

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Horticulture Commission

Licenses (LAC 7:XXIX.117)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Horticulture Commission, hereby proposes to amend regulations regarding the required standards of practice for the utility arborist license.

The Department of Agriculture and Forestry, Horticulture Commission intends to adopt these rules and regulations for the purpose of amending the utility arborist standards of practice.

These rules are enabled by R.S. 3:3801.

Title 7

AGRICULTURE AND ANIMALS

Part XXIX. Horticulture Commission

Chapter 1. Horticulture

§117. Required Standards of Practice

A. - I.4. ...

5. Recommendations and pruning practices shall meet the standards outlined in the *International Society of Arboriculture Certification Manual* and *Best Management Practices Utility Pruning of Trees*, a publication by the International Society of Arboriculture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3808 and R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:185 (April 1982), amended LR 9:410 (June 1983), LR 11:317 (April 1985), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 20:640 (June 1994), LR 27:1832 (November 2001), LR 31:

Family Impact Statement

The proposed amendments to Rules LAC 7:XXIX.117 regarding the required standards of practice for the landscape architect license and the re-issuance of suspended, revoked or un-renewed license or permit should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

All interested persons may submit written comments on the proposed Rules through October 25, 2005, to Craig Roussel, Department of Agriculture and Forestry, 5825

Florida Boulevard, Baton Rouge, LA 70806. No preamble concerning the proposed Rules is available.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Licenses

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There will be no implementation costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There 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)
Licensed Utility Arborists will be directly affected by the proposed action. There are no significant changes in the actual standards; however, this reference source is more informative. For those utility arborists who wish to purchase the booklet, there will be a cost of approximately \$5.00. There will be no effect on workload or paperwork.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition and employment.

Skip Rhorer
Assistant Commissioner
0509#022

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs Maintaining Eligibility
(LAC 28:IV.705 and 805)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant Rules (R.S. 17:3021-3025 and R.S. 17:3048.1).

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (SG0664NI)

The text of this proposed Rule may be viewed in the Emergency Rule section of this *Louisiana Register*.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., October 10, 2005, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Scholarship/Grant
Programs Maintaining Eligibility**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
It is anticipated that any additional costs incurred by providing additional eligibility for tuition support for occupational and technical programs will be offset by the cost savings achieved by having students remain in this type of program instead of the more expensive academic programs.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Revenue collections of state and local governments will not be affected by the proposed changes.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed changes will enable students to receive additional occupational or technical training making them more productive and effective members of the workforce. Businesses in the state will benefit by the increase in the pool of qualified and highly trained workers.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Competition and employment will increase as the pool of skilled and highly trained workers increases.

George Badge Eldredge
General Counsel
0509#004

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

**Incorporation by Reference of 40 CFR Part 63
as It Applies to Major Sources
(LAC 33:III.5122)(AQ254)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.5122 (Log #AQ254).

This proposed rule removes 40 CFR Part 63, Subpart D, from the subparts of the federal regulations that are incorporated by reference by the department. This will correctly reflect the subparts that the state is responsible for. 40 CFR Part 63, Subpart D, was incorporated by reference inadvertently in previous rulemaking. The basis and rationale for this proposed rule are to correct the incorporation by reference to reflect the subparts that the state is responsible for.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

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

**Chapter 51. Comprehensive Toxic Air Pollutant
Emission Control Program
Subchapter C. Incorporation by Reference of 40 CFR
Part 63 (National Emission Standards for
Hazardous Air Pollutants for Source
Categories) as It Applies to Major
Sources**

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

A. - C.2. ...

3. 40 CFR Part 63, Subpart D, Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants, and Subpart E, Approval of State Programs and Delegation of Federal Authorities, are not included in this incorporation by reference.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1798 (October 1999), LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:1010 (May 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

A public hearing will be held on October 25, 2005, at 1:30 p.m. in the Galvez Building, Room 1051, 602 N. 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ254. Such comments must be received no later than November 1, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ254. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525

Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Herman Robinson, CPM
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Incorporation by Reference of
40 CFR Part 63 as It Applies to Major Sources**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no expected implementation costs or savings to state or local governmental units by the proposed rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no estimated effect on revenue collections of state or local governmental units by the proposed rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There are no estimated costs or significant economic benefits to directly affected persons or nongovernmental groups by the proposed rule.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no estimated effect on competition or employment by the proposed rule.

Herman Robinson, CPM
Executive Counsel
0509#046

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

**Remediation of Sites with Contaminated Media
(LAC 33:V.109)(HW084)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.109.Hazardous Waste Definition (Log #HW084).

Current regulation causes contaminated environmental media to retain the description of having RCRA-listed waste "contained-in," therefore complicating and impeding the remediation of the site or possibly halting it completely due to administration and disposal issues. This rule will remove a regulatory hurdle that deters site remediation by promulgating the guidance recommended by the Environmental Protection Agency (EPA). One of the most significant impediments to progress in the RCRA corrective action program has been the high cost of remediation waste management. Consequently, EPA has devoted much attention to management of remediation wastes and instituted a number of changes to the corrective action program that are designed to tailor management requirements to the risks posed by the wastes. The waste handling process will be simplified by reducing

administrative requirements and providing greater consistency with non-RCRA waste handling requirements and practices. This will provide strong motivation to initiate and accelerate voluntary remediation of contaminated sites without increasing risks to human health or the environment. This rule will promulgate Emergency Rule HW084E6, which was effective July 30, 2005, and published in the August 20, 2005, issue of the *Louisiana Register*. The basis and rationale for this rule are to promote voluntary remediation of contaminated sites without increasing risks to human health.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

**Subpart 1. Department of Environmental Quality—
Hazardous Waste**

Chapter 1. General Provisions and Definitions

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

Hazardous Waste—A solid waste, as defined in this Section, is a hazardous waste if:

1. - 2.c.vii. ...

