writing as to whether it may proceed with negotiation of a contract with a specified energy services company ("ESCO") or that he has not consented to the award of a performance contract. Pursuant to the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section, such consent shall be given to the responsible ESCO whose proposal is determined by the commissioner of administration to be the most advantageous to the state of Louisiana, taking into consideration all of the evaluation factors set forth in the RFP, as well as any evaluations and recommendations provided by the user agency and the independent consultant. In the event that the commissioner of administration determines that consent to the award of a performance contract would not be advantageous to the state of Louisiana, he shall provide the user agency with written reasons for his decision to withhold his consent.

9. Except as explicitly set forth in this Section, no party shall disclose information derived from submitted proposals prior to the consent by the commissioner of administration to the award of a performance contract to a specified ESCO.

C. Negotiation of Performance Contracts

1. A user agency shall negotiate a performance contract with an approved ESCO in a form approved by OCR. The process of such negotiation shall be in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by

OCR pursuant to that Chapter, and this Section. The commissioner of administration may require that an independent third-party consultant retained pursuant to this Section participate on behalf of a user agency in the negotiation of a performance contract with an approved ESCO.

a. Notwithstanding any other provisions of this Section, every performance contract negotiated pursuant to this Section shall set forth the total units of energy saved, the method, device or financial arrangement to be used to establish the amount of such savings, the cost per unit of energy and, if applicable, the basis for any adjustment in the cost per unit of energy during the term of the contract.

b. Notwithstanding any other provisions of this Section, every performance contract negotiated pursuant to this Section shall, with respect to each ECSM included in such performance contract and in addition to fulfilling any other requirements set forth in this Section, state the following:

- i. the detailed scope of work to be performed pursuant to the performance contract;
- ii. the initial price to be paid by the user agency;
- iii. the annual energy savings guaranteed by the ESCO;
- iv. the annual energy cost savings guaranteed by the ESCO;
- v. the annual maintenance cost savings guaranteed by the ESCO, including, but not limited to, services, parts, materials, labor and equipment;
- vi. the annual new maintenance costs, including operating expenses added as a result of new equipment installed or service performed by the ESCO; and
- vii. the total annual savings guaranteed by the ESCO.

(a). *Total Annual Savings*—annual energy cost savings plus annual maintenance cost savings minus annual new maintenance costs.

c. Notwithstanding any other provisions of this Section, no payment shall be made to an ESCO pursuant to a performance contract unless such performance contract complies with Paragraph C.1.

2. The term of every performance contract negotiated pursuant to this Section and term of any obligation incurred by a user agency to fund a performance contract shall be for a period no greater than the lesser of 20 years or the average life of the equipment installed by the ESCO and shall contain a guarantee of energy savings, which guarantee shall, at a minimum, ensure total annual savings sufficient to fully fund any financing arrangement entered into pursuant to such performance contract.

3. Every performance contract negotiated pursuant to this Section shall contain the following clause:

"The continuation of this contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the contract. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which funds have been appropriated. Such termination shall be without penalty or expense to the agency, board or commission except for payments which have been earned prior to the termination date."

4. Upon completion of negotiation of a performance contract by the user agency, the commissioner of administration shall review the negotiated contract. A user agency's submission of a negotiated performance contract shall be in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section. If the commissioner of administration approves the contract then the contract shall be submitted by the commissioner of administration to the Joint Legislative Committee on the Budget for review and approval. No performance contract shall be awarded except by the approval of both the commissioner of administration and the Joint Legislative Committee on the Budget.

5. At the time a performance contract is executed, the contracting ESCO shall submit a certified or cashiers check, payable to Louisiana Department of the Treasury in a sum equal to no more than 2 1/2 percent of the total value of the proposed performance contract. The percentage of such total value and the means of calculating such total value shall be determined by the commissioner of administration and shall be set forth in the performance contract.

D. Audits of Performance Contracts

1. An ESCO that enters into a performance contract shall at least annually provide the user agency and FPC with a report containing all performance information and other reports required by the performance contract and this Section.

a. An ESCO's reports to the user agency shall conform to the standards of the International Performance Measurement and Verification Protocol except in the case that alternative protocols and verification standards have been agreed upon by the user agency, the state, and the ESCO for the measurement and verification of maintenance and operational savings.

b. An ESCO's reports to the user agency shall, in addition to fulfilling any other requirements set forth in its performance contract or in this Section, state the following:

- i. the name of the user agency;
- ii. the ESCO's name and address;
- iii. the name and access information of the ESCO's primary contact for the contract;
- iv. whether the payment obligation under the performance contract is either:
 - (a). set as a percentage of the annual energy cost savings attributable to the services or equipment under the performance contract; or
 - (b). guaranteed by the ESCO to be less than the annual energy cost savings attributable to the services or equipment under the performance contract;
- v. the total monetary sum financed under the contract;
- vi. the total amount the user agency is required to pay under the performance contract;
- vii. the term of the contract and the time remaining in the term;
- viii. the total amount paid to date by the user agency and the amount paid each year to date under the performance contract;
- ix. any costs paid by the user agency which were associated with the set-up or maintenance of the

performance contract or with repair or maintenance of the equipment used under the performance contract;

viii. the annual cost to the user agency of energy or other utilities beginning two years prior to operation of the performance contract and during the operation of the performance contract;

x. the total annual energy savings guaranteed by the ESCO, expressed in units of energy;

xi. the total annual energy savings achieved, expressed in units of energy;

xii. the total annual energy cost savings guaranteed by the ESCO;

xiii. the total annual energy cost savings achieved; and

xiv. the annual energy cost savings achieved each year of the contract to date, shown also as a percentage of the annual amount to be paid by the user agency under the performance contract. When calculating annual energy cost savings, maintenance savings shall be included.

(a). *Maintenance Savings*—operating expenses eliminated and future capital replacement expenditures avoided by the user agency as a result of new equipment installed or services performed by the ESCO.

(b). For all maintenance savings, the ESCO shall state the basis of the savings and the means used to verify the savings.

2. Upon a request by the user agency, by the commissioner of administration or by the legislative auditor, an ESCO shall provide any working documents, accounting records or other materials relating to costs, pricing or any other aspect of the ESCOs performance pursuant to a performance contract. Documents, records and other materials provided by an ESCO in accordance with this Section shall be subject to review and verification by a user agency, by the commissioner of administration, by the legislative auditor, or by an independent third party selected by a user agency, by the commissioner of administration or by the legislative auditor.

3. Upon request, user agencies shall provide to the legislative auditor copies of all performance information and other reports submitted by an ESCO pursuant to a performance contract or this Section.

4. As required by R.S. 39:1496.1(E)(2), the legislative auditor shall conduct periodic performance audits of performance-based energy efficiency contracts in effect on and after January 1, 2010 both during the term of such contracts and upon the completion of any such contract. The legislative auditor shall establish a written schedule for execution of such performance audits, and the schedule shall be posted on the website of the legislative auditor no later than February first of each year. The results of any such performance audits shall be published no later than thirty days prior to the commencement of each Regular Session of the Legislature.

5. In order to facilitate such performance audits, the ESCO shall provide reports to the legislative auditor annually, or upon request, containing, at a minimum, the information described in Clauses D.1.b.i-xiv, above.

E. Retention by User Agencies of Net Savings Generated by Energy Cost Savings Measures

1. Pursuant to R.S. 39:254(B)(1), a user agency that is able to demonstrate net savings from implementing an

ECSM by means of a performance contract may retain its net savings relating to such ECSM, until the investment costs of implementing the ECSM are paid in full, and thereafter may retain one half of such net savings over the remaining useful life of the ECSM. Such retained net savings shall be from funds appropriated or allocated to the user agency for utility costs.

2. The measurement and verification of net savings relating to ECSMs shall conform to the standards of the International Performance Measurement and Verification Protocol except in the case that alternative protocols and verification standards have been agreed upon by the user agency, the state, and the ESCO for the measurement and verification of maintenance and operational savings.

3. For the purposes of these rules, ECSM refers to a repair, equipment modification, procedure, course of action or other step taken which lowers energy or operation and maintenance costs.

4. For the purposes of these rules, *net savings* from the implementation of ECSMs shall be defined as measurable and verifiable energy cost savings that directly result from such implementation and shall be determined in accordance with the following provisions.

a. ESCOs shall employ energy savings measurement techniques that embody the best practical methods of determining net savings generated by the ECSMs to be evaluated. Such measurement techniques shall be fully defined and set forth in their response to the RFP and the performance contract that includes the ECSMs. In selecting a measurement technique, an ESCO shall consider the complexity of the ECSM to be evaluated and other factors that may affect energy use, such as changes in the mission of a facility, population, space utilization and weather.

b. Energy savings measurement may be based upon estimates, calculations or computer models, if metering is not practical.

c. Every RFP and performance contract shall set forth in detail the method to be used by an ESCO in order to determine the unit energy costs by which an energy baseline and energy savings are to be multiplied. For the purposes of these rules, an energy baseline shall be defined as the amount of energy that would be consumed annually without implementation of a given ECSM and shall be based upon historical metered data, engineering calculations, submetering of buildings or other energy-consuming systems, building load simulations, statistical regression analysis, or some combination of these methods.

d. The selection of every energy savings measurement technique and method of determining unit energy costs or energy baseline shall be subject to the approval of the commissioner of administration, who shall have the authority to modify such techniques and methods if he determines, in his sole discretion, that such modification is warranted by changed conditions or other circumstances affecting the accuracy or appropriateness of such techniques and methods.

e. Net savings must be real savings of money that the state of Louisiana either is currently spending or has budgeted to spend in the future. Such money must be available in the state's budget for payments against the

performance contract involved. Net savings may be either recurring or one-time cost savings.

f. Examples of net savings shall include, but not be limited to, recurring operation, maintenance and repair tasks, which are currently performed by the state or its agents and which are directly related to the energy-consuming system affected by an ESCM. The savings associated with such tasks shall be net savings if the ESCO assumes such tasks, reduces the burden of such tasks or eliminates such tasks. The commissioner of administration shall determine whether an ESCO's action with respect to a given recurring task generates net savings and shall determine the value of such net savings.

g. Net savings may also include one-time cost savings of money budgeted by the state and available to fund a project or task that is made unnecessary by the implementation of an ESCM. The commissioner of administration shall determine whether an ESCO's action with respect to a given one-time project or task generates net savings and shall determine the value of such net savings.

h. Any utility company rebates or other incentives arising in connection with the implementation of an ESCM shall be the property of the user agency. An ESCO shall provide any assistance necessary in order to permit a user agency to apply for and receive such rebates or other incentives.

F. Grandfathered Performance Contracts

1. Notwithstanding any other provision of this Section, where an RFP or a proposed performance contract is exempt from the application of subparagraphs (a)-(d) of R.S. 39:1496.1(E)(1), the selected ESCO shall, at the time a performance contract is executed, submit a certified or cashier's check, payable to the Louisiana Department of the Treasury, in a sum equal to no more than 1 percent of the total value of the proposed performance contract. The percentage of such total value and the means of calculating such total value shall be determined by the commissioner of administration and shall be set forth in the performance contract.

2. Where an RFP or a proposed performance contract is exempt from the application of subparagraphs (a)-(d) of R.S. 39:1496.1(E)(1), such RFP or proposed performance contract shall not be subject to the application of Subsection A or B of this Section but shall be subject to the remaining provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1496.1(A).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office Facility Planning and Control, LR 39:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Public Comments

All interested persons are invited to submit written comments on the proposed regulations. Comments must be received no later than January 21, 2013 at 4 p.m., and should

be sent to Manuel J. Martinez, Facility Planning and Control, P.O. Box 94095, Baton Rouge, LA 70804-9095 or faxed to (225) 342-7624.

John L. Davis
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Performance-Based Energy Efficiency Contracting

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated cost to the state or local governments as a result of this Rule change. The source of funds for administration of the performance contracting program is an administrative fee which was authorized by Act 989 of 2003. The proposed administrative Rule will have no impact on the administrative fee. The proposed administrative Rule will conform to requirements of R.S. 39:1496.1 as amended by Act 1021 of the 2010 Regular Legislative Session relative to performance-based energy efficiency contracts. The effect of these Rule changes is to institute the Energy Efficiency Procurement Support Team to review performance contracting proposals and make a recommendation for the selection of an energy services company to the commissioner of administration.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated impact on revenue collections of state or local governmental units due to this Rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This Rule change has no anticipated impact upon costs and/or economic benefits to any persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This Rule change has no anticipated effect upon competition and employment.

John L. Davis
Director
1212#050

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Tax Commission

Ad Valorem Taxation
(LAC 61:V.101, 303, 304, 703,
907, 1103, 1307, 1503 and 2503)

In accordance with provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, notice is hereby given that the Tax Commission intends to adopt, amend and/or repeal Sections of the Louisiana Tax Commission Real/Personal Property rules and regulations for use in the 2013 (2014 Orleans Parish) tax year.

The full text of this proposed Rule may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the Louisiana Tax Commission hereby submits the following Family Impact Statement.

1. The Effect on the Stability of the Family. Implementation of these proposed rules will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parent Regarding the Education and Supervision of Their Children. Implementation of these proposed rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of these proposed rules will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of these proposed rules will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of these proposed rules will have no effect on the behavior and responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in these Proposed Rules. Implementation of these proposed rules will have no effect on the ability of the family or local government to perform this function.

Public Comments

Interested persons may submit written comments on the proposed rules until 4 p.m., January 9, 2013, at the following address: Charles Abels, Tax Commission Administrator, Louisiana Tax Commission, P.O. Box 66788, Baton Rouge, LA 70896.