d. it consists of an environmental medium (soil, sediment, surface water, or groundwater) that contains one or more hazardous wastes listed in LAC 33:V.4901 (unless excluded by one of the exclusions contained in this definition) or that exhibits any of the characteristics of hazardous waste identified in LAC 33:V.4903. Environmental media no longer contain a hazardous waste when the concentration of the hazardous constituent that serves as the basis for the hazardous waste being listed (as shown in LAC 33:V.4901.Table 6, Table of Constituents that Serve as a Basis for Listing Hazardous Waste; or if the constituent is not listed in Table 6, as identified in LAC 33:V.2299; or if the constituent is not listed in either of these locations, as determined by the department on a case-by-case basis) remaining in the medium is below applicable RECAP screening standards (LAC 33:I.Chapter 13) and the medium no longer exhibits any of the characteristics of hazardous waste identified in LAC 33:V.4903. Land disposal treatment standards (LAC 33:V.2299) apply prior to placing such an environmental medium into a land disposal unit even though the medium may no longer contain a hazardous waste. Any person claiming this exclusion shall have records supporting the exclusion.

e. Rebuttable Presumption for Used Oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in LAC 33:V.4901. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (e.g., by using an analytical method from LAC 33:V.Chapter 49.Appendix A to show that the used oil does not contain significant

concentrations of halogenated hazardous constituents listed in LAC 33:V.3105.Table 1).

i. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.

ii. The rebuttable presumption does not apply to used oils contaminated with Chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

3. - 6.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

A public hearing will be held on October 25, 2005, at 1:30 p.m. in the Galvez Building, Room 1051, 602 N. 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW084. Such comments must be received no later than November 1, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or

money order is required in advance for each copy of HW084. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Herman Robinson, CPM
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Remediation of Sites
with Contaminated Media**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs to state or local governmental units from this proposed rule. There may be some savings to local governmental units regarding remediation costs of contaminated sites.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no significant net increase or decrease in revenues due to the proposed action. Any minimal decrease in fees or revenues realized by the state due to the change from hazardous waste to solid waste reportable tonnage will likely be partially offset by the increase in voluntary cleanup disposal fees.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Commercial businesses, industries, local governments and individual property owners could see a savings in remediation costs of contaminated sites due to a reduction in disposal and transportation costs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule could stimulate environmental consulting business and employment by construction companies performing clean-up procedures, due to accelerated activity of owners/operators performing voluntary and necessary remediation of contaminated sites.

Herman Robinson, CPM
Executive Counsel
0509#047

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

Waste Tire Management Fund Grants and Loans
(LAC 33:VII.10505, 10539, 10541 and 10543)(SW040P)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been

initiated to adopt the Solid Waste regulations, LAC 33:VII.10505, 10537, 10538, and 10539 (Log #SW040P).

The rule provides the guidelines for persons to apply for grants and loans from the Waste Tire Management Fund. The rule provides a formal process for persons applying for the use of the funds to supply the information necessary for the department to make a decision on whether the proposal serves the purpose of solving the state's waste tire problem. The rule also provides for penalties for violations of the terms and conditions imposed on the use of the funds. Act 789 of the 2003 Regular Session of the Louisiana Legislature amended R.S. 30:2418(H)(3) to provide that 5 percent of the funds in the Waste Tire Management Fund be set aside for providing technical assistance to encourage market research and development projects and to encourage the development of products that are marketable and provide a beneficial use and for promotion of those products that have a beneficial use. The basis and rationale for this proposed rule are to provide guidance on applying for grants and loans from the Waste Tire Management Fund.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 2. Recycling

Chapter 105. Waste Tires

§10505. Definitions

A. The following words, terms, and phrases, when used in conjunction with the Solid Waste Rules and Regulations, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

* * *

Applicant Any person submitting a grant and or loan application for funds from the Waste Tire Management Fund.

* * *

Grant Any funds awarded by the department from the Waste Tire Management Fund to a person subject to a grant agreement.

Grant Agreement A written contract or other written agreement between the department and the recipient of a grant that defines the conditions, goals, and responsibilities of the recipient and the department.

Grant Application Can application meeting the requirements of LAC 33:VII.10541 from a person making a request for a grant from the Waste Tire Management Fund.

Grantee The recipient of a grant or loan.

Loan Any issuance of funds by the department from the Waste Tire Management Fund to a person subject to a loan agreement.

Loan Agreement A written contract or other written agreement between the department and the recipient of a loan that defines the conditions, goals, and responsibilities of the recipient and the department.

Loan Application Can application meeting the requirements of LAC 33:VII.10541 from a person making a request for a loan from the Waste Tire Management Fund.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:37 (January 1992), amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2773 (December 2000), LR 27:829 (June 2001), LR 27:2226 (December 2001), LR 28:1953 (September 2002), LR 29:2779 (December 2003), amended by the Office of Environmental Assessment, LR 31:1323 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:

§10539. Grants and Loans Applicability

A. The department may award a grant or loan to a person for any use that serves the purpose of solving the state's waste tire problem.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:

§10541. Application for a Grant or Loan

A. A person may apply for a grant or loan from the Waste Tire Management Fund by making application to the Department of Environmental Quality, Office of Management and Finance. The grant or loan application must be submitted on a form obtained from the department, which shall be available on the department's website. Along with this form, the request for a grant or loan must include information on the following non-exclusive items:

1. a detailed description of the project for which the grant or loan is requested and how the project meets the requirements of R.S. 30:2418(G) that the funds be used "solely for the purpose of solving the state's waste tire problem";
2. the amount of the grant or loan request;
3. the projected time frame for completion of the project for which the grant or loan is requested;
4. an analysis of how the grant or loan monies will be used to encourage market research and development, provide for products that are marketable and that provide for a beneficial use, and/or provide for promotion of those products;
5. a detailed explanation of how the grantee will account for the use of the grant or loan funds;
6. procedures for reporting to the department on an annual basis the status of the project. The department may require additional reporting;
7. how the recipient will provide for any permits that may be necessary in order for the project to be completed, and the status of the applicant's efforts to obtain the necessary permits; and
8. any other information deemed necessary by the department.

B. Upon receipt of the grant application or loan application, the department shall review the application, may request additional information from the applicant, may deny the application, or may grant the application.

1. The denial of a grant application or loan application is a final decision of the administrative authority.

2. The granting of the application does not award funds, but allows for the applicant and the department to enter into a grant or loan agreement. The grant or loan agreement constitutes the conditions, goals, and responsibilities of the recipient and the department. The grant agreement or loan agreement, as a condition of the agreement, may require offsets for amounts due from any subsidy payments made in accordance with LAC 33:VII.10535.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:

§10543. Violations

A. Failure to Comply. The grantee shall comply with all provisions of the grant agreement or loan agreement. In the event of a violation, the department may take any enforcement action authorized by the Act, including but not limited to:

1. issuance of a compliance order;
 2. issuance of a notice of potential penalty and/or a penalty;
 3. filing suit for recovery of the grant or loan amounts;
- or
4. the placing of a lien on any real property of the grantee for the amount of the grant or loan funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 31:

A public hearing will be held on October 25, 2005, at 1:30 p.m. in the Galvez Building, Room 1051, 602 N. 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 Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by SW040P. Such comments must be received no later than November 1, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of SW040P. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive,

Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Herman Robinson, CPM
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Waste Tire Management
Fund Grants and Loans**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no costs to state or local governmental units as a result of the implementation of this rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will result in no costs to directly affected persons or non-governmental groups. The proposed rule will make available funds for research, product development, and product promotion, which may provide economic benefits to persons engaging in these activities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule may have positive effects on competition and employment in the affected class of persons engaged in research, product development, and product promotion.

Herman Robinson, CPM
Executive Counsel
0509#048

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Hospital Licensing Standards
(LAC 48:I.9469 and 9505-9521)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 48:I.9469, 9505-9515 and repeal §§9517-9521 as authorized by R.S. 40:2100-2115 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule that established new regulations governing the licensing of hospitals (*Louisiana Register*, Volume 29, Number 11). The bureau now proposes to amend the November 20, 2003 Rule in order to clarify under what conditions outpatient services can be offered when the corresponding service is not offered on an inpatient basis. The bureau also proposes to bring requirements for obstetrical and newborn services in line with recommendations from the *National Guidelines for Perinatal Care*.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Title 48

PUBLIC HEALTH

Part I. General Administration

Subpart 3. Licensing

Chapter 93. Hospitals

Subchapter O. Outpatient Services (Optional)

§9469. General Provisions and Organization

A. ...

B. Outpatient services shall be appropriately organized, integrated with, and provided in accordance with the standards applicable to the same service provided by the hospital on an inpatient basis.

1. Outpatient services shall be provided only under conditions stated in Subparagraphs a or b.i.-ii below.

a. Outpatient services may be provided by a hospital if that hospital provides inpatient services for the same area of service. For example, a hospital may provide psychiatric outpatient services if that hospital provides psychiatric services on an inpatient basis.

b. Outpatient services may be provided by a hospital that does not provide inpatient services for the same area of service only if that hospital has a written policy and procedure to ensure a patient's placement and admission into an inpatient program to receive inpatient services for that area of service. The policy and procedure must ensure that the hospital is responsible for coordination of admission into an inpatient facility and must include, but not be limited to, the following:

i. the hospital personnel and/or staff responsible for coordination of placement and admission into an inpatient facility;

ii. the procedure for securing inpatient services for that patient.

2. For all outpatient services, there shall be established methods of communication as well as established procedures to assure integration with inpatient services that provide continuity of care.

3. When patients are admitted, pertinent information from the outpatient record shall be provided to the inpatient facility so that it may be included in the inpatient record.

C. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2423 (November 2003), LR 31:

Subchapter S. Perinatal Services (Optional)

§9505. General Provisions

A. This Subchapter S requires that the level of care on the Obstetrical Unit and the Neonatal Intensive Care Unit shall be at the identical level except for free standing children's hospitals. All hospitals with existing obstetrical and neonatal services must be in compliance with this Subchapter S within one year of the promulgation date of this rule. All new providers of obstetrical and neonatal services will be required to be in compliance with this Subchapter S immediately upon promulgation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 31:

§9507. Obstetrical Services

A. These requirements are applicable to those hospitals which provide obstetrical and neonatal services.

B. Levels of Care Units. There are four established obstetrical levels of care units:

1. Obstetrical Level I Unit;
2. Obstetrical Level II Unit;
3. Obstetrical Level III Unit; and
4. Obstetrical Level III Regional Unit.

C. Obstetrical services shall be provided in accordance with current acceptable standards of practice as delineated in the current AAP/ACOG *Guidelines for Perinatal Care*. Each advanced level of care unit shall provide all services and meet the personnel requirements of the lower designated units, as applicable, i.e., a Level III regional unit must meet the requirements of a Level I, II, and III units.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 31:

§9509. Obstetrical Unit Functions

A. Obstetrical Level I Unit

1. General Provisions

a. Care and supervision for low risk pregnancies greater or equal to 35 weeks gestation shall be provided.

b. There shall be a triage system for identification, stabilization and referral of high risk maternal and fetal conditions beyond the scope of care of a Level I Unit.

c. There shall be a written transfer agreement with a hospital which has an approved appropriate higher level of care.

d. The unit shall provide detection and care for unanticipated maternal-fetal problems encountered in labor.

e. Blood and fresh frozen plasma for transfusion shall be immediately available.

f. Postpartum care facilities shall be available.

g. There shall be capability to provide for resuscitation and stabilization of inborn neonates.

h. The facility shall have a policy for infant security and an organized program to prevent infant abductions.

i. The facility shall support breast feeding.

j. The facility shall have data collection and retrieval capabilities including current birth certificate in use, and shall cooperate and report the requested data to the appropriate supervisory agencies for review.

k. The facility shall have a program in place to address the needs of the family, including parent-sibling-neonate visitation.

l. The facility shall have written transport agreements. The transport service must be designed to be adequately equipped and have transport personnel with appropriate expertise for obstetrical and neonatal care during transport. Transport services shall meet appropriate local, state, and federal guidelines.

2. Personnel Requirements

a. Obstetrical services shall be under the medical direction of a qualified physician who is a member of the medical staff with obstetric privileges. The physician shall be Board Certified or Board Eligible in OB/Gyn or Family Practice Medicine. The physician has the responsibility of coordinating perinatal services with the pediatric chief of service.

b. The nursing staff must be adequately trained and staffed to provide patient care at the appropriate level of service. The facility shall utilize the guidelines for staffing as provided by the AAP and the ACOG in the current *Guidelines for Perinatal Care* (See Table 2-1 in §9515, Additional Support Requirements).

c. The unit shall provide credentialed medical staff to ensure the capability to perform emergency Cesarean delivery within 30 minutes of the decision to operate (30 minutes from decision to incision).

d. Anesthesia, radiology, ultrasound, electronic fetal monitoring (along with personnel skilled in its use) and laboratory services shall be available on a 24-hour basis. Anesthesia services shall be available to ensure performance of a Cesarean delivery within 30 minutes as specified in Subparagraph c above.

e. At least one qualified physician or certified registered nurse midwife shall attend all deliveries, and at least one qualified individual capable of neonatal resuscitation shall attend all deliveries.

f. The nurse manager shall be a registered nurse (RN) with specific training and experience in obstetric care. The RN manager shall participate in the development of written policies, procedures for the obstetrical care areas, and coordinate staff education and budget preparation with the chief of service. The RN manager shall name qualified substitutes to fulfill duties during absences.