James D. "Pete" Peters
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Ad Valorem Taxation

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rules reflect annual changes in valuation procedures for taxation purposes based on the most recent available data. There are no estimated state costs or savings associated with the proposed rules. The impact on local governmental workload and paperwork cannot be quantified, but is expected to be minimal.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

On average, these revisions will generally increase certain 2013 real and personal property assessments for property of similar age and condition in comparison with the latest available equivalent assessments. However, the assessments of certain property types will increase compared to prior year. Composite multiplier tables for assessment of most personal property will increase by an estimated 1.5%. Specific valuation tables for assessment of pipelines will increase by an estimated 11% (onshore 13% and offshore 9.5%). Oil & gas wells will increase by an estimated 4% in all regions. Drilling rigs will

increase by an estimated 9% on average (Land rigs 11.5%, jack-ups 5%, semisubmersible rigs 16% and well service land only rigs 4%). The net effect determined by averaging these revisions is estimated to increase assessments by 2.5% and estimated local tax collections by \$21,215,000 in FY 13/14 on the basis of the existing statewide average millage. However, these revisions will not necessarily affect revenue collections of local government units as any net increase or decrease in assessed valuations are authorized to be offset by millage adjustment provisions of Article VII, Section 23 of the state Constitution. Additionally, the proposed rule addresses the Constitutional Amendment that was approved in October, 2011, allowing for a doubling of the homestead exemption for certain disabled veterans as stated in the amendment. To the extent that the exemption is approved by parishes and claimed, local revenue will decline.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The affects of these new rules on assessments of individual items of equivalent real and personal property will generally be higher in 2013 compared to the last year of actual data. Specific assessments will depend on the age and condition of the property subject to assessment. Taxpayers will be impacted based on the changes to the valuation guidelines for assessments as listed in Section II. The magnitude will depend on the taxable property for which they are liable. Regardless of the guidelines adopted by the Tax Commission, all taxpayers continue to have the right to appeal the assessments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The impact on competition and employment cannot be quantified. In as much as the proposed changes in assessments are relatively small and there will no longer be any charges for the updates, the impact is expected to be minimal.

James D. "Pete" Peters
Chairman
1212#046

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Motor Vehicle Commission

Automotive Industry—Recreational Products
(LAC 46:V.309 and Chapters 15 and 17)

In accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapter 6, the Office of the Governor, Louisiana Motor Vehicle Commission, notice is hereby given that the Louisiana Motor Vehicle Commission finds it necessary to adopt §309 to implement the provisions of R.S. 49:953(C) which requires the agency to provide a Rule for an interested person to request the adoption, amendment, or repeal of a rule.

The Louisiana Motor Vehicle Commission finds it necessary to adopt this Rule to further implement the provisions of R.S. 49:953(C) which require an agency to provide a rule for an interested person to request the adoption, amendment, or repeal of a rule.

The legislature enacted R.S. 32:1256.1 to provide statutory authority for regional recreational product shows. This enactment resulted in Chapter 15 being inconsistent with the provisions of the statute requiring that it be repealed by the commission. Chapter 15, Recreational Product

Shows, will be repealed. Chapter 15, Recreational Product Shows, is being adopted with language to clarify the regional recreational product rules which will assist licensees in dealing with the regulatory scheme assigned to the commission. The Rule will increase the license fee for promoters, producers, or organizers from \$100 to \$500. The Rule will reduce the recreational product show license fee from \$500 to \$100. The Rule makes clear the order and priority of invitations to the regional recreational product shows and sets forth requirements for out of state exhibitors to participate. The Rule also establishes sales activities that may take place at a regional recreational product show.

Chapter 17, Recreational Product Static Offsite Displays; Off-site Expositions, is being adopted to replace provisions formerly contained in the repealed Chapter 15. This adoption allows the commission to continue to license dealers and regulate recreational product expositions and static offsite displays certain situations covered by Chapter 17. This will assure the consuming public will benefit by attendance at regional recreational product shows and expositions conducted by producers under the provisions of the Motor Vehicle Commission law.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part V. Automotive Industry

Subpart 1. Motor Vehicle Commission

Chapter 3. Hearing Procedures

§309. Petition for Commission Review of Rule

A. A request by an interested party for the adoption, amendment or repeal of a rule pursuant to R.S. 49:953(C), shall be made in the form of a petition to the commission. The petition shall include, but shall not be limited, to the following:

1. the name and address of petitioner;
2. specific reference to the statute or rules to which it relates;
3. a statement of the proposed action requested;
4. a summary of the content of the rule change proposed if for adoption or repeal; a summary of the change in the rule if proposed for amendment;
5. the specific citation of the enabling legislation purporting to authority the requested review;
6. a statement of the circumstances which require the adoption, amendment or repeal of the rule; and
7. other information appropriate for the commission's deliberation on the request.

B. The petition will be considered by the commission at its next regularly scheduled meeting provided the petition has been filed at least 30 days prior to that meeting.

C. The commission will either deny the petition in writing, stating the reason for denial, or shall initiate rule making proceedings within 90 days after submission of the petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 49:953(C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 39:

Chapter 15. Recreational Product Shows

§1501. License and Regulation of Recreational Product Shows

A. The commission shall license and regulate recreational product shows at offsite locations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 32:1256.1(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 37:2996 (October 2011), repromulgated LR 37:3262 (November 2011), amended LR 39:

§1503. Promoter, Producer or Organizer License Fee and Application

[Formerly §1505]

A. A promoter, producer or organizer shall obtain a license from the commission and its request for a 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 \$500 for each year covered by the license;
3. a list of shows proposed or planned for the licensed year. This list shall be updated on an annual basis.

B. Any application not received at the appropriate time shall be charged a late fee in accordance with R.S. 32:1255(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 32:1256.1(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 37:2997 (October 2011), repromulgated LR 37:3262 (November 2011), amended LR 39:

§1505. Recreational Product Show License Fee and Application

[Formerly §1507]

A. The promoter, producer or organizer of a regional or national recreational product show shall be required to obtain a license for the show from the commission and its request for a license shall consist of the following:

1. the application shall be on a form 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. the license shall be for the recreational product show subject of the application.

B. The application must be submitted to the commission no less than 90 days prior to the opening date of the recreational product show. Any application received after that date shall be charged a late fee in accordance with R.S. 32:1255(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 32:1256.1(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 37:2997 (October 2011), repromulgated LR 37:3262 (November 2011), amended LR 39:

§1507. Regional Recreational Product Show; Invitation and Priority

A. The promoter shall contact and invite all licensees of the type of recreational products to be displayed at a regional recreational product show as follows.

1. All Louisiana recreational product dealers whose area of responsibility for the brands they represent includes the location of the show shall not later than 75 days prior to the beginning date of the show be invited and have the first

option to participate in the show. These licensees shall notify the promoter or producer of its participation in the show within 10 business days of the receipt of the invitation.

2. Louisiana dealers whose area of responsibility does not include the location of the show shall not later than 60 days prior to the beginning date of the show be invited and have the second option to participate in the show, provided that a dealer shall not show the same brand of recreational product as shown by a participating Louisiana recreational product dealer whose area of responsibility includes the location of the show.

3. The promoter shall accept any request from a licensed Louisiana recreational product dealer not excluded by Paragraph 2 of this Subsection to participate in the show so long as space is available at the location of the show as determined by the producer. These licensees shall notify the producer or promoter of its participation in the show within 10 business days of the receipt of the invitation.

4. The promoter after complying with Paragraphs 1, 2 and 3 of this Subsection, may invite nonresident recreational product dealer, distributors, or manufacturers who shall not show the same brand of recreational products as shown by participating Louisiana recreational product dealers.

5. No recreational vehicle dealer, distributor or manufacturer shall participate in any regional recreational product show where its product line of recreational vehicles is represented by a dealer whose area of responsibility includes the location of the show, whether or not that dealer participates in the show. If no dealer's area of responsibility includes the location of the show, any dealer, distributor or manufacturer of a product line of recreational vehicles may participate in the show for so long as space is available as determined by producer.

6. The promoter shall maintain all records of invited, participating and declining dealers and shall furnish these records to the commission 10 working days prior to the opening of the recreational products show.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 32:1256.1(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 39:

§1509. Non-Louisiana Display Permit Fee and Application

A. A non-Louisiana recreational product dealer, distributor or manufacturer shall obtain a display permit to participate in a regional recreational product show not later than 10 business days prior to the date of the show by providing the following:

1. its name and address;
2. a copy of its current equivalent license from the state of its domicile;
3. a statement to be disclosed at the show to attendees the location of where warranty repairs will be made for products it will display at the show;
4. the name, site and date of the show for which a display permit is sought; and
5. a registration fee of \$250.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 32:1256.1(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 39:

§1511. Sales at a Regional Recreational Product Show

A. Except for a licensed Louisiana recreational product dealer whose area of responsibility includes the site of the regional recreational product show, a licensed recreational product dealer or non-resident recreational product dealer may not complete a sales transaction (by accepting purchase funds, completing the paperwork and delivering a product) for recreational products at a regional recreational product show. This restriction shall not apply to or extend to sales price negotiation, accepting deposits, setting closing dates, or completing a buyer's order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 32:1256.1(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 39:

Chapter 17. Recreational Product Static Offsite Displays; Offsite Expositions

§1701. Offsite Expositions of Recreational Products [Formerly §1513]

A. The executive director must approve all offsite expositions by licensed recreational products dealers. A request for an offsite exposition, accompanied by a fee of \$200, must be received and approved by the executive director 10 days prior to the commencement of the exposition. Any application received after that date shall be charged a late fee in accordance with R.S. 32:1255(B).

B. The location of any off-site exposition must be within the dealer's area of responsibility.

C. An off-site exposition of recreational products is limited to a single dealer and shall not exceed nine days.

D. A recreational products dealer may have only four off-site expositions per calendar year and at the same location only once each six months.

E. The number of vehicles at any off-site exposition of recreational products will be left to the discretion of the executive director.

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, recreational products cannot be delivered from the off-site exposition location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 32:1256.1(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 37:2997 (October 2011), repromulgated LR 37:3263 (November 2011), amended LR 39:

§1703. Static Offsite Displays

A. The executive director must approve all offsite displays of recreational products. A licensee's request to display recreational products at an offsite location must be received by the commission seven days prior to the commencement of the display.

B. The location of each display must be within the licensee's defined area of responsibility for the make and model to be displayed, if applicable.

C. Each offsite display will be limited to 30 days, unless the licensee submits a copy of the contract for the location of the offsite display and then the display will be limited to the length of the contract up to a six month period. There will

not be a limit on the number of offsite displays allowed per year, per licensee.

D. The number of recreational products at any offsite display will be left to the discretion of the executive director.

E. The presence of any sales personnel, business cards, brochures, pricing sheets, or any other point of sale device is strictly prohibited. The only pricing information allowed on any vehicle(s) displayed will be the Maroney label which is required by federal law or, with regard to recreational vehicles, the manufacturer's suggested retail price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 32:1256.1(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 39:

**§1705. Licensee Participation in a Rally
[Formerly §1515]**

A. Closed Rally

1. A closed rally is conducted and limited to a single product line.

2. A closed rally shall be subject to the provisions of §1701 of this Chapter.

B. Open Rally

1. An open rally is conducted with multiple product lines invited to participate.

2. An open rally is subject to all provisions of this Chapter related to recreational product shows.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E) and R.S. 32:1256.1(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 37:2998 (October 2011), repromulgated LR 37:3263 (November 2011), amended LR 39:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The proposed Rule should have a positive effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This proposed Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? The proposed Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This proposed Rule will not affect the behavior or personal responsibility of children.

6. What effect will this have on the ability of the family or local government to perform the function as contained in this proposed Rule? This proposed Rule is designed to help the family to obtain the information and help needed to own their own vehicle.

Small Business Statement

It is anticipated that the proposed Rule will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods

in drafting the proposed Rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Any person may submit data, views or positions in writing to the Louisiana Motor Vehicle Commission, 3519 Twelfth Street, Metairie, LA 70002 and facsimile (504) 838-5416 no later than 4:30 p.m., Wednesday, January 9, 2013.

Lessie A. House
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Automotive Industry
Recreational Products**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change may result in a minimal increase in Louisiana Motor Vehicle Commission administrative costs associated with reviewing and preparing sponsored regional recreational product shows or events licenses. The proposed rule provides for the holding of regional recreational product shows or events in accordance with the provisions of R.S. 32:1256.1 and provides for license fees and applications together with priority of invitations. The proposed rule also provides for recreational product exhibitions and rallies.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change may result in an indeterminable net decrease in revenues of approximately \$2,500 to \$4,000 annually as a result of the license fees for trade shows being reduced from \$500 to \$100. Over the past three years an average of sixteen trade show permits were issued per year. The proposed rule increases the producer license fee from \$100 to \$500. Over the past three years an average of 13 producer licenses were issued suggesting the revenue loss from trade show licenses may be greater than the gains from increased producer license fees. However, the proposed rule also establishes guidelines for permitting out of state trade show participants under certain circumstances. These entities would be required to acquire a \$250 display permit. This fee would be new revenue as these entities were previously ineligible to participate. The number of out of state entities that would participate and pay the additional fee is indeterminable, but any additional revenues would offset the projected net decrease.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Producers of regional recreational product shows may have a minimal increase in paperwork associated with the application for licenses. To the degree that the proposed rule change encourages or prohibits additional scheduling of trade shows, licensed producers and participating vendors may realize an impact on income streams from booth sales and admission charges for attendance at the show or event.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is anticipated to have no effect on competition and employment.