3. Physical Plant

a. Obstetrical patients shall not be placed in rooms with non-obstetrical patients.

b. Each room shall have at least one toilet and lavatory basin for the use of obstetrical patients.

c. The arrangement of the rooms and areas used for obstetrical patients shall be such as to minimize traffic of patients, visitors, and personnel from other departments and prevent traffic through the delivery room(s).

d. There shall be an isolation room provided with hand washing facilities for immediate segregation and isolation of a mother and/or baby with a known or suspected communicable disease.

e. Any new construction or major alteration of obstetrical units shall have a facility to enable Cesarean section deliveries in the obstetrical unit.

B. Obstetrical Level II Unit

1. General Provisions

a. The role of an Obstetrical Level II unit is to provide care for most obstetric conditions in its population, but not to accept transports of obstetrical patients with gestation age of less than 32 weeks or 1,500 grams if delivery of a viable infant is likely to occur.

b. Conditions which would result in the delivery of an infant weighing less than 1,500 grams or less than 32 weeks gestation shall be referred to an approved Level III or Level III regional obstetrical unit unless the patient is too unstable to transport safely. Written agreements with

approved obstetrical Level III and/or obstetrical Level III regional units for transfer of these patients shall exist for all obstetrical Level II units.

c. The unit shall be able to manage maternal complications of a mild to moderate nature that do not surpass the capabilities of a board certified obstetrician/gynecologist.

d. The needed subspecialty expertise is predominantly neonatal although perinatal cases might be appropriate to co-manage with a perinatologist.

e. Ultrasound equipment shall be on site, in the hospital, and available to labor and delivery 24 hours a day.

2. Personnel Requirements

a. The chief of obstetric services shall be a board-certified obstetrician or an active candidate for certification in obstetrics. This obstetrician has the responsibility of coordinating perinatal services with the neonatologist or pediatrician in charge of the neonatal intensive care unit (NICU).

b. A board-certified radiologist and a board-certified clinical pathologist shall be available 24 hours a day. Specialized medical and surgical consultation shall be readily available.

C. Obstetrical Level III Unit

1. General Provisions

a. There shall be provision of comprehensive perinatal care for high risk mothers.

b. The unit shall provide care for the most challenging of perinatal conditions. Only those conditions requiring a medical team approach not available to the perinatologist in an obstetrical Level III unit shall be transported to an obstetrical Level III regional unit.

c. Cooperative transfer agreements with approved obstetrical Level III regional units shall exist for the transport of mothers and fetuses requiring care unavailable in an obstetrical Level III unit or that are better coordinated at an obstetrical Level III regional unit.

d. Obstetric imaging capabilities to perform targeted ultrasound examination in cases of suspected abnormalities shall be available.

e. Genetic counseling and diagnostics shall be provided.

f. Ongoing educational opportunities shall be provided through organized educational programs.

g. This unit shall provide for and coordinate maternal transport with obstetrical Level I and II units.

2. Personnel Requirements

a. The chief of the obstetrical unit providing maternal-fetal medicine at a Level III unit shall assure that appropriate care is provided by the primary attending physician for high risk maternal patients and shall be:

- i. board certified in maternal-fetal medicine; or
- ii. an active candidate for subspecialty certification in maternal-fetal medicine; or
- iii. a board-certified obstetrician with experience in maternal-fetal medicine and credentialing to care for high risk mothers.

b. If there is no hospital based perinatologist, a written consultative agreement shall exist with an approved obstetrical Level III or Level III regional obstetrical unit with a hospital based perinatologist. The agreement shall

also provide for a review of outcomes and case management for all high risk obstetrical patients for educational purposes.

c. A board-certified anesthesiologist with special training or experience in maternal-fetal anesthesia services at a Level III unit shall direct obstetrical anesthesia services. Personnel, including CRNAs, with credentials to administer obstetric anesthesia shall be in-house 24 hours a day.

D. Obstetrical Level III Regional Unit

1. General Provisions

a. The unit shall have the ability to care for both mother and fetus in a comprehensive manner in an area dedicated to the care of the critically ill parturient.

b. These units shall provide for and coordinate maternal and neonatal transport with Level I, II and III NICU units throughout the state.

2. Personnel Requirements

a. The chief of service at the Level III regional obstetrical unit must be a board-certified perinatologist.

b. The obstetrical Level III Regional unit shall have the following obstetrical specialties or subspecialties on staff and clinical services available to provide consultation and care to the parturient in a timely manner:

- i. maternal fetal medicine;
- ii. cardiology;
- iii. neurology;
- iv. neurosurgery; and
- v. hematology.

c. Subspecialists to provide consultation in the care of the critically ill parturient shall be on staff in the following areas:

- i. adult critical care;
- ii. cardiothoracic surgery;
- iii. nephrology;
- iv. pulmonary medicine;
- v. endocrinology;
- vi. urology;
- vii. infectious disease; and
- viii. gastroenterology.

d. Personnel qualified to manage obstetrical emergencies shall be in house 24 hours per day, including CRNAs, with credentials to administer obstetrical anesthesia.

e. A lactation consultant shall be on staff to assist breast feeding mothers.

f. Registered nurses with experience in the care of high risk maternity patients shall be in house on a 24-hour basis.

g. A nutritionist and a social worker shall also be available for the care of these patients.