Lessie House
Executive Director
1212#047

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Nursing

Peripherally Inserted Central Catheter (PICC) Insertion and Removal (LAC 46:XLVII.3707)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:918, that the Louisiana State Board of Nursing proposes to amend Chapter 35 of its rules, in particular, by amending Section 3707 of the board's rules to revise Paragraph B.5, in order to acknowledge the authority of an advanced practice registered nurse to determine catheter tip placement prior to the initiation of therapy where the procedure for verifying catheter tip placement has been set forth in a written policy that has been established by the institution or facility and under certain requirements. The written policy must require that the advanced practice registered nurse be credentialed by the agency prior to performing the procedure, the specific procedure is identified in the clinical privileges of the advanced practice registered nurse, the competencies of the advanced practice registered nurse are verified both initially and at regular intervals, the final verification of catheter tip placement performed via radiographic methods must be provided by a physician, and requires and documents evidence of formal didactic educational preparation and clinical experiences of the advanced practice registered nurse to perform the procedure. The current version of Section 3707.B.5 states that catheter tip placement must be determined by a physician. The amendment of the rule serves as an express acknowledgment within the ambit of the Nurse Practice Act, R.S. 37:911 et seq., authorizing advanced practice registered nurses to verify catheter tip placement if pursuant to a written policy and meeting all of the conditions and safeguards noted above.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses: Practical Nurses and Registered Nurses

Subpart 2. Registered Nurses

Chapter 37. Nursing Practice

§3707. Peripherally Inserted Central Catheter (PICC) Insertion and Removal

A. - B.4. ...

5. prior to initiation of therapy, catheter tip placement must be determined by a physician or an advanced practice registered nurse with the following provisos.

a. The procedure of verifying catheter tip placement by an APRN is a written established institutional/facility policy which:

- i. delineates that the APRN must be credentialed by the agency prior to performing the procedure;
- ii. delineates the specific procedure in the clinical privileges of the individual APRN;
- iii. verifies competencies initially and at regular intervals through methods including but not limited to direct observation;

iv. provides that the final verification of catheter tip placement performed via radiographic methods be provided by a physician; and

v. requires and documents evidence of formal didactic educational preparation and clinical experiences of the APRN to perform the procedure.

C. - C.3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 36:64 (January 2010), amended LR 39:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The proposed Rule should have no effect on the stability of the family.

2. What effect will this Rule have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule should have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this Rule have on the functioning of the family? The proposed Rule should have no effect on the functioning of the family.

4. What effect will this Rule have on family earnings and family budget? The proposed Rule should have no effect on family earnings and family budget.

5. What effect will this Rule have on the behavior and personal responsibility of children? The proposed Rule should have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, family or local government may not perform any of the functions outlined in the proposed Rule.

Public Comments

Interested persons may submit written comments on the proposed Rule to Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 17373 Perkins Road, Baton Rouge, LA 70810, or by facsimile to (225) 755-7585. All comments must be submitted by 5 p.m. on or before January 10, 2013.

Public Hearing

A public hearing has been scheduled for Friday, January 25, 2013, at 10 a.m. at 17373 Perkins Road, Baton Rouge, LA 70810. At that time, all interested persons will be afforded an opportunity to submit data, views and/or arguments either orally or in writing.

Barbara L. Morvant
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Peripherally Inserted Central Catheter (PICC) Insertion and Removal

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that \$250 will be expended in FY 13 for the state's administrative expense for promulgation of the proposed rule. In addition, the proposed rule will minimally increase the

workload of any state health facilities using advanced practice registered nurses (APRNs) to determine catheter tip placement under this rule change. Workload increases may include the need for policy development, record keeping and documentation. In addition, if the APRN has not had the requisite education required under the rule change, then additional education costs could be incurred by the APRN or the state health facility depending upon the facility policy. Initial courses for catheter tip placement are estimated to be between \$250-\$275 and may require the cost of travel to a course if not held in-house.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of the proposed rule will not affect revenue collections for FY 13.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that that implementation of the proposed rule will minimally increase the workload of any non-state health facilities using advanced practice registered nurses (APRNs) to determine catheter tip placement under this rule change. In addition, depending upon the facility policy, education costs could be incurred by the APRN or the non-state health facility if the APRN has not had the requisite education required under the rule change. Initial courses for catheter tip placement are estimated to be between \$250-\$275 and may require the cost of travel to a course if not held in-house. Physicians may also realize a minimal workload decrease.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect upon employment due to the proposed rule. Although the rule acknowledges the ability of an APRN to determine catheter tip placement prior to the initiation of therapy, a procedure which the rule previously required to be performed by a physician, the new rule should have little to no effect upon competition since final verification of catheter tip placement performed via radiographic methods must be provided by a physician. Also, only APRNs who meet the criteria set forth within the proposed rule would be authorized to determine catheter tip placement, which may be a relatively small segment of advanced practice registered nurses.

E. Wade Shows
Board Attorney
1212#052

Josh D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments Distinct Part Psychiatric Units Payment Methodology (LAC 50:V.2709)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.2709 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 for the reimbursement of uncompensated care costs for psychiatric services provided by non-state acute

care hospitals that expand their distinct part psychiatric units and enter into an agreement with the Office of Mental Health (OMH), and established provisions for disproportionate share hospital (DSH) payments to non-state acute care hospitals that enroll a new distinct part psychiatric unit and enter into an agreement with OMH (*Louisiana Register*, Volume 34, Number 8). The department promulgated an Emergency Rule which amended the provisions governing DSH payments to non-state distinct part psychiatric units that enter into a cooperative endeavor agreement with the department's Office of Behavioral Health (*Louisiana Register*, Volume 38, Number 2). The department promulgated an Emergency Rule which amended the February 10, 2012 Emergency Rule to clarify the provisions for the qualifying hospitals (*Louisiana Register*, Volume 38, Number 5). This proposed Rule is being promulgated to continue the provisions of the May 20, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 27. Qualifying Hospitals

§2709. Distinct Part Psychiatric Units

A. Effective for dates of service on or after February 10, 2012, a Medicaid-enrolled non-state acute care hospital that enters into a cooperative endeavor agreement (CEA) with the Department of Health and Hospitals, Office of Behavioral Health to provide inpatient psychiatric hospital services to Medicaid and uninsured patients, and which also assumes the operation and management of a state-owned and formerly state-operated hospital distinct part psychiatric unit, shall be paid a per diem rate of \$581.11 per day for each uninsured inpatient.

B. Qualifying hospitals must submit costs and patient specific data in a format specified by the department.

1. Cost and lengths of stay will be reviewed for reasonableness before payments are made.

C. Payments shall be made on a quarterly basis.

D. - 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 34:1627 (August 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

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.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is

responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Disproportionate Share Hospital Payments—Distinct Part Psychiatric Units Payment Methodology

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will result in estimated state general fund programmatic savings of \$474,047 for FY 12-13, \$504,119 for FY 13-14 and \$519,243 for FY 14-15. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 12-13 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 reduce federal revenue collections by approximately \$944,609 for FY 12-13, \$957,519 for FY 13-14 and \$986,245 for FY 14-15. It is anticipated that \$205 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the February 10, 2012 and May 20, 2012 Emergency Rules which amended the provisions governing disproportionate share hospital payments to non-state distinct part psychiatric units that enter into a cooperative endeavor agreement with the department's Office of Behavioral Health. It is anticipated that implementation of this proposed Rule will reduce programmatic expenditures in the Medicaid Program by approximately \$1,419,066 for FY 12-13, \$1,461,638 for FY 13-14 and \$1,505,488 for FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed Rule will not have an effect on competition and employment.

J. Ruth Kennedy
Medicaid Director
1212#075

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Early and Periodic Screening, Diagnosis and Treatment
School-Based Health Centers (LAC 50:XV.9113)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XV.9113 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 to allow for Medicaid coverage and reimbursement of mental health services provided to students by school based health centers and to establish provisions for other Medicaid-covered services (*Louisiana Register*, Volume 34, Number 7). School based health centers were required to be enrolled as a KIDMED provider. The KIDMED program was terminated June 1, 2012. Children who received services in the KIDMED Program will continue to receive covered services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

The department promulgated an Emergency Rule which amended the provisions governing the standards of participation for school based health centers to require them to be enrolled as an EPSDT services provider (*Louisiana Register*, Volume 38, Number 4). This proposed Rule is being promulgated to continue the provisions of the June 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

Chapter 91. School Based Health Centers

Subchapter B. Provider Participation

§9113. Standards of Participation

A. - D. ...

E. The SBHC must be enrolled as an EPSDT services provider in addition to enrollment for providing any other services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:31.3 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 34:1419 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed

Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability, and autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Early and Periodic Screening, Diagnosis and Treatment—School-Based Health Centers

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 12-13. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY 12-13 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 other than the federal share of the promulgation costs for FY 12-13. It is anticipated that \$123 will be collected in FY 12-13 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule is being promulgated to continue the provisions of the June 1, 2012 Emergency Rule which amended the standards of participation for school based health centers to require them to be enrolled as an EPSDT services provider. It is anticipated that implementation of this proposed Rule will not have economic costs or benefits to directly affected persons or non-governmental groups for FY 12-13, FY 13-14 and FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This Rule has no known effect on competition and employment.

J. Ruth Kennedy
Medicaid Director
1212#076

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Electronic Health Records Incentive Payments
Inclusion of Optometrists (LAC 50:I.12501)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:I.2501 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 American Recovery and Reinvestment Act (ARRA) of 2009 authorized 100 percent federal financial participation to states for the purpose of establishing incentive payments to encourage Medicaid health care providers to adopt, implement, and use certified electronic health records (EHR) technology. In compliance with the directives of ARRA, the Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions to establish Medicaid incentive payments to qualifying professional practitioners and hospitals that adopt, implement, or upgrade certified EHR technology (*Louisiana Register*, Volume 36, Number 12).

The department promulgated an Emergency Rule which amended the provisions governing the EHR Incentive Payments Program to include optometrists as eligible professionals who may qualify to receive incentive payments (*Louisiana Register*, Volume 38, Number 9). This proposed Rule is being promulgated to continue the provisions of the October 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 13. Electronic Health Records

Chapter 125. Incentive Payments

§12501. General Provisions

A. ...
B. The following providers may qualify to receive Medicaid incentive payments:

1. - 5. ...
6. optometrists;
7. acute care hospitals, including cancer and critical access hospitals; and
8. children's specialty hospitals.

C. - D. ...

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 36:2865 (December 2010), amended LR 39:

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.

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 improving the quality of health care through the utilization of a coordinated electronic health records system.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Electronic Health Records Incentive Payments—Inclusion of Optometrists**

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 costs to the state other than the cost of promulgation for FY 12-13 as the incentive payments are 100 percent federally funded. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY 12-13 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 may increase revenue collections by an indeterminable amount in FY 12-13. The incentive payments are 100 percent federally funded; however, there is no way to determine how many optometrists will participate in the Electronic Health Records (EHR) Incentive Payments Program. It is anticipated that \$123 will be collected in FY 12-13 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the October 1, 2012 Emergency Rule which amended the provisions governing the EHR Incentive Payments Program to include optometrists as eligible professionals who may qualify to receive incentive payments. It is anticipated that implementation of this proposed Rule will not have economic costs, but will have economic benefits to optometrists for FY 12-13, FY 13-14 and FY 14-15 who choose to participate in the EHR Incentive Payments Program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This Rule has no known effect on competition and employment.

J. Ruth Kennedy
Medicaid Director
1212#077

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

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

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend 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 proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for end stage renal disease (ESRD) facilities to reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 6).

Due to a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ESRD facilities to reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 9. End Stage Renal Disease Facilities

Chapter 69. Reimbursement

§6901. General Provisions

A. - F. ...

G. Effective for dates of service on or after July 1, 2012, the reimbursement to ESRD facilities shall be reduced by 3.7 percent of the rates in effect on June 30, 2012.

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 35:1891 (September 2009), LR 36:2040 (September 2010), LR 37:1599 (June 2011), LR 39:

§6903. Medicare Part B Claims

A. - F. ...

G. Effective for dates of service on or after July 1, 2012, the reimbursement to ESRD facilities for Medicare Part B

claims shall be reduced by 3.7 percent of the rates in effect on June 30, 2012.

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 35:1891 (September 2009), amended LR 36:2040 (September 2010), LR 37:1599 (June 2011), LR 39:

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.

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: End Stage Renal Disease Facilities Reimbursement Rate Reduction

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 state general fund programmatic savings of \$97,138 for FY 12-13, \$103,429 for FY 13-14 and \$106,532 for FY 14-15. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 12-13 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 reduce federal revenue collections by approximately \$193,682 for FY 12-13, \$196,453 for FY 13-14 and \$202,347 for FY 14-15. It is anticipated that \$164 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the July 1, 2012 Emergency Rule which amended the provisions governing the reimbursement methodology for end stage renal disease facilities to reduce the reimbursement rates. It is anticipated that implementation of this proposed Rule will reduce programmatic expenditures in the Medicaid Program by approximately \$291,148 for FY 12-13, \$299,882 for FY 13-14 and \$308,879 for FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed Rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed Rule may have a negative effect on employment as it will reduce the payments made to end stage renal disease facilities. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy
Medicaid Director
1212#078

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Family Planning Clinics
Reimbursement Rate Reduction
(LAC 50:XI.3501)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XI.3501 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.

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for family planning clinics to reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 6). As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for family planning clinics to reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 5. Family Planning

Chapter 35. Reimbursement

§3501. Reimbursement Methodology

A. - B. ...

C. Effective for dates of service on or after July 1, 2012, the reimbursement rates for family planning clinics shall be

equal to the reimbursement rates for family planning services in the Professional Services Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1022 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1600 (June 2011), LR 39:

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.

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Family Planning Clinics Reimbursement Rate Reduction

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 state general fund programmatic savings to the state of \$1,050 for FY 12-13, \$1,291 for FY 13-14 and \$1,329 for FY 14-15. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 12-13 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 reduce federal revenue collections by approximately \$2,256 for FY 12-13, \$2,452 for FY 13-14 and \$2,526 for FY 14-15. It is anticipated that \$164 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule, which continues the provisions of the July 1, 2012 emergency rule, amends the provisions governing the reimbursement methodology for family planning clinics to reduce the reimbursement rates. It is anticipated that implementation of this proposed rule will reduce expenditures in the Medicaid Program for family planning clinic services by approximately \$3,634 for FY 12-13, \$3,743 for FY 13-14 and \$3,855 for FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to family planning clinics. The reduction in payments may adversely impact the financial standing of these providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy
Medicaid Director
1212#079

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Family Planning Waiver Reimbursement Rate Reduction (LAC 50:XXII.2701)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXII.2701 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.

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for family planning waiver services to reduce reimbursement rates (*Louisiana Register*, Volume 37, Number 7).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for family planning waiver services in order to align the reimbursement rates in the waiver with the rates for family planning services provided under the Medicaid State Plan (*Louisiana Register*, Volume 38, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXII. 1115 Demonstration Waivers

Subpart 3. Family Planning Waiver

Chapter 27. Reimbursement

§2701. Reimbursement Methodology

A. - C. ...

D. Effective for dates of service on or after July 1, 2012, the reimbursement rates for the following family planning

waiver services shall be adjusted to be consistent with the reimbursement rates paid on the established Medicaid fee schedule for family planning services covered under the Medicaid State Plan in the Professional Services Program.

1. Rate adjustments shall be made to the following procedure codes:

a. current procedural terminology (CPT) codes 00851, 36415, 58300, 58301, 58600, 58670, 58671, 71020, 80048, 80050, 80051, 82962, 86631, 86703, 87480, 87481, 87490, 87491, 87590, 87591, 87621, 87810, 87850, 88141, 88175, 88174, 93000, 99212, 99241, and 99242, 71010, 80061, 81000, 81001, 81002, 81003, 81005, 81025, 82948, 84520, 84550, 84702, 84703, 85014, 85018, 86592, 86593, 86689, 86701, 87070, 87075, 87081, 87110, and 87210.

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 32:1461 (August 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2280 (October 2010), LR 37:2156 (July 2011), LR 39:

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.

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Family Planning Waiver Reimbursement Rate Reduction

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 state general fund programmatic

savings of \$111,802 for FY 12-13, \$119,018 for FY 13-14 and \$122,588 for FY 14-15. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 12-13 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 reduce federal revenue collections by approximately \$222,898 for FY 12-13, \$226,061 for FY 13-14 and \$232,843 for FY 14-15. It is anticipated that \$164 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule, which continues the provisions of the July 1, 2012 emergency rule, amends the provisions governing the reimbursement methodology for family planning waiver services to reduce the rates in order to align them with the rates for family planning services provided under the Medicaid State Plan. It is anticipated that implementation of this proposed rule will reduce programmatic expenditures in the Medicaid Program by approximately \$335,028 for FY 12-13, \$345,079 for FY 13-14 and \$355,431 for FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the reimbursement rates paid for family planning waiver services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy
Medicaid Director
1212#080

John D. Carpenter
Legislative Fiscal Officer
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 Day Health Care
Reimbursement Rate Reduction
(LAC 50:XXI.2915)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.2915 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.

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the reimbursement methodology for the adult day health care (ADHC) waiver to reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 9).

Due to a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the ADHC Waiver to reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 3. Adult Day Health Care

Chapter 29. Reimbursement

§2915. Provider Reimbursement

A. - F.3. ...

G. Effective for dates of service on or after July 1, 2012, the reimbursement rates for ADHC services shall be reduced by 1.5 percent of the rates in effect on June 30, 2012.

1. The provider-specific transportation component shall be excluded from this rate 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 Aging and Adult Services, LR 34:2170 (October 2008), repromulgated LR 34:2575 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2157 (July 2011), LR 37:2625 (September 2011), LR 39:

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.

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Services Waivers—Adult Day Health Care Reimbursement Rate Reduction

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 state general fund programmatic savings of \$47,450 for FY 12-13, \$50,613 for FY 13-14 and \$52,132 for FY 14-15. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 12-13 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 reduce federal revenue collections by approximately \$94,694 for FY 12-13, \$96,133 for FY 13-14 and \$99,017 for FY 14-15. It is anticipated that \$164 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the July 1, 2012 emergency rule which amended the provisions governing the reimbursement methodology for the Adult Day Health Care (ADHC) Waiver to reduce the reimbursement rates. It is anticipated that implementation of this proposed rule will reduce programmatic expenditures in the Medicaid Program by approximately \$142,472 for FY 12-13, \$146,746 for FY 13-14 and \$151,149 for FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a negative effect on employment as it will reduce the payments made for Adult Day Health Care services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy
Medicaid Director
1212#081

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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—Service Cap Reduction
(LAC 50:XXI.11301)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.11301 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.

As a result of a budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule which amended the provisions governing the Children's Choice Waiver to reduce the service cap and to reduce the reimbursement rates paid for waiver services (*Louisiana Register*, Volume 37, Number 7).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the Children's Choice Waiver services (*Louisiana Register*, Volume 38, Number 7). This proposed Rule is being promulgated to continue the provisions of the August 1, 2012 Emergency Rule.

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 9. Children's Choice

Chapter 113. Service

§11301. Service Cap

A. - C. ...

D. Effective August 1, 2012, Children's Choice services are capped at \$16,410 per individual per plan of care year.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 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 36:324 (February 2010), amended LR 36:2280 (October 2010), LR 37:2157 (July 2011), LR 39:

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.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Services Waivers—Children's Choice—Service Cap Reduction

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 programmatic savings to the state of \$10,751 for FY 12-13, \$12,657 for FY 13-14 and \$13,037 for FY 14-15. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 12-13 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 reduce federal revenue collections by approximately \$21,580 for FY 12-13, \$24,040 for FY 13-14 and \$24,761 for FY 14-15. It is anticipated that \$164 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule, which continues the provisions of the August 1, 2012 emergency rule, amends the provisions governing the Children's Choice Waiver to reduce the annual service budget/service cap for Children's Choice Waiver services. It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately \$32,659 for FY 12-13, \$36,697 for FY 13-14 and \$37,798 for FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to Children's Choice Waiver providers. The reduction in payments may adversely impact the financial standing of these providers and could possibly cause a reduction in employment opportunities.

Don Gregory
Medicaid Director
1212#082

John D. Carpenter
Legislative Fiscal Officer
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
Community Choices Waiver
Reimbursement Rate Reduction
(LAC 50:XXI.9501)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.9501 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 and the Office of Aging and Adult Services adopted provisions which established the Community Choices Waiver Program to replace the Elderly and Disabled Adults (EDA) Waiver (*Louisiana Register*, Volume 37, Number 12). The department promulgated an Emergency Rule which amended the December 20, 2011 Rule to clarify provisions governing the delivery of services, to remove the wage pass-through language that was erroneously included in the Rule, and to comply with a court-mandated standard for use in the determination of expedited Community Choices Waiver slots and addition of waiver opportunities (*Louisiana Register*, Volume 38, Number 2).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the Community Choices Waiver to reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7). The department promulgated an Emergency Rule which amended the provisions of the July 1, 2012 Emergency Rule in order to reduce the reimbursement rates for certain services that were inadvertently omitted from the July 1, 2012 rate reduction (*Louisiana Register*, Volume 38, Number 9). This proposed Rule is being promulgated to continue the provisions of the July 1, 2012 and October 1, 2012 Emergency Rules.

Title 50

**PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services
Waivers**

Subpart 7. Community Choices Waiver

**Chapter 95. Reimbursement§9501. Reimbursement
Methodology**

A. - H. ...

I. Effective for dates of service on or after July 1, 2012, the reimbursement rates for community choices waiver personal assistance services furnished to one participant shall be reduced by 1.5 percent of the rates in effect on June 30, 2012.

J. Effective for dates of service on or after October 1, 2012, the reimbursement rates for in-home caregiver temporary support services provided by personal care

attendants or a home health agency shall be reduced by 1.5 percent of the rates in effect on September 30, 2012.

K. Effective for dates of service on or after October 1, 2012, the reimbursement rates for caregiver temporary support services provided by an adult day health care center shall be reduced by 1.5 percent of the rates in effect on September 30, 2012.

L. Effective for dates of service on or after October 1, 2012, the reimbursement rates for adult day health care services shall be reduced by 1.5 percent of the rates in effect on September 30, 2012.

1. The provider-specific transportation component shall be excluded from this rate 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011), amended LR 39:

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.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Home and Community-Based Services
Waivers—Community Choices Waiver
Reimbursement Rate Reduction**

**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 state general fund programmatic savings of \$584,460 for FY 12-13 \$621,485 for FY 13-14 and \$640,129 for FY 14-15. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 12-13 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 reduce federal revenue collections by approximately \$1,164,575 for FY 12-13, \$1,180,443 for FY 13-14 and \$1,215,857 for FY 14-15. It is anticipated that \$205 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the July 1, 2012 and October 1, 2012 emergency rules which amended the provisions governing the reimbursement methodology for the Community Choices Waiver to reduce the reimbursement rates. It is anticipated that implementation of this proposed rule will reduce programmatic expenditures in the Medicaid Program by approximately \$1,749,445 for FY 12-13, \$1,801,928 for FY 13-14 and \$1,855,986 for FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a negative effect on employment as it will reduce the payments made for Community Choices Waiver services. The reduction in payments may adversely impact the financial standing of providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy
Medicaid Director
1212#083

John D. Carpenter
Legislative Fiscal Officer
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
Community Choices Waiver
Reimbursement Methodology
(LAC 50:XXI.9501)**

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.9501 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 and the Office of Aging and Adult Services adopted provisions which established the Community Choices Waiver Program to replace the Elderly and Disabled Adults (EDA) Waiver (*Louisiana Register*, Volume 37, Number 12). The department promulgated an Emergency Rule which amended the December 20, 2011 Rule to clarify provisions governing the delivery of services, to remove the wage pass-through language that was erroneously included in the Rule, and to comply with a

court-mandated standard for use in the determination of expedited Community Choices Waiver slots and addition of waiver opportunities (*Louisiana Register*, Volume 38, Number 2).

The department promulgated an Emergency Rule which amended the provisions of the February 1, 2012 Emergency Rule in order to clarify the provisions governing the reimbursement methodology for personal assistance services provided in the Community Choices Waiver to correct the percentages listed in the Rule so that the provisions will reflect current payment methodology for personal assistance services (*Louisiana Register*, Volume 38, Number 11). This proposed Rule is being promulgated to continue the provisions of the November 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

**Part XXI. Home and Community-Based Services
Waivers**

Subpart 7. Community Choices Waiver

Chapter 95. Reimbursement

§9501. Reimbursement Methodology

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

1. - 1.a. ...

b. for dates of service on or after November 1, 2012, personal assistance services furnished to two participants shall be reimbursed at 82.79 percent of the full rate for each participant;

c. for dates of service on or after November 1, 2012, personal assistance services furnished to three participants shall be reimbursed at 72.4 percent of the full rate for each participant;

2. in-home caregiver temporary support service when provided by a personal care services or home health agency;

3. caregiver temporary support services when provided by an adult day health care center; and

4. adult day health care services.

B. - C.1.c. ...

D. The following services shall be reimbursed at an established monthly rate:

1. - 2. ...

3. monthly monitoring/maintenance for certain assistive devices/technology and medical supplies procedures.

E. - G. ...

H. Reimbursement shall not be made for Community Choices Waiver services provided prior to the department's approval of the POC and release of prior authorization for the 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 37:3525 (December 2011), amended LR 39:

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.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Services Waivers—Community Choices Waiver Reimbursement Methodology

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 12-13. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 12-13 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 other than the federal share of the promulgation costs for FY 12-13. It is anticipated that \$205 will be collected in FY 12-13 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule, which continues the provisions of the November 1, 2012 Emergency Rule, amends the provisions of the February 1, 2012 Emergency Rule in order to clarify the provisions governing the reimbursement methodology for personal assistance services provided in the Community Choices Waiver to correct the percentages listed in the Rule so that the provisions will reflect current payment methodology for personal assistance services. The current rate paid to providers will not change. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to directly affected persons or non-governmental groups for FY 12-13, FY 13-14 and FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

J. Ruth Kennedy
Medicaid Director
1212#084

John D. Carpenter
Legislative Fiscal Officer
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 Waiver Services
Cost Reporting Requirements
(LAC 50:XXI.Chapter 7)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to adopt LAC 50:XXI.Chapter 7 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.

Act 299 of the 2011 Regular Session of the Louisiana Legislature directed the Department of Health and Hospitals to establish mandatory cost reporting requirements for providers of home and community-based services to verify expenditures and for use in determining appropriate reimbursement rates. In compliance with Act 299, the department promulgated an Emergency Rule which adopted provisions establishing cost reporting requirements for providers of home and community-based waiver services (*Louisiana Register*, Volume 38, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community-Based Services Waivers

Subpart 1. General Provisions

Chapter 7. Cost Reporting Requirements

§701. General Provisions

A. Effective July 1, 2012, the department shall implement mandatory cost reporting requirements for providers of home and community-based waiver services. The cost reports will be used to verify expenditures and to support rate setting for the services rendered to waiver recipients.

B. Providers of services in the following waiver programs shall be required to submit cost reports:

1. adult day health care waiver;
2. children's choice waiver;
3. community choices waiver;
4. new opportunities waiver;
5. residential options waiver; and
6. supports waiver.

C. Each provider shall complete the DHH approved cost report and submit the cost report(s) to the department no later than five months after the state fiscal year ends (June 30).

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 39:

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.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Waiver Services Cost Reporting Requirements

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 12-13. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY 12-13 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 other than the federal share of the promulgation costs for FY 12-13. It is anticipated that \$123 will be collected in FY 12-13 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the July 1, 2012 Emergency Rule, which adopted provisions establishing cost reporting requirements for providers of home and community-based waiver services. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to directly affected persons or nongovernmental groups for FY 12-13, FY 13-14 and FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

J. Ruth Kennedy
Medicaid Director
1212#085

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Home Health Services—Cost Reporting Requirements (LAC 50:XIII.121)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XIII.Chapter 1 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.