3. - 7. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 31:

§9511. Neonatal Intensive Care

A. This §9511 is applicable to those hospitals which provide obstetrical and neonatal services.

B. Levels of Care. There are four established neonatal levels of care units:

1. Neonatal Level I Unit;
2. Neonatal Level II Unit;

3. Level III NICU Unit; and

4. Level III regional NICU.

C. Each advanced level of care unit shall provide all services and meet the personnel requirements of the lower designated units, as applicable, i.e., a Level III regional unit must meet the requirements of the Level I, II, and III units.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2428 (November 2003), amended LR 31:

§9513. Neonatal Unit Functions

A. Level I Neonatal Unit

1. General Provisions

a. The unit shall have the capability for resuscitation and stabilization of all inborn neonates in accordance with Neonatal Resuscitation Program (NRP) guidelines. The unit shall stabilize unexpected small or sick neonates before transfer to the appropriate advanced level of care.

b. The unit shall maintain consultation and transfer agreements with an approved Level II or III as appropriate, and an approved Level III regional NICU, emphasizing maternal transport when possible.

c. There shall be a defined nursery area with limited access and security or rooming-in facilities with security.

d. Parent and/or sibling visitation/interaction with the neonate shall be provided.

e. The unit shall have the capability for data collection and retrieval.

2. Personnel Requirements

a. The unit's chief of service shall be a physician who is board certified or board eligible in pediatric or family practice medicine.

b. The nurse manager shall be a registered nurse with specific training and experience in neonatal care. The RN manager shall participate in the development of written policies and procedures for the neonatal care areas, and coordinate staff education and budget preparation with the chief of service. The RN manager shall name qualified substitutes to fulfill duties during absences.

c. Registered nurse to patient ratios may vary in accordance with patient needs. However, the ratio for a Level I neonatal unit shall be 1:6-8. This ratio reflects traditional newborn nursery care. If couplet care or rooming-in is used, a registered nurse who is responsible for the mother should coordinate and administer neonatal care. If direct assignment of the nurse is also made to the nursery to cover the newborn's care, there shall be double assignment (one nurse for the mother-neonate couplet and one for just the neonate if returned to the nursery). A registered nurse shall be available at all times, but only one may be necessary as most neonates will not be physically present in the nursery. Direct care of neonates in the nursery may be provided by ancillary personnel under the registered nurse's direct supervision. Adequate staff is needed to respond to acute and emergency situations.

B. Neonatal Level II Unit

1. General Provisions

a. There shall be management of small, sick neonates with a moderate degree of illness that are admitted or transferred.

b. There shall be neonatal ventilatory support, vital signs monitoring, and fluid infusion in the defined area of the nursery. Neonates requiring greater than 24-hour continuous ventilatory support shall be transferred to an approved Level III or Level III regional unit.

c. Neonates born at a Level II facility with a birth weight of less than 1,500 grams shall be transferred to an approved Level III or Level III regional NICU unit unless a neonatologist is providing on-site care in the hospital.

d. Neonates requiring transfer to a Level III or Level III regional NICU may be returned to an approved Level II unit for convalescence.

2. Personnel Requirements

a. A board-certified pediatrician with special interest and experience in neonatal care or a neonatologist shall be the chief of service.

b. Registered nurse to patient ratios may vary in accordance with patient needs. However, the ratio for a Level II neonatal unit shall be 1:3-4 (See Table 2-1 of §9515, Additional Support Requirements).

C. Level III NICU

1. General Provisions

a. There shall be a written neonatal transport agreement with an approved Level III regional unit. There shall be an organized outreach educational program.

b. If the neonatologist is not in-house, there shall be a pediatrician who has successfully completed the Neonatal Resuscitation Program (NRP) or one neonatal nurse practitioner in-house for Level III NICU patients.

c. Direct consultation with a neonatologist shall be available 24 hours per day.

2. Personnel Requirements

a. The chief of service of a Level III NICU shall be a board-certified neonatologist. The following exceptions are recognized.

i. A board-certified pediatrician who is an active candidate for a subspecialty certification in neonatal medicine.

ii. In 1995, those physicians in existing units who were designated as the chief of service of the unit and who were not neonatal or perinatal board certified, were granted a waiver by written application to the Office of the Secretary, Department of Health and Hospitals. This waiver shall be maintained as it applies only to the hospital where that chief of service's position is held. The physician cannot relocate to another hospital nor can the hospital replace the chief of service for whom the exception was granted and retain the exception.

b. Medical and surgical consultation shall be readily available and pediatric sub-specialists may be used in consultation with a transfer agreement with a Level III regional NICU.

c. Registered nurse-to-patient ratios may vary in accordance with patient needs. However, the ratio for a Level III NICU unit shall be 1:2-3 (See Table 2-1 of §9515, Additional Support Requirements).

D. Level III Regional NICU

1. General Provisions

a. Twenty-four-hour per day in-house coverage shall be provided by a neonatologist, a second year or higher pediatric house officer, or a neonatal nurse practitioner. If the neonatologist is not in-house, there shall be immediate

consultative ability with the neonatologist and he/she shall be available to be on-site in the hospital within 30 minutes.

b. The unit shall have a transport team and provide for and coordinate neonatal transport with Level I, Level II units and Level III NICUs throughout the state. Transport shall be in accordance with national standards as published by the American Academy of Pediatrics Section on neonatal and pediatric transport.

c. The unit shall be recognized as a center of research, educational and consultative support to the medical community.

2. Personnel Requirements

a. The chief of service shall be a board-certified neonatologist.

b. Nurse to patient ratios may vary in accordance with patient needs. However, the ratio for a Level III regional NICU shall be 1:1-2 (See Table 2-1 in §9515, Additional Support Requirements).

c. The unit shall have the following pediatric specialties/subspecialties on staff and clinical services available to provide consultation and care to neonates in a timely manner:

- i. anesthesia;
- ii. pediatric surgery;
- iii. pediatric cardiology;
- iv. pediatric ophthalmology.

d. Subspecialists to provide consultation in the care of the critically ill neonate shall be on staff in the following areas:

- i. pediatric neurology;
- ii. pediatric hematology;
- iii. genetics;
- iv. pediatric nephrology;
- v. pediatric endocrinology;
- vi. pediatric gastroenterology;
- vii. pediatric infectious disease;
- viii. pediatric pulmonary medicine;
- ix. orthopedic surgery;
- x. pediatric urologic surgery;
- xi. ENT surgery;
- xii. cardiothoracic surgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), amended LR 31:

§9515. Additional Support Requirements

A. A Bioethics Committee shall be available for consultation with care providers at all times.

B. The following support personnel shall be available to provide consultation and care and services to Level II, Level III and Level III regional obstetrical, neonatal, and NICU units in a timely manner:

1. at least one full-time medical social worker who has experience with the socioeconomic and psychosocial problems of high-risk mothers and fetuses, sick neonates, and their families (additional medical social workers may be required if the patient load is heavy);
2. at least one occupational or physical therapist with neonatal expertise;
3. at least one registered dietitian/nutritionist who has special training or experience in perinatal nutrition and can

plan diets that meet the special needs of high-risk mothers and neonates.

C. The following support personnel shall be immediately available to be on-site in the hospital for Level II, Level III and Level III regional obstetrical, neonatal, and NICU units:

1. qualified personnel for support services such as laboratory studies, radiologic studies, and ultrasound examinations (these personnel shall be readily available 24 hours a day); and

2. registered respiratory therapists or registered nurses with special training who can supervise the assisted ventilation of neonates with cardiopulmonary disease (optimally, one therapist is needed for each four neonates who are receiving assisted ventilation).

D. The staffing guidelines shall be those recommended by the current AAP/ACOG *Guidelines for Perinatal Care*. (See Table 2-1 below)

Nurse/Patient Ratio	Care Provided
Intrapartum	
1:2	Patients in labor
1:1	Patients in second stage of labor
1:1	Patients with medical or obstetric complications
1:2	Oxytocin induction or augmentation of labor
1:1	Coverage for initiating epidural anesthesia
1:1	Circulation for Cesarean delivery
Antepartum/ Postpartum	
1:6	Antepartum/postpartum patients without complications
1:2	Patients in postoperative recovery
1:3	Antepartum/postpartum patients with complications but in stable condition
1:4	Recently born infants and those requiring close observation
Newborns	
1:6-8	Newborns requiring only routine care
1:3-4	Normal mother-newborn couplet care
1:3-4	Newborns requiring continuing care
1:2-3	Newborns requiring intermediate care
1:1-2	Newborns requiring intensive care
1:1	Newborns requiring multi-system support
1:1 or Greater	Unstable newborns requiring complex critical care

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), amended LR 31:

§9517. Neonatal Unit Functions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), repealed LR 31:

§9519. Medical Staff

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2430 (November 2003), repealed LR 31:

§9521. Staffing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2430 (November 2003), repealed LR 31:

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, October 25 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Hospital Licensing Standards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for FY 05-06, 06-07 and 07-08. It is anticipated that \$1,836 (\$918 SGF and \$918 FED) will be expended in FY 05-06 for the state administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 05-06. It is anticipated that \$918 will be expended in FY 05-06 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 rule proposes to amend hospital licensing standards to clarify the conditions and timelines under which outpatient services can be offered when the corresponding service is not offered on an inpatient basis (approximately 607 providers). The rule also proposes to bring the requirements for Obstetrical and Newborn services in line with the recommendations from the National Guidelines for Perinatal Care (published by the American Academy of Pediatrics, 5th Edition (approximately 90 hospitals)). It is anticipated that implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or non governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition or employment.

Ben A. Bearden
Director
0509#062

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Inpatient Hospital Services—State Hospitals Reimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in June of 1983 which established a reimbursement methodology for inpatient services provided in acute care hospitals (*Louisiana Register*, Volume 9, Number 6). Inpatient hospital services were reimbursed in accordance with the Medicare reimbursement principles with a target rate set based on the cost per discharge for each hospital, except that the base year to be used in determining the target rate was the fiscal year ending on September 30, 1981 through September 29, 1982. In a Rule promulgated in October of 1984, separate per diem limitations were established for neonatal and pediatric intensive care and burn units using the same base period as the target rate per discharge calculation (*Louisiana Register*, Volume 10, Number 10). A Rule was later promulgated in October 1992, which provided that inpatient hospital services to children under one year of age shall be reimbursed as pass-through costs and shall not be subject to per discharge or per diem limits applied to other inpatient hospital services. The reimbursement methodology was subsequently amended in a Rule promulgated in June of 1994 which established a prospective payment methodology for nonstate hospitals (*Louisiana Register*, Volume 20, Number 6). These per discharge and per diem limitations in state acute hospitals were rebased by a Rule promulgated in December of 2003 (*Louisiana Register*, Volume 29, Number 12). The bureau subsequently promulgated an Emergency Rule to amend the reimbursement methodology for inpatient services provided in state acute hospitals (*Louisiana Register*, Volume 31, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2005 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 will have no impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology for inpatient hospital services rendered in state acute hospitals to discontinue the requirement that state hospitals utilize target rate per

discharge amounts and per diem limitations to determine the reimbursable Medicaid inpatient costs on the cost report. Inpatient hospital services provided by state acute hospitals shall be reimbursed at allowable costs and shall not be subject to per discharge or per diem limits.

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

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, October 25, 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Inpatient Hospital Services—State Hospitals; Reimbursement Methodology

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 05-06. It is anticipated that \$204 (\$102 SGF and \$102 FED) will be expended in FY 05-06 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 05-06. It is anticipated that \$102 will be expended in FY 05-06 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 rule, which continues the provisions of the July 1, 2005 Emergency Rule, proposes to amend the reimbursement methodology for inpatient services provided in state operated acute care hospitals (approximately 10 hospitals). It is anticipated that implementation of this proposed rule will not have an estimable cost or economic benefit to state hospitals.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Ben A. Bearden
Director
0509#061

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Medical Transportation Program
Emergency Ambulance Services
Certification for Ambulance Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to increase the reimbursement paid for designated emergency ambulance procedures by 1.4 percent (*Louisiana Register*, Volume 27, Number 11). The bureau subsequently adopted a Rule which established the provisions governing the medical certification of emergency and non-emergency ambulance services (*Louisiana Register*, Volume 29, Number 11). The bureau promulgated an Emergency Rule effective July 25, 2005 to amend the November 20, 2001 and November 20, 2003 Rules governing reimbursement methodology and medical certification of emergency ambulance services. The bureau repealed the July 25, 2005 Emergency Rule and amended the November 20, 2003 Rule to discontinue the requirement for completion of a medical certification form for reimbursement of emergency ambulance services (*Louisiana Register*, Volume 31, Number 8). The bureau now proposes to continue the provisions of the August 3, 2005 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 will have no impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing discontinues the requirement for completion of the medical transportation certification form for reimbursement of emergency ambulance services. In order to submit a claim for Medicaid reimbursement, the emergency ambulance trip must meet the definition of emergency response as defined by the Centers for Medicare and Medicaid Services. All claims for emergency ambulance services are subject to post pay review.