Act 299 of the 2011 Regular Session of the Louisiana Legislature directed the Department of Health and Hospitals to establish mandatory cost reporting requirements for providers of home and community-based services to verify expenditures and for use in determining appropriate reimbursement rates. In compliance with Act 299, the department promulgated an Emergency Rule which adopted provisions establishing cost reporting requirements for providers of home health services (*Louisiana Register*, Volume 38, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2012 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIII. Home Health Program

Subpart 1. Home Health Services

Chapter 1. General Provisions

§121. Cost Reporting Requirements

A. Effective July 1, 2012, the department shall implement mandatory cost reporting requirements for providers of home health services. The cost reports will be used to verify expenditures and to support rate setting for the services rendered to Medicaid recipients.

B. Each home health agency shall complete the DHH approved cost report and submit the cost report(s) to the department no later than five months after the state fiscal year ends (June 30).

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 39:

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.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home Health Services Cost Reporting Requirements

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 12-13. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY 12-13 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 other than the federal share of the promulgation costs for FY 12-13. It is anticipated that \$123 will be collected in FY 12-13 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the July 1, 2012 Emergency Rule which adopted provisions establishing cost reporting requirements for providers of home health services. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to directly affected

persons or non-governmental groups for FY 12-13, FY 13-14 and FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

J. Ruth Kennedy
Medicaid Director
1212#086

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Third Party Liability—Provider Billing and Trauma Recovery (LAC 50:I.8341, 8345, 8347, and 8349)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:I.8341, 8345, 8347 and 8349 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 provider billing and recovery from liable third parties in traumatic injuries or accident cases (*Louisiana Register*, Volume 33, Number 3). Under these provisions, the Department shall not prevent a provider from pursuing a liable third party for payment in excess of the Medicaid paid amount to a provider.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing provider billing and recovery from liable third parties in traumatic injuries or accident cases in order to comply with the Centers for Medicare and Medicaid Services' (CMS) recommendations to further clarify the provider responsibilities (*Louisiana Register*, Volume 34, Number 8).

The department now proposes to amend the provisions governing third party liability to require providers to include notification of the existence or possible existence of a liable third party to the Medicaid Third Party Recovery Unit and to Medicaid contracted managed care entities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 9. Recovery

Chapter 83. Third Party Liability

Subchapter D. Provider Billing and Trauma Recovery

§8341. Definitions

Difference—payment to a provider for health care services rendered to a Medicaid recipient in excess of the Medicaid paid amount.

Initial Lien—the first letter or other notice sent by the Medicaid Third Party Recovery Unit and the Medicaid contracted managed care entity(s) via certified mail to the recipient or his representative providing notification of the lien amount.

Updated Lien—the most recent letter or other notice sent by the Medicaid Third Party Recovery Unit and the Medicaid contracted managed care entity(s) via certified mail to the recipient or his representative, subsequent to the initial lien, providing notification of an updated lien amount.

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 33:463 (March 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§8345. Provider Responsibilities

A. - A.3. ...

B. A provider, who has filed and accepted Medicaid payment and who wishes to pursue the difference, shall submit written notification containing information relating to the existence or possible existence of a liable third party to the Medicaid Third Party Recovery Unit and the Medicaid contracted managed care entity, within 365 days of the accident or incident for which the third party is or may be liable.

1. - 1.d. ...

C. A provider who has filed and accepted a Medicaid payment may accept or collect the difference from a third party. Within 15 working days of receipt of the difference, the provider or his agent shall notify the Medicaid Third Party Recovery Unit and the Medicaid contracted managed care entity(s) to determine whether it has received full reimbursement for all payments made to all providers for health care services rendered to a Medicaid recipient as a result of an accident or incident. A provider shall not disburse the difference until receipt of notification from the Medicaid Third Party Recovery Unit and the Medicaid contracted managed care entity(s) that it has been made "whole". Medicaid and the Medicaid contracted managed care entity(s) shall be made whole.

1. In the event Medicaid and the Medicaid contracted managed care entity(s) agrees to and accepts less than full reimbursement for all payments made on behalf of a Medicaid recipient, excluding any partial payment, Medicaid and the Medicaid contracted managed care entity(s) shall be deemed to have been made whole. Medicaid and the Medicaid contracted managed care entity(s) shall have 15 working days from receipt of notice to notify the provider whether it has been made whole.

2. When Medicaid and the Medicaid contracted managed care entity(s) have not been made whole, the provider shall return the difference to the remitter within 15 working days of the date of Medicaid and the Medicaid contracted managed care entity(s)' notices and shall also provide confirmation of the remittance to Medicaid and the Medicaid contracted managed care entity(s).

D. - E. ...

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 33:463 (March 2007), amended LR 34:661 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§8347. Recipient Responsibilities

A. The claims included in the initial lien calculated by the Medicaid Third Party Liability Recovery Unit and the Medicaid contracted managed care entity(s) shall be deemed as an accurate reflection of the total amount paid by Medicaid and the Medicaid contracted managed care entity(s), unless challenged in writing by the recipient or his representative within 90 days of the date of the initial lien notification to the Medicaid recipient or his representative.

B. Any additional Medicaid payments included as the result of an updated lien shall be deemed as an accurate reflection of the total amount of the claims paid by Medicaid and the Medicaid contracted managed care entity(s), unless challenged in writing by the recipient or his representative, within 30 days of the date of the updated lien notification to the Medicaid recipient or his representative.

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 33:464 (March 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

§8349. Noncompliance and Violations

A. ...

B. A provider who has filed and accepted Medicaid payment may be referred for investigation and prosecution for any possible violation of either federal or state laws. A provider may be excluded from participation in the Medicaid Program in the event he:

1. pursues the difference prior to providing written notification to the Medicaid Third Party Recovery Unit and the Medicaid contracted managed care entity(s);

2. - 3. ...

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 33:464 (March 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:

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.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, January 24, 2013 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.

Bruce D. Greenstein
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Third Party Liability
Provider Billing and Trauma Recovery**

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 12-13. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 12-13 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 other than the federal share of the promulgation costs for FY 12-13. It is anticipated that \$205 will be collected in FY 12-13 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing third party liability to require providers to include notification of the existence, or possible existence, of a liable third party to the Medicaid Third Party Recovery Unit and to Medicaid contracted managed care entities. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to directly affected persons or non-governmental groups for FY 12-13, FY 13-14 and FY 14-15.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

J. Ruth Kennedy
Medicaid Director
1212#087

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of State
Elections Division**

**Emergency Election Day Paper Ballot Procedures
(LAC 31:I.Chapter 11)**

Pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and under the authority of R.S. 18:1352, R.S. 18:1353 and R.S. 36:742, the secretary of state hereby gives notice of his intent to adopt LAC 31:I.Chapter 11 to establish guidelines for paper ballot procedures to be used on election day in the event that the secretary of state or

his designee declares an emergency. Prior to the 2010 census, all precincts in Louisiana had a minimum of two voting machines in each precinct. If one voting machine became inoperable, voters were still capable of voting on the other voting machine in the precinct. As a result of reapportionment, Louisiana now has many split precincts where only one voting machine is available for drayage and placement in the polling place for election day. Louisiana continues to maintain a five percent backup for election day failures and has the authorization to provide for the use of paper ballots on an emergency basis pursuant to R.S. 18:1352.

**Title 31
ELECTIONS**

Part I. Election Process

**Chapter 11. Emergency Election Day Paper Ballot
Voting Procedures**

§1101. Emergency Declaration

A. The Department of State is establishing emergency election day paper ballot voting procedures to be followed if a precinct does not have a voting machine that is operable and the precinct is not located in a consolidated precinct which has the ballot for which the voters are eligible to vote on a voting machine and the secretary of state or his designee declares an emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1352, R.S. 18:1353, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

**§1103. Preparation and Supplies for Implementation of
Emergency Election Day Paper Ballot Voting
Procedures**

A. Emergency Declaration—Preparation Prior To Election Day

1. The secretary of state or his designee shall review all voting machine allocation reports and provide supplies for implementation of the emergency election day paper ballot voting procedures for any precinct which has only one voting machine allocated for the election and is not located in a consolidated polling place which has the ballot for which the voters are eligible to vote on a voting machine. Supplies shall be provided in the back of the voting machine for immediate implementation upon a written declared emergency.

2. The clerk of court shall provide training to the commissioners for each one voting machine precinct on the implementation of the emergency election day paper ballot voting procedures as provided for herein.

3. The clerk of court shall inform the parish board of election supervisors or the absentee commissioners appointed to count the mail and early voting ballots of the possibility of having to implement the emergency election day paper ballot voting procedures due to the one machine precinct(s) in the parish.

B. Emergency Declaration—Supplies and Implementation Procedures

1. The commissioner-in-charge shall follow the directions in his parish for notifying the clerk of court and the Department of State when a precinct does not have a voting machine that is operable. The clerk of court, registrar

of voters, and the secretary of state, or his designee, shall consult on the matter before an emergency is declared.

2. If the secretary of state, or his designee, declares an emergency, the secretary, or his designee, shall notify the clerk of court in writing, who shall notify the commissioners to implement the emergency election day paper ballot voting procedures provided for herein. The clerk of court shall also notify either the parish board of election supervisors or the appointed absentee commissioners of the declared emergency, so that they will be available to count the paper ballots on election night.

3. The secretary of state will provide all ballots and supplies to be used for the emergency election day paper ballot voting procedures. Supplies shall include: paper ballots identified by the corresponding button number of the machine lockout for the precinct and secrecy envelopes; a notice to the voters to be posted; instructions for the commissioners; a paper ballot audit form (in duplicate) to be used by the commissioners; a large return envelope labeled election day voted paper ballots; and any other supplies as determined necessary by the secretary or his designee.

4. The commissioner-in-charge shall post a notice at the entrance to the polling place notifying the voters that they will be allowed to vote on paper ballots. The commissioner-in-charge shall remove the notice when the precinct has a voting machine that is operable and voting resumes on the voting machine.

5. The commissioners shall use the instructions provided to follow the proper procedures in implementing the emergency election day paper ballot voting procedures.

6. The commissioner-in-charge shall complete the relevant parts of the paper ballot audit form prior to distribution of any paper ballot, such as the parish/ward/precinct information, time of implementation of procedures, lockout button number on ballot envelope, and total number of ballots per lockout button received in the lead machine. The commissioner-in-charge shall use this form to account for the number of voted paper ballots sealed in secrecy envelopes per button number, the number of spoiled ballots sealed in secrecy envelopes per button number, and the number of unused ballots per button number. This information will provide an accurate accounting of the paper ballots supplied to the precinct per button number. At the end of the election day, the original paper ballot audit form shall be placed in the large return envelope labeled election day voted paper ballots for delivery to the clerk of court and a duplicate copy shall be posted at the precinct.

7. Paper ballots shall only be used during the time when the precinct does not have a voting machine that is operable and the secretary of state or his designee has declared an emergency in writing for implementation of the emergency election day paper ballot voting procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:551, R.S. 18:1352, R.S. 18:1353, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§1105. Procedures for Voting and Termination of Voting for Paper Ballots

A. Allowing the Voters to Vote Paper Ballots

1. The commissioner shall continue to follow the normal procedures of verifying the voter and having the voter sign the precinct register as provided in the "Election

Day Procedures" provided in Part 3 of the *Informational Pamphlet for Election Day Voting*.

2. Additionally, the commissioner shall initial the precinct register opposite the voter's signature or mark and write "Paper Ballot" in the "Lockout Districts" column on the line in the precinct register where the voter is listed.

3. After the commissioner initials the precinct register and writes "Paper Ballot" in the precinct register, the commissioner shall:

a. remove a ballot and secrecy envelope from the large ballot envelope labeled with the button number for the voter that is listed in the precinct register and account for the distribution of that specific ballot number on the paper ballot audit form. (Hash marks or similar counting marks may be used and then totaled at the end of voting to report a final total for each column on the paper ballot audit form.);

b. give the voter the ballot, the secrecy envelope and a pencil or pen;

c. instruct the voter to read and follow the instructions at the top of the ballot to mark the ballot according to those instructions and to seal the ballot in the secrecy envelope after he has completed voting;

d. the commissioner shall allow the voter to go to an area inside the polling place where he can mark his ballot in private and seal his voted ballot in the secrecy envelope; and

e. instruct the voter to return the sealed voted ballot in the secrecy envelope to the commissioner.

4. If the voter spoils his ballot and requests a new ballot, the commissioner shall:

a. instruct the voter to seal his spoiled ballot in the secrecy envelope before collecting the spoiled ballot;

b. write "Spoiled" across the ballot envelope and initial;

c. give the voter a new ballot; and

d. account for the distribution of the new ballot and the spoiled ballot on the paper ballot audit form and place the spoiled ballot envelope in the large return envelope labeled election day voted paper ballots.

5. Upon receipt of the voted ballot in the secrecy envelope from the voter, the commissioner shall account for the voted ballot on the paper ballot audit form and place the secrecy envelope in the large return envelope labeled election day voted paper ballots. The secrecy envelopes with the voted paper ballots shall be retained in the election day voted paper ballots envelope.

B. Termination of Voting Paper Ballots

1. Paper ballots shall only be used during the time when the precinct does not have a voting machine that is operable and the secretary of state, or his designee, has declared an emergency in writing for implementation of the emergency election day paper ballot voting procedures.

2. The commissioner-in-charge shall notify the clerk of court when the voting of paper ballots is terminated due to an operable voting machine and shall indicate the time on the paper ballot audit form. The clerk of court shall then notify the secretary of state, or his designee.

C. Closing the Polling Place

1. After the closing of the polling place, the commissioners shall follow the instructions to complete the paper ballot audit form and certify to its accuracy and place the original paper ballot audit form, all sealed secrecy

envelopes containing voted ballots, all spoiled ballot envelopes, and all unused paper ballots and secrecy envelopes in the large return envelope labeled election day voted paper ballots.

2. The commissioner-in-charge shall post a duplicate copy of the paper ballot audit form next to the posted voting machine results tape.