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

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, October 25 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Medical Transportation Program; Emergency Ambulance Services; Certification for Ambulance Services

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$989,146 for FY 05-06, \$1,121,521 for FY 06-07, and \$1,155,166 for FY 07-08. It is anticipated that \$204 (\$102 SGF and \$102 FED) will be expended in FY 05-06 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$2,318,896 for FY 05-06, \$2,629,385 for FY 06-07, and \$2,708,267 for FY 07-08. It is anticipated that \$102 will be expended in FY 05-06 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 discontinues the requirement for completion of the medical transportation certification form for reimbursement of emergency ambulance services (approximately 7,220 trips annually). In order to submit a claim for Medicaid reimbursement, an emergency ambulance trip must meet the definition of an emergency response as defined by the Centers for Medicare and Medicaid Services. It is anticipated that implementation of this proposed rule will increase program expenditures to providers of emergency ambulance services by approximately \$3,307,838 for FY 05-06, \$3,750,906 for FY 06-07, and \$3,863,433 for FY 07-08.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Ben A. Bearden
Director
0508#059

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of the Secretary Bureau of Primary Care and Rural Health

Medicare Rural Hospital Flexibility Program
Critical Access Hospitals
(LAC 48:I.7601-7613)

Editor's Note: This Notice of Intent, which was published on pages 2123-2125 of the August 20, 2005 issue of the *Louisiana Register*, is being republished to correct the date of the public hearing.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health proposes to amend LAC 48:I.7601-7615 as authorized by the Balanced Budget Act of 1997 (Public Law 105-33) and pursuant to Title XVIII of the Social Security Act and reauthorized by the Medicare Prescription, Improvement and Modernization Act of 2003. This proposed Rule is promulgated in accordance with Medicare, Medicaid, the State Children's Health Insurance Programs (SCHIP) Balanced Budget Refinement Act of 1999, the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health promulgated a Rule implementing the Medicare Rural Hospital Flexibility Program (MRHF) to assist rural communities in improving access to essential health care services through the establishment of limited service hospitals and rural health networks. The program created the Critical Access Hospital (CAH) as a limited service hospital eligible for Medicare certification and reimbursement (*Louisiana Register*, Volume 25, Number 8). The bureau now proposes to amend the August 20, 1999 Rule to revise the definition of "necessary provider" and revise other criteria to limit participation in the MRHF Program to Louisiana's existing small rural hospitals.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972

The Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health hereby amends the Medicare Rural Hospital Flexibility Program. To qualify as a critical access hospital, the small rural hospital must complete the following designation, licensing and certification processes.

Title 48

PUBLIC HEALTH GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 76. Medicare Rural Hospital Flexibility Program (MRHF)

Subchapter A. Critical Access Hospitals

§7601. Definitions

A. The following word and terms, when used in this Chapter 76 shall have the following meanings, unless the context clearly indicates otherwise.

BPCRHC Department of Health and Hospital, Office of the Secretary, Bureau of Primary Care and Rural Health.

CAHC Critical Access Hospital.

CMS Centers for Medicare and Medicaid Services.

EACH/RPCH Essential Access Community Hospital/Rural Primary Care Hospital-a limited service rural hospital program.

EMSC Emergency Medical Services.

Health Care Network Can organization consisting of at least one CAH and one acute care hospital with agreements for patient referrals, emergency /non-emergency transportation and other services as feasible.

HPSA Health Professional Shortage Area.

HSS Department of Health and Hospitals, Bureau of Health Services Financing, Health Standards Section.

MRHF Medicare Rural Hospital Flexibility Program.

MSA Metropolitan Statistical Area.

MUA Medically Underserved Area designated by the federal Office of Shortage Designations.

Necessary Provider Ca facility located in a primary care HPSA or MUA; or located in a parish in which the percentage of Medicare beneficiaries is higher than the percentage of Medicare beneficiaries residing in the state; or a facility located in a parish in which the percentage of the population under 100 percent of the federal poverty level is higher than the percentage of the state population under 100 percent of the federal poverty level or qualifies as a "rural hospital" under the Louisiana Rural Preservation Act.

Not-for Profit C incorporated as a non-profit corporate entity.

Primary Care C basic ambulatory health services that provide preventive, diagnostic and therapeutic care.

Primary Care Physicians C includes general, family and internal medicine, pediatrics and obstetrics/gynecology.

QIO Quality Improvement Organization

Public Hospital C hospital supported by public funds including city, service district and state hospitals.

Rural C the CAH is located outside any area that is a Metropolitan Statistical Area, as defined by the Office of Management and Budget or qualifies as a rural hospital under the Louisiana Rural Preservation Act.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (P.L. 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balance Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:1478 (August 1999), amended LR 26:1480 (July 2000), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 31:

§7603. Criteria for Designation as a CAH

A. A hospital must submit an application to the BPCRH and must meet the following criteria, or affirm that it can meet these criteria at the time of certification, to be designated as a CAH:

1. be a licensed hospital;
2. be currently participating in the Medicare program and meet applicable conditions of participation;
3. be located in a rural area:

a. may be a rural census tract in a Metropolitan Statistical Area as determined under the Goldsmith Modification, originally published in the *Federal Register* on February 27, 1992 and updated October 1, 2004; or

b. qualifies as a "rural hospital" under the Rural Preservation Act, RS 40:100.143;

4.a. be located more than a 35-mile drive or a 15-mile drive in mountainous terrain or areas with secondary roads, from the nearest hospital or CAH; or

b. be certified as a necessary provider by qualifying as a "rural hospital" under the Louisiana Rural Hospital Preservation Act RS 40:1300.143; and meeting at least one of the following:

i. be located in a primary care health professional shortage area (HPSA) or a medically underserved area (MUA); or

ii. be located in a parish in which the percentage of Medicare beneficiaries is higher than the percentage of Medicare beneficiaries residing in the state; or

iii. be located in a parish in which the percentage of the population under 100 percent of the federal poverty level is higher than the percentage of the state population under 100 percent of the federal poverty level;

c. provide not more than 25 acute care inpatient beds or swing-beds, meeting such standards as the secretary may establish, for providing inpatient care that does not exceed, as determined on an annual, average basis, 96 hours per patient.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (P.L. 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balance Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:1478 (August 1999), amended LR 26:1480 (July 2000), Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 31:

§7609. Application Submission and Review

A. A hospital that wishes to be designated as a CAH is required to submit an application to the BPCRHR. Application forms may be requested and submitted by interested hospitals at any time following HCFA approval of the state's Rural Health Care Plan and application.