3. The commissioner-in-charge shall place the large return envelope labeled election day voted paper ballots in the clear plastic zipper bag along with the election results cartridges and deliver the bag to the clerk of court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:49.1, R.S. 18:564, R.S. 18:565, R.S. 18:1352, R.S. 18:1353, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

§1107. Delivery of "Election Day Voted Paper Ballots" Envelope and Tabulation and Counting of Paper Ballots

A. Election Day Voted Paper Ballots Envelope

1. Upon receipt of the "election day voted paper ballots" envelope on election night, the clerk of court or his designee shall deliver the envelope to the parish board of election supervisors or absentee commissioners for tabulation of the election day voted paper ballots.

B. Counting and Tabulating the Votes

1. The paper ballots cast at the polling place shall be counted by the parish board of election supervisors or the absentee commissioners on election night according to the procedures for counting absentee by mail ballots in R.S. 18:1313, R.S. 18:1315, R.S. 18:1316, and the specific procedures provided for herein.

2. A member of the parish board or an absentee commissioner shall remove the paper ballots audit form, the sealed secrecy envelopes containing the voted ballots, the spoiled ballot envelopes, and the unused paper ballots from the election day voted paper ballots envelope and check to confirm that the paper ballots audit form is correct and matches what is delivered in the election day voted paper ballots envelope. If there are any discrepancies, the board or absentee commissioners shall make a notation of the discrepancy on the original paper ballots audit form and certify by their signature to the accuracy of their notation.

3. Each voted ballot shall be removed from the secrecy envelope and a member of the parish board or an absentee commissioner shall write "ED" for election day and his initials in the space on the ballot directly below the secretary of state's signature so as not to mark on the dark black timing marks on the sides of the ballots and to distinguish the election day paper ballots from the absentee by mail paper ballots.

4. The election day paper ballots shall be segregated from the absentee by mail paper ballots and shall be kept segregated by precinct to be counted and reported by precinct.

5. The parish board of election supervisors or the absentee commissioners may elect to count the election day paper ballots manually or they may use the scanning equipment. The election day paper ballots shall be counted separately from the absentee by mail paper ballots and shall be counted and reported by precinct. The secretary of state shall provide written instructions to assist with the counting of paper ballots by precinct.

6. Upon completion of the counting of the election day paper ballots, a member of the parish board of election supervisors or absentee commissioner shall enter the vote totals from the election day paper ballots for each precinct on a worksheet which shall be signed by the board or absentee commissioners and delivered to the clerk of court for entering of the results.

7. The clerk of court or his designee on election night shall add the vote totals for the election day paper ballots from the worksheet to the vote totals for each precinct in the Department of State's Elections and Registration Information Network (ERIN). The secretary of state shall provide written instructions to assist with the entering of these vote totals.

8. Upon completion of the counting of the election day paper ballots, the voted ballots and secrecy envelopes, the original paper ballots audit form, the spoiled ballot envelopes, and all unused ballots and secrecy envelopes shall be returned to the election day voted ballots envelope and the envelope shall be retained by the registrar of voters in accordance with the procedures for retention of absentee by mail ballots in R.S. 18:1312.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1312, R.S. 18:1313, R.S. 18:1315, R.S. 18:1316, R.S. 18:1352, R.S. 18:1353, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 39:

Family Impact Statement

The proposed Rule LAC 31:I.Chapter 11 regarding emergency election day paper ballots should not have any known or foreseeable impact on any family as defined by R.S. 49:972D 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; and
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons may submit written comments to Angie Rogers, Commissioner of Elections, Department of State, P.O. Box 94125, Baton Rouge, LA 70804-9125. She will be responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Tuesday, January 29, 2013 at 11 a.m. in the auditorium of the State Archives Building which is located at 3851 Essen Lane, 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 department to receive written comments is 4:30 p.m. on January 30, 2013 after the public hearing.

Tom Schedler
Secretary of State

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Emergency Election
Day Paper Ballot Procedures**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation of the proposed Rule will lead to an increased cost of approximately \$5,000 per election that, depending on the type of election, would be paid by the state or local governing authority. The proposed Rule provides for use of paper ballots on an emergency basis in precincts where only one voting machine is available for voters on election day in the event the machine has a failure and is not available for voting. For these precincts, the costs associated with the proposed Rule are the cost of printing absentee ballots and supplies. Louisiana has 390 split precincts where only one voting machine is available for election day placement.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on revenue collections of state or local governmental units as a result of this Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no anticipated effect on costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the adoption of this Rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment as a result of the adoption of this Rule.

Joe R. Salter
Undersecretary
1212#033

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Alternative Oyster Culture Permits (LAC 76:VII.535)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission do hereby advertise their intent to promulgate rules for alternative oyster culture activities.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 5. Oysters

§535. Alternative Oyster Culture Permits

A. Definitions. For purposes of this Section, the following terms shall have the following meanings.

Alternative Oyster Culture Activity or *AOC Activity*—any on-bottom, off-bottom, or other means of cultivating or growing oysters other than directly on reefs or other water bottoms, including but not limited to the use of on-bottom cages or bags or floating, suspended, or otherwise off-bottom cages or bags, and includes the harvesting of oysters so grown or cultivated.

Alternative Oyster Culture Permit, AOC Permit, or Permit—permit authorizing AOC activity, as authorized by R.S. 56:431.2, unless otherwise specifically provided.

Alternative Oyster Culture Permittee, AOC Permittee, or Permittee—person to whom an AOC permit has been issued or transferred, unless otherwise specifically provided.

Oyster Lease or *Lease*—oyster bedding ground lease of state water bottoms, or renewal thereof, pursuant to R.S. 56:427 or 428.

Secretary—secretary of the Department of Wildlife and Fisheries or his designee.

B. Permits. The secretary may issue alternative oyster culture activity permits in accordance with R.S. 56:431.2 and this rule.

1. Authorized Activity. An AOC permit authorizes the permittee and, upon written authorization by the permittee, any authorized user of the permit to engage in the AOC activities specified in the permit on the permit area. The permittee, any authorized user, and any laborer, deckhand, or other person working under the direction of a permittee or authorized user may engage in such activities on the water bottoms, in the water column, and on the water surface above the water bottoms within the permit area, to the extent specified in the permit, and in accordance with the provisions of R.S. 56:431.2 and this rule.

2. Term. An AOC permit is valid for 10 years or until termination of the oyster lease containing the permitted area (including any renewal thereof) to which the permit pertains, whichever occurs first. If the lease is renewed pursuant to R.S. 56:428, the permit shall continue in effect until expiration of the 10-year term. All permits shall expire December 31 of the last year of the permitted term.

3. Transfer. An AOC permit is transferrable only with the transfer of the lease containing the permitted area, and only to the transferee of the lease. If the lease is transferred, the permit shall automatically terminate on the effective date of the transfer of the lease unless the permit is transferred simultaneously with the transfer of the lease. If the lease is transferred by succession, the permit shall be presumed to have been transferred with the lease unless the transferee of the lease surrenders the permit to the department. Under no circumstances may the permittee be any person other than the lessee of the lease containing the permitted area. Wherever the term “permittee” is used in a permit or this rule, it includes any transferee of that permit unless the context clearly requires otherwise. The department will charge the transferee a fee of \$10 per permit for transfer of a permit.

4. Authorized Users. An AOC permittee may authorize any person holding a valid oyster harvester license pursuant to R.S. 56:303.6 and a valid commercial fisherman's license pursuant to R.S. 56:303 to engage in permitted AOC activities on the permit area. Any such authorization shall be in writing. Laborers, deckhands, and other persons working under the direction of a permittee or authorized user do not themselves need a permit or authorization. Wherever the term “permittee” is used in a permit or this rule, it includes any authorized user of that permit unless the context clearly requires otherwise.

5. Permit Availability. Persons engaged in AOC activities must show the permit upon demand to a duly authorized agent of the department. Authorized users engaged in AOC activities must also show the written authorization upon demand to a duly authorized agent of the department.

6. Permit Fee. The fee for an AOC permit is \$2.00 per acre or fraction of an acre, per year (or fraction of a year through December 31, for the first year).

a. AOC permit fee notices will be mailed to AOC permittees at least 30 days in advance of the due date, which is January 1 of each year.

b. During the first week of February of each year, the department will compile a list of AOC permits that are in default. After compiling the list, each AOC permittee will be notified by certified mail that his permit is in default and will be canceled if payment is not received by March 31.

7. Hours of Operation. No person shall conduct AOC activities between the hours of one-half hour after sunset and one-half hour before sunrise.

8. Compliance with Other Laws

a. The permittee shall comply with all other applicable laws, regulations, and orders, including but not limited to those pertaining to oyster leases, oyster fishing, fisheries closures, coastal use permits, and obstruction to navigation, construction, wetlands, dredge, or fill permits.

b. With respect to any oysters grown, harvested, or otherwise present in or removed from the permit area, the permittee shall comply with all requirements that would be applicable under any law, regulation, or order if the oysters had been grown on the water bottom, unless otherwise provided in R.S. 56:431.2 or this rule.

9. Amendment. Upon application by the permittee, an AOC permit may be amended by the secretary, subject to the same requirements for and discretion of the secretary regarding an original permit application. The application for the amendment shall specify all respects in which the permit is sought to be amended. A new plat and schematics shall be provided, if the permitted acreage or location or extent of permitted facilities is sought to be amended. A greater or lesser removal bond may be required, if the types or extent of the permitted AOC activities, facilities, or equipment are sought to be amended. The original term of the permit cannot be amended.

10. Termination. An AOC permit is terminable by the secretary:

a. upon conviction or guilty plea to a significant violation or repeated violations of the permit, or a Class 4 or greater oyster-related violation as defined in the laws pertaining to wildlife and fisheries, by the permittee or anyone authorized by the permittee to engage in AOC activities on the permitted area;

b. for failure to pay the annual permit fee by March 31;

c. for provision of false information in relation to the permit or the application for the permit; or

d. upon the permittee's surrender of the permit to the department.

11. Removal of Equipment. The AOC permittee shall remove all equipment, facilities, and other items used for AOC activities from the permit area within 120 days after termination, cancellation, or expiration of the AOC permit. However, the department may allow facilities or portions thereof (such as pilings below the surface of the water bottoms) to remain if authorized in writing by the Department of Natural Resources and the U.S. Army Corps of Engineers and in accordance with any such permission. The department will allow additional time for completion of

removal activities during the pendency of a request for such authorization, and may also allow additional time due to extenuating circumstances upon written request by the permittee.

C. Applications

1. Eligibility. Applications for an AOC permit shall be accepted by the department only from persons who meet the eligibility requirements provided in R.S. 56:431.2 and this rule.

a. An AOC permit may be issued only to a leaseholder holding a valid oyster lease of state water bottoms pursuant to R.S. 56:427 or 428, and only for the state water bottoms leased pursuant to that lease.

b. No AOC permit may be issued to an applicant who has been convicted of or pled guilty to a Class 4 or greater oyster-related violation, as defined in the laws pertaining to wildlife and fisheries, within 3 years prior to the submission of the application.

2. Appearance. An applicant must appear in person at the department's Oyster Lease Survey Section office in order to apply for an AOC permit, or provide power of attorney to an agent to appear and act on the applicant's behalf.

3. Forms and Required Information and Materials

a. Applications shall be accepted by the department only on forms supplied by the department, which shall include at a minimum:

i. name, physical address, mailing address, telephone number, and if applicable, email address of the applicant;

ii. commercial fisherman license number and oyster harvester license number of the applicant;

iii. lessee name and lease number of the oyster lease where the applicant seeks to engage in AOC activities;

iv. description of all AOC activities sought to be permitted;

v. description of all equipment or gear sought to be permitted and the quantities thereof; and

vi. description of all facilities sought to be permitted.

b. The applicant shall outline on a department map the area sought to be permitted, and the location and horizontal and vertical physical extent of all AOC activities and related facilities sought to be permitted.

c. The applicant shall submit one application per permit sought. The secretary or his designee may grant more than one permit per lease and more than one permit per leaseholder, but permit areas cannot overlap and cannot extend across lease boundaries.

d. The applicant shall submit all other local, state, and federal permits necessary for the activity authorized by the AOC permit, specifically including state coastal use permits (R.S. 49:214.30), federal obstruction to navigation Section 10 (33 U.S.C. § 403) and section 9 (33 U.S.C. §401) permits, Clean Water Act Section 404 fill permits (33 U.S.C. §1344), and State Water Quality Certification (33 U.S.C. §1341); or documentation from the relevant agencies establishing that such permits are unnecessary.

e. The applicant shall submit a cost estimate to remove and properly dispose of all equipment, facilities, and other items sought to be permitted. The cost estimate must be prepared by a contractor with no familial or business

relationship with the applicant and with all licenses necessary to provide such services.

f. The department may request the applicant to submit additional information or documentation.

g. The application for an AOC permit shall be accompanied by an application fee of \$100.

h. The application shall be deemed complete only upon receipt by the department of all information and documentation required by this rule, including any additional information or documentation required by the department. The secretary will consider only a complete application.

4. Plat. Prior to issuance of an AOC permit, the applicant shall submit to the department a plat meeting department specifications.

a. The plat shall comply with the following.

i. All corners of the lease and the proposed AOC permit area shall be shown, referenced to geographic coordinates (latitude and longitude) or the Louisiana State Plane Coordinate System, South Zone, NAD83, Survey Feet.

ii. All corners of the proposed facilities and equipment shall be shown, referenced to geographic coordinates (latitude and longitude) or the Louisiana State Plane Coordinate System, South Zone, NAD83, Survey Feet.

iii. Plats shall be drawn in black ink on standard oyster lease plats furnished by the Oyster Lease Survey Section, and the original shall become the property of same. The applicant shall provide a formatted ASCII file of the coordinates for each corner on the plat that complies with the Oyster Lease Survey Section's geographic information system. The plat shall contain the applicant's name, license number, and signature.

iv. The exact acreage sought to be permitted shall be shown on the plat, but for all purposes pertaining to the permit the acreage, even though calculated to the hundredth of acre, shall be rounded up to the next highest acre.

v. Application number and the applicant's name and lease number shall be shown on all plats as indicated on the original application.

vi. Use standard signs and symbols.

b. The plat shall include or be accompanied by a plot plan and schematics clearly showing the nature, location, and physical extent of all AOC activities sought to be permitted within the permit area, horizontally and vertically, and all facilities and equipment sought to be placed therein or used pursuant to the permit.

5. Investigation of State Water Bottoms. No AOC permit may be issued unless a reasonable investigation into the question of ownership is complete and, based on the findings, a determination is made that the State owns the water bottom to be covered by the AOC permit.

6. The department shall post notice of the application and a point of contact for comment on the department website, and provide such notice by email to all persons who have requested such notification in writing, at least 15 days prior to acting on the application.

7. Provision of insufficient or false information. Failure to provide information required by the department, after 30-day notification from the department by certified mail, or provision of false information, shall result in cancellation of the application and forfeiture of all fees to the department.

8. Initial Annual Fee. Upon issuance of the AOC permit, the permittee shall pay the first annual permit fee, which is \$2 per acre or fraction of an acre permitted.

D. Discretionary Provisions. The secretary shall have discretion with respect to the following provisions in any AOC permit.

1. Permitted Activities. The secretary may issue AOC permits specifying particular AOC activities that are authorized thereby, regardless of whether the AOC permit as issued deviates from the application. The types of AOC activities that may be permitted are:

a. on-bottom cages, racks, or bags;

b. off-bottom cages, racks, or bags, suspended by poles or floats;

c. string or longline culture;

d. any other AOC activity as approved by the secretary in the permit.

2. Permitted Species. Unless otherwise specifically authorized by the secretary in the permit, AOC activities may be performed using only *Crassostrea virginica* (including all subspecies thereof or triploid *Crassostrea virginica*) from the Gulf of Mexico. However, the permittee shall obtain a disease certification issued by a competent biologist and approved by the department for all oysters, including seed or spat, sourced from any location outside the State of Louisiana.

3. Permit Area. The secretary may issue AOC permits in numbers, locations, sizes, and configurations specified by the secretary, regardless of whether the AOC permit as issued deviates from the application, except:

a. no permit area may extend beyond the boundaries of an existent oyster lease;

b. no permit area may exceed 2,000 feet in length or width;

c. permit areas must be separated by at least 100 feet;

d. no AOC permit may authorize AOC activities in an area that is any of the following at the time the AOC permit is issued:

i. designated by the United States Army Corps of Engineers as a navigation channel or waterway or within 1,500 feet of the centerline of such a channel or waterway;

ii. covered by a coastal use permit or drilling permit for fixed items such as wellheads, pipelines, access channels, wharves, docks, piers, or mooring dolphins, or located within 1,500 feet of the outside of the exterior boundaries of an area covered by such a coastal use permit or drilling permit;

iii. designated for dredging, direct placement of dredged or other materials, or other work or activities for the construction or maintenance of a project for integrated coastal protection or within 1,500 feet of the outside of the exterior boundaries of an area designated for such dredging, direct placement, or other work or activities;

iv. located on land, or on water bottoms that are not claimed by the State of Louisiana, as determined by the State Land Office; or

v. otherwise determined by the department to be unsuitable or inappropriate for AOC activities. In making this determination, the department shall use the suitability mapping required by R.S. 56:431.2, any update or revision to the initial suitability mapping, any master plan or annual

plan issued pursuant to R.S. 49:214.5.3, and any other information and data deemed relevant by the department, to identify areas that are unsuitable or inappropriate for AOC activities due to creation of unreasonable conflicts with other existing or anticipated uses of state waters and water bottoms. The department shall also consider the location and nature of existing AOC permits;

d. the permit area shall be located and configured so as to avoid unreasonable interference with surface navigation, passage by water craft, and any other authorized public use;

e. no fencing shall be allowed.

4. **Equipment.** The secretary may specify or impose limitations in the permit regarding the equipment and materials authorized or required to be used for AOC activities.

a. All equipment and materials used for AOC activities shall, at a minimum, comply with United States Coast Guard regulations and requirements, and with all state and federal fishing laws and regulations, as amended from time to time.

b. The secretary may impose additional requirements or limitations on equipment and materials usable or used for AOC activities from time to time.

c. Any equipment and materials used for AOC activities authorized pursuant to this Section may be transported or used in compliance with the provisions of this Section.

5. **Marking.** The secretary may specify or impose requirements in the permit for marking, lighting, or warning devices authorized or required in relation to AOC activities.

a. Marking, lighting, and warning devices for AOC activities shall, at a minimum, comply with United States Coast Guard regulations and requirements, and with all state and federal laws and regulations, as amended from time to time.

b. All areas where such equipment or materials are present on state water bottoms or in the water column shall be clearly marked. At a minimum, the AOC permittee shall comply at all times with the following requirements:

i. The AOC permittee shall place and maintain markers along the boundaries of the permit area, at intervals of 75 feet, between 3 and 12 feet above the water level.

ii. The AOC permittee shall place and maintain markers along the boundaries of the areas where AOC facilities or equipment are actually located, at intervals of 20 feet, between 3 and 12 feet above the water level.

iii. The AOC permittee shall place and maintain buoys conforming to United States Coast Guard markings at all corners of the permit area and the areas where AOC equipment or facilities are actually located, and midway between the corners if separated by more than 1000 feet.

c. Each buoy, each main cage, bag, or float, and each structure used for AOC activities shall contain an indelible and permanent tag that includes the AOC permit number.

6. **Reporting.** The secretary may impose requirements in the permit for the AOC permittee to report information or data to enable the department to monitor the activities under the AOC permit or to study such activities and their results. Such information is not privileged and may be disseminated to the public.

7. **Removal Bond.** The secretary may require an AOC permittee to post a reasonable surety bond in an amount to be determined by the department, commensurate with the anticipated cost to remove and properly dispose of all permitted equipment, facilities, and other items. In determining the amount of the bond, the department shall consider but is not bound by the cost estimate for removal provided by the applicant, and shall take into account reasonably-anticipated cost increases through the term of the permit and any other relevant information.

E. **Mandatory Provisions.** The secretary shall include the following provisions in any AOC permit.

1. "This permit is terminable by the department upon significant or repeated violation of the permit or any applicable statutes, rules, or regulations by the permittee or anyone authorized by the permittee to engage in AOC activities on the permitted area."

2. "The permittee hereby indemnifies and holds harmless the State of Louisiana, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee thereof against and from any claim arising as a result of operations by or for the permittee pursuant to this permit."

3. "The permittee and anyone using this permit hereby holds the State of Louisiana, political subdivisions of the state, the United States, and any agency, agent, contractor, or employee thereof harmless from any claims arising under or as a result of the issuance of this permit in relation to diversions of fresh water or sediment, dredging or direct placement of dredged or other materials, any other actions taken for the purpose of integrated coastal protection, or adverse effects on water quality, including but not limited to increased sedimentation or eutrophication or fluctuations in salinity or pH."

4. "The permittee shall remove and properly dispose of all equipment, facilities, and other items used for alternative oyster culture activities within 120 days after termination, cancellation, or expiration of the permit, unless otherwise authorized by the department."

F. **Office Procedures**

1. **Copy Fees.** A fee for all maps, leases, plats or documents, will be charged, as set forth at LAC 76:VII.501(E), as such fees may change from time to time.

G. **Enforcement**

1. Violation of an AOC permit, including conducting any AOC activity that is not expressly authorized by a permit, is a Class 3 violation, as defined in R.S. 56:33.

2. Theft of or intentionally causing damage to properly permitted alternative oyster culture equipment or oysters contained in such equipment is a Class 4 violation, as defined in R.S. 56:34.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:431.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 39:

Family Impact Statement

In accordance with Act #1183 of the 1999 regular session of the Louisiana Legislature, 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).

1. The stability of the family? The proposed Rule is not anticipated to have any effect on the stability of the family.

2. The authority and rights of parents regarding the education and supervision of their children? The proposed Rule is not anticipated to have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The functioning of the family? The proposed Rule is not anticipated to have any effect on the functioning of the family.

4. Family earnings and family budget? The proposed Rule is not anticipated to have any effect on family earnings and family budget.

5. The behavior and personal responsibility of children? The proposed Rule is not anticipated to have any effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in this proposed Rule? The proposed Rule is not anticipated to have any effect on the ability of the family or a local government to perform the function as contained in this proposed Rule.

Public Comments

Interested persons may submit written comments on the proposed Rule to Mr. Cole Garrett, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000 no later than 4:30 p.m., January 10, 2013.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Notice of Intent and the final Rule, including, but not limited to, the filing of the fiscal and economic impact statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Ann L. Taylor
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Alternative Oyster Culture Permits

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state or local governmental unit expenditures. The proposed rule change establishes a system to issue permits for alternative oyster culture activities, such as on-bottom cages or bags or floating, suspended or otherwise off-bottom cages or bags.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Department of Wildlife and Fisheries may experience an indeterminable increase in revenues to the Conservation Fund from application fees, annual per acre fees, and copy fees under the proposed rule change. The department expects that revenue from application fees will be less than \$1,000 and will be received in the first year and revenues from the annual lease fees are expected to be less than \$1,000 per year. Revenue increases would be dependent upon the number of applicants and the number of acres adopting alternative oyster culture methods.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

These techniques may have the potential to increase oyster production or to decrease oyster harvesting costs in certain areas relative to oyster production directly on reefs or other water bottoms.

Costs paid by the permit holder would include permit fees, application fees, survey expenses, and removal bonds. Additional potential costs include expenditures for boundary markers and other equipment required for safety and navigation purposes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule would allow economic activity that may enhance competitiveness and is anticipated to have a positive effect on employment in the private sector. This would likely be the case if the alternative oyster culture activities to which the permitting process pertains proves a plausible alternative to or complement to standard on-bottom oyster production practices.

Lois Azzarello
Undersecretary
1212#054

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Sharks and Sawfishes—Harvest Regulations (LAC 76:VII.357)

The Wildlife and Fisheries Commission does hereby give notice of intent to amend a Section (LAC 76:VII.357) modifying rules for the commercial harvest of shark, which are part of the existing rule for daily take, possession, and size limits for shark set by the Commission. Authority of adoption of this Rule is included in R.S. 56:6(10), R.S. 56:6(25)(a), R.S. 56:326(E)(2), R.S. 56:326.1, R.S. 56:326.3, R.S. 56:320.2(C), and R.S. 325.2(A). Said Rule is attached to and made a part of this Notice of Intent.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery §357. Sharks and Sawfishes—Harvest Regulations

A - H.1. ...

2. Persons possessing a commercial state shark permit but no federal shark permit shall not possess on any one day, or on any trip, or land from any trip, or sell, barter, trade, or exchange in excess of 36 sharks per vessel from the large coastal species group, taken from Louisiana state waters. Persons possessing a commercial state shark permit shall not possess any sandbar sharks unless they also have in their name and in possession a valid federal shark research permit under 50 CFR 635.32(1).

H.3 - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:326(E)(2), R.S. 56:326.1, R.S. 56:326.3, R.S. 56:320.2(C), and R.S. 325.2(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:543 (March 1999), amended LR 27:2267 (December 2001), LR 30:1507 (July 2004), LR 35:705 (April 2009), LR 39:

Family Impact Statement

In accordance with Act 1183 of 1999 regular session of the Louisiana Legislature, 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).

1. The stability of the family? The proposed Rule is not anticipated to have any effect on the stability of the family.

2. The authority and rights of parents regarding the education and supervision of their children? The proposed Rule is not anticipated to have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The functioning of the family? The proposed Rule is not anticipated to have any effect on the functioning of the family.

4. Family earnings and family budget? The proposed Rule is not anticipated to have any effect on family earnings and family budget.

5. The behavior and personal responsibility of children? The proposed Rule is not anticipated to have any effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in this proposed Rule? The proposed Rule is not anticipated to have any effect on the ability of the family or a local government to perform the function as contained in this proposed Rule.

Public Comments

Interested persons may submit comments relative to the proposed Rule to Jason Adriance, Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, February 7, 2013.

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 the 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.

Ann L. Taylor
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Sharks and Sawfishes—Harvest Regulations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state or local governmental units expenditures.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is anticipated to have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change would increase the daily possession limit for sharks in the large coastal species group taken from Louisiana state waters from the current limit of 33 sharks per vessel per day to 36 sharks per vessel per day for persons who possess a commercial state shark permit. The proposed rule change is designed to be consistent with regulations for federal waters and would allow holders of a commercial state shark permit to possess the same amount of large coastal sharks as a federal shark permit holder.

Commercial fishermen who harvest sharks may experience an increase in revenues because they would be allowed to harvest and keep more sharks in the large coastal species group from Louisiana state waters. Local seafood dealers, processors and consumers may experience an increase in the availability of sharks.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is anticipated to have a minimal positive effect on competition and employment due to the expected increase in shark landings.

Lois Azzarello
Undersecretary
1212#053

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Wild Seafood Certification Program (LAC 76:I.701)

The Secretary of the Department of Wildlife and Fisheries hereby advertises his intent to allow wholesale/retail dealers (docks and landings) to be issued a LWSCP permit without the required LDHH permit provided the permit is obtained by January 1, 2014.

Title 76

WILDLIFE AND FISHERIES

**Part I. Wildlife and Fisheries Commission and Agencies
Thereunder**

**Chapter 7. Louisiana Wild Seafood Certification
Program**

§701. Declaration of Policy, Purposes, and Intent

A. - B. ...

C. Policy

1. Participation in the LWSCP is voluntary and limited to those individuals or entities meeting the following criteria:

a. must possess one of the following resident or non-resident Louisiana licenses:

- i. commercial fisherman’s license;
- ii. senior commercial license;
- iii. fresh products dealer license;
- iv. seafood wholesale/retail dealer;
- v. seafood retail dealer.

b. wholesale/retail dealers must have their facility located within Louisiana. Retailers are not required to have their facility located within Louisiana;

c. eligible participants not requiring a LDWF license include in-state restaurants or grocers who only sell seafood that is fully prepared by cooking for immediate consumption by the consumer, and all out-of-state retailers;

d. must possess and be in compliance with all other state and federal permits, licenses, and laws regarding the buying, acquiring, or handling, from any person, by any means whatsoever, any species of fish or seafood products, whether fresh, frozen, processed, or unprocessed, for sale or resale, whether on a commission basis or otherwise. Including but not limited to any LDWF, LDHH or LDAF permits or regulations. The following exceptions apply.

i. LDWF may issue a LWSCP wholesale/retail dealer permit to docks and landings that do not possess the required LDHH permit. The LWSCP permit shall be issued on the condition that the LDHH permit is obtained by January 1, 2014.

2. - 2.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.15 and R.S. 56:23.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of the Secretary, LR 38:1999 (August 2012), amended by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 39:

Family Impact Statement

In accordance with Act 1183 of 1999 regular session of the Louisiana Legislature, 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).

1. The stability of the family? The proposed Rule is not anticipated to have any effect on the stability of the family.

2. The authority and rights of parents regarding the education and supervision of their children? The proposed Rule is not anticipated to have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The functioning of the family? The proposed Rule is not anticipated to have any effect on the functioning of the family.

4. Family earnings and family budget? The proposed Rule is not anticipated to have any effect on family earnings and family budget.

5. The behavior and personal responsibility of children? The proposed Rule is not anticipated to have any effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in this proposed Rule? The proposed Rule is not anticipated to have any effect on the ability of the family or a local government to perform the function as contained in this proposed Rule.

Public Comments

Interested persons may submit comments relative to the proposed Rule to Jason Froeba, Fisheries Division, Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, February 7, 2013.

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 the 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.

Robert J. Barham
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Wild Seafood Certification Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state or local governmental unit expenditures.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is anticipated to have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change would allow Louisiana resident seafood wholesale/retail dealers (also called seafood docks or dealers) to participate in the Louisiana Wild Seafood Certification Program (LWSCP) without holding a Louisiana Department of Health and Hospitals (LDHH) permit under the condition that they obtain such a license by January 1, 2014.

The LWSCP is intended to benefit diverse elements of the Louisiana commercial seafood sector, including commercial fishermen, seafood dealers or docks, and processors, by establishing voluntary standards that should enhance the quality and reputation of Louisiana seafood.

The current rule that requires seafood dealers or docks to hold a LDHH permit may discourage their participation in the LWSCP if they find it costly and inconvenient to bring current facilities into compliance with LDHH permit standards in a short timeframe. The proposed rule change may improve the income of seafood dealers or docks that choose to participate in the LWSCP by reducing the cost of coming into compliance with LDHH permit standards.

Allowing seafood dealers or docks more time to renovate their facilities should reduce the cost of meeting LDHH permit standards and thus for participating in the LWSCP. Reducing costs will benefit the seafood dealers or docks. It may also be expected to benefit commercial fishermen, seafood dealers, and other portions of the Louisiana seafood marketing sector who interact with Louisiana seafood dealers or docks.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule would allow economic activity that may enhance competitiveness and is anticipated to have a positive effect on employment in the private sector. This would likely be the case if the alternative oyster culture activities to which the permitting process pertains proves a plausible alternative to or complement to standard on-bottom oyster production practices.

Lois Azzarello
Undersecretary
1212#055

Evan Brasseaux
Staff Director
Legislative Fiscal Office

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Department of Environmental Quality Office of Environmental Services Air Permits Division

2010 Nitrogen Dioxide (NO₂) National Ambient Air Quality Standards (NAAQS)—State Implementation Plan (SIP) Revisions

Under the authority of the Louisiana Environmental Quality Act, La R.S. 30:2051 et seq., the secretary of the Louisiana Department of Environmental Quality (LDEQ) gives notice that the Office of Environmental Services, Air Permits Division, Manufacturing Section, will submit to the U.S. Environmental Protection Agency (EPA) a revision to the infrastructure state implementation plan as required by Section 110(a)(1) and (2) of the Clean Air Act (CAA). (1212Pot2)

On February 9, 2010, the EPA established an additional one hour averaged NO₂ primary standard of 0.1 parts per million (100 ppb). In addition, the EPA reviewed, but chose not to revise the annual primary and secondary NO₂ standards of 0.053 parts per million (53 ppb). Pursuant to Sections 110(a)(1) and (2) of the CAA, each state is required to submit a plan to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS.

If any party requests a public hearing on this matter, one will be scheduled and the comments received will be submitted as an addendum to the original submittal. All interested persons are invited to submit written comments concerning the revisions no later than 4:30 p.m., February 28, 2013, to Gilberto Cuadra, Office of Environmental Services, P.O. Box 4313, Baton Rouge, LA 70821-4313, fax (225) 219-3240 or email to gilberto.cuadra@la.gov.

A copy of the recommendation may be viewed online at the LDEQ Air Permits Engineering and Planning website or the LDEQ Galvez Building at 602 North Fifth Street, Room 536-03.

Herman Robinson, CPM
Executive Counsel

POTPOURRI

Department of Environmental Quality Office of the Secretary

Declaratory Ruling—No. 12-001 Diamond Green Diesel, LLC

Background:

On November 30, 2012, the secretary of the Louisiana Department of Environmental Quality (LDEQ) issued Declaratory Ruling No. 12-001 in accordance with the Environmental Quality Act (R.S. 30:2001 et seq.), the Administrative Procedure Act (R.S. 49:950 et seq.) and the *Louisiana Administrative Code*, Title 33, Part I, Subpart I, Chapter 11 (LAC 33:I.1101 et seq.) (1212Pot3).

The declaratory ruling was issued pursuant to an application by Diamond Green Diesel, LLC (DGD LLC), submitted in June 2012 which can be viewed in the LDEQ's Electronic Document Management System (EDMS) at Document No. 8623399. The application by DGD LLC requested a ruling concerning the applicability of various regulations concerning the green diesel manufacturing facility (facility) located at 14891 Airline Drive, Norco, LA in St. Charles Parish (Agency Interest No. 168018).

Conclusion:

The declaratory ruling, which can be viewed in EDMS at Document No. 8623397, holds that:

1. the facility is not subject to a "petroleum refinery" regulations under the Clean Air Act;
2. the facility is not subject to "bulk gasoline terminal" regulations under the Clean Air Act;
3. the facility is not subject to synthetic organic chemical manufacturing industry (SOCMI) regulations under the Clean Air Act;
4. the facility is subject to the benzene waste operations NESHAP (BWON), namely 40 CFR Part 61 Subpart FF;
5. the facility will not produce listed hazardous waste codes under the Resource Conservation and Recovery Act (RCRA) regulations, specifically, RCRA hazardous waste codes F037 and F038, as well as waste codes K048 through K052 and K169 through K172;

1212#025

6. the facility is not subject to the technology-based effluent limitations for organic chemicals, plastics, and synthetic fibers (OCPSF) under the Clean Water Act and LPDES regulations.

Pursuant to R.S. 30:2050.21 and LAC 33:I.1145, an aggrieved person may appeal devolutively this declaratory ruling only to the Nineteenth Judicial District Court. A petition for review may be filed in the district court within 30 days after this notice of the ruling.

For more information, contact Donald Trahan, Office of the Secretary, Legal Division, at (225) 219-3985.

Herman Robinson, CPM
Executive Counsel

1212#026

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Division

Notice of Public Hearing—Substantive Changes to Proposed Rule WQ085—Minor Revisions to Water Quality Standards Antidegradation Language (LAC 33:IX.1119)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the department is seeking to incorporate substantive changes to the proposed amendments to various regulations, LAC 33:IX.1119 (Log #WQ085S), which were originally noticed as WQ085 in the July 20, 2012 issue of the *Louisiana Register* (WQ085S) (1212Pot1).

The department has made substantive changes to address comments received during the public comment period of proposed Rule WQ085. The regulation now states that additional implementation procedures may be incorporated into the water quality management plan after appropriate public participation and intergovernmental coordination. Additionally, the regulation has been changed to clarify that the antidegradation policy applies to both activities and discharges. Finally, language has been included to address increased wastewater discharges and to clarify permit requirements.

A strikeout/underline/shaded version of the proposed Rule that distinguishes original proposed language from substantively changed language is available on the internet at www.deq.louisiana.gov under “Rules and Regulations.”

A public hearing on the substantive changes will be held on January 29, 2013, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the substantive changes. Persons commenting should reference this proposed regulation by WQ085S. Such

comments must be received no later than January 29, 2013, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. The comment period for the substantive changes ends on the same date as the public hearing. Copies of these substantive changes can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ085S. These proposed regulations are available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These substantive changes are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

1212#043

POTPOURRI

Office of the Governor Office of Financial Institutions

Judicial Interest Rate Determination for 2013

R.S. 13:4202(B), as amended by Acts 2001, No. 841, and Acts 2012, No. 825, requires the Louisiana Commissioner of Financial Institutions to determine the judicial interest rate for the calendar year following the calculation date. The commissioner has determined the judicial interest rate for the calendar year 2013 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on October 1, 2012, the first business day of the month of October, the approved discount rate of the Federal Reserve Board of Governors was three-quarters (.75) percent.

R.S. 13:4202(B)(1) mandates that on and after January 1, 2002, the judicial interest rate shall be three and one-quarter percentage points above the Federal Reserve Board of Governors approved discount rate on October 13, 2012. Thus, the effective judicial interest rate for the calendar year 2013 shall be four percent per annum.

R.S. 13:4202(B)(2) provides that the publication of the Commissioner's determination in the *Louisiana Register* “shall not be considered rulemaking within the intent of the Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:953.” Therefore, (1) a Fiscal Impact Statement, (2) a Family Impact Statement, and (3) a Notice of Intent are not required to be filed with the *Louisiana Register*.

John P. Ducrest, CPA
Commissioner

1212#021

POTPOURRI

**Department of Health and Hospitals
Board of Veterinary Medicine**

Board Meeting Dates

The members of the Louisiana Board of Veterinary Medicine will meet at 8:30 a.m. on the following dates in 2013:

- Thursday, February 7, 2013
- Thursday, April 4, 2013
- Thursday, June 6, 2013 (Annual Meeting)
- Thursday, August 1, 2013
- Thursday, October 3, 2013
- Thursday, December 5, 2013

These dates are subject to change, so please contact the board office via telephone at (225) 342-2176 or email at admin@lsbvm.org to verify actual meeting dates.

Wendy D. Parrish
Executive Director

1212#023

POTPOURRI

**Department of Natural Resources
Office of Coastal Management
Permits and Mitigation Division**

Mitigation Bank Review

The rules and procedures for mitigation (LAC, Title 43, Part I, Chapter 7, Subchapter C, Section 724) were promulgated in 1995 as part of the Louisiana Coastal Resources Program to require compensatory mitigation for impacts to vegetated wetlands in the Louisiana coastal zone. These requirements state that the secretary shall not grant a coastal use permit for an individual activity unless the authorization is conditioned to include a requirement for compensatory mitigation to offset any net loss of wetland ecological value that is anticipated to occur. By this notice, the Department of Natural Resources announces that it intends to promulgate revised rules for Subsections E and F of Section 724 which provide the methods available for accomplishing compensatory mitigation, general procedures for establishing wetland mitigation banks, and the procedures for the review of mitigation bank proposals. In an effort to effect the codification of existing mitigation bank review practices and procedures, rule revisions are essential and will assist in: streamlining the present mitigation bank review process; making mitigation bank review more consistent with federal agencies' review; making the state review process of mitigation banks less burdensome on mitigation bank sponsors; and reducing the time required for mitigation bank proposal review. For more information, contact Kelley Templet, at (225) 342-3124. This notice is available on the Department of Natural Resources' website.

Karl Morgan
Administrator

1212#022

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the oilfield sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, La. R.S. 30:80 et seq., and as such are being declared orphaned oilfield sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Crystal Oil And Land Company	Sligo	S	Hoss Sud; Skannal	001	117684
Crystal Oil And Land Company	Sligo	S	Hoss Sud; Skannel	002	118521
C. L. Morris	Pendleton-Many	S	V C Eason	001	96235
R O Roy	Wildcat-No La Shreveport Dist	S	Hutchinson Frierson	002	8899
Jefferson Lake Sulphur Company	Bay St Elaine	L	Salt Dome Royalties Inc	006	25128
Eagle Oil Company	Wildcat-No La Shreveport Dist	S	Stephens	001	191
La Oil Ref Corp	Wildcat-No La Shreveport Dist	S	C W Lane	007-A	5949

James H. Welsh
Commissioner

1212#061

POTPOURRI

**Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund**

**Underground Obstruction
Latitude/Longitude Coordinates**

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 16 claims in the amount of \$74,732.19 were received for payment during the period November 1, 2012-November 30, 2012.

There were 16 paid and 0 denied.

Latitude/longitude coordinates, in degree decimal minutes, of reported underwater obstructions are:

28 56.126	89 22.112	Plaquemines
29 16.278	89 52.294	Plaquemines
29 16.518	89 44.238	Plaquemines
29 16.819	89 56.795	Jefferson
29 17.810	89 43.982	Plaquemines
29 19.292	89 51.885	Plaquemines
29 19.848	89 59.580	Jefferson
29 25.871	89 56.322	Plaquemines
29 35.365	90 08.934	Jefferson
29 40.945	89 23.680	Saint Bernard
29 45.260	89 41.460	Saint Bernard
29 45.451	93 21.807	Cameron
29 48.666	89 40.451	Saint 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) 342-9388.

Stephen Chustz
Secretary

1212#051

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