B. On receipt of an application, the BPCRHR will conduct a review to determining the eligibility of the applicant hospital for conversion and consistency with the criteria for designation detailed in §7603.

C. The supporting information to be included with the application is:

1. documentation of ownership, including names of owners and percent of ownership;

2. board resolution to seek CAH certification;

3. documentation of Medicare participation;

4. notification from BPCRHR that location is in a HPSA or MUA;

5. affirmation that 24-hour emergency medical care services and medical control agreements are available including information on staffing arrangements;

6. documentation that facility meets rural hospital staffing requirements with the following exceptions:

a. the facility need not meet hospital standards regarding the number of hours per day or days of the week

in which it must be open and fully staffed, except as required to make emergency medical care services available and to have nursing staff present if an inpatient is in the facility;

b. the facility may provide the services of a dietician, pharmacist, laboratory technician, medical technologist, and/or radiological technologist on a part-time, off site basis; and

c. inpatient care may be provided by a physician assistant, nurse practitioner, or clinical nurse specialist, subject to the oversight of a physician who need not be present in the facility but immediately available in accordance with state requirements for scope of practice;

7. copy of a needs assessment, if available;

8. copy of a strategic plan for conversion;

9. copy of financial feasibility assessment.

D. Decision. If an application is complete, and all supporting documentation provided, the BPCRHR will provide written notice to the applicant hospital.

1. If the application and required documentation supports conversion to a MRHF, after the effective date of the published rule, the BPCRHR will provide a written notice of the designation to the applicant hospital and HSS.

2. If the application is incomplete or otherwise insufficient to allow designation, the BPCRHR will provide written notice to the applicant outlining the actions necessary to correct the deficiencies. The hospital may then address the deficiencies and resubmit its application.

E. Once designated, a hospital may apply to the Bureau of Health Services Financing, Health Standards Section (HSS) of the Department of Health and Hospitals for an onsite survey.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (P.L. 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balance Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:1479 (August 1999), amended LR 26:1481 (July 2000), amended by the Office of the Secretary, Bureau of Primary Care and Rural Health, LR 31:

§7611. Technical Assistance

A. The BPCRHR is available to furnish basic technical assistance to hospitals and communities interested in CAH conversion such as providing program information helping with interpretation and completion of the application for designation, and identifying other sources of assistance and information.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (P.L. 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balance Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:1480 (August 1999), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 31:

§7613. Program Monitoring and Evaluation

A. Ongoing monitoring and evaluation of the program will be conducted by the Quality Management Section of the BPCRHR.

1. Strengths and weaknesses of the program and state policy affecting CAHs will be assessed, with the goal of identifying problem areas and developing solutions.

2. Results will be reported to the BPCRH Director who will assign program staff to work with other state agencies and interested parties to determine the necessity of changes and updates to the plan and state policy.

3. All plan changes will be forwarded to HCFA for review and approval.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (P.L. 105-33) and Title XVIII of the Social Security Act; amended by Medicare, Medicaid, SCHIP Balance Budget Refinement Act of 1999.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:1480 (August 1999), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Primary Care and Rural Health, LR 31:

Family Impact Statement

1. The Effect on the Stability of the Family. None.
2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. None.
3. The Effect on the Functioning of the Family. None.
4. The Effect on Family Earnings and Budget. None.
5. The Effect on the Behavior and Personal Responsibility of Children. None.
6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. None.

Interested persons may submit written comments to Kristy Nichols, Bureau of Primary Care and Rural Health, P.O. Box 2870, Baton Rouge, LA 70821-2870. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, September 27, 2005 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Medicare Rural Hospital Flexibility Program Critical Access Hospitals

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The only implementation cost is the cost of printing the proposed rule. It is anticipated that \$748 will be expended in SFY 2004-05 for the state's administrative cost of printing the Notice of Intent and final Rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is not anticipated that the proposed rule amendments will have any material effect on the revenue collections of DHH or of any state or local governmental unit.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

CAH hospitals receive cost-based reimbursement from Medicare. Consequently, there is no direct impact on the state's Medicaid program when a hospital converts to CAH status. It is

anticipated that the proposed rule will enable two small rural hospitals to convert to CAH status that previously did not qualify. It also is anticipated that four hospitals in rural areas that are currently closed would be prohibited from reopening and converting to CAH status as a result of this rule. Consequently, there is an undeterminable potential cost savings that could occur because the four closed hospitals will more than likely not be able to reopen without CAH status.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

If the two hospitals previously ineligible for CAH conversion find that it is in their best interest to convert, the conversion could positively affect their ability to compete in their market and retain and attract employees. However, limiting the reopening of the other four hospitals will limit new employment opportunities in their communities via a reopened local hospital.

Kristy H. Nichols
Program Manager III
0509#016

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Computation of Net Allocable Income from Louisiana Sources (LAC 61:I.1130)

Under the authority of R.S. 47:287.81, R.S. 47:287.92, R.S. 47:287.93, R.S. 47:287.785, R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.1130 relative to the computation of net allocable income from Louisiana sources.

The primary purpose of this regulation is to update the corporation income tax regulation relating to the allocation of items of income and expense and to make the regulation easier to understand. Changes resulting from the enactment of the Louisiana Headquarters and Growth Act of 2005 are included. This regulation has not been revisited in depth since the corporate income tax statutes were enacted in 1986. This regulation will provide more guidance on the treatment of intangible assets than the current regulation.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered

Chapter 11. Income: Corporation Income Tax §1130. Computation of Net Allocable Income from Louisiana Sources

A. Allocation of items of income and loss. R.S. 47:287.93 provides that items of gross allocable income or loss shall be allocated directly to the state or states within which such items of income are earned or derived. The statute attributes every item of gross allocable income to a location and does not allow for any unallocated items of income. The principles embodied in the statute and this regulation are that items of allocable income from the use of tangible assets are allocated to the location of the tangible asset at the time of the use; income from the use of intangible assets is allocated to the business situs of the intangible asset, or in the absence of a business situs, to the commercial domicile of the corporation; and items of

allocable income from services are allocated to the location at which the service was performed.

1. Rents and Royalties from Immovable or Corporeal Movable Property

a. Rents and royalties from immovable or corporeal movable property shall be allocated to the state where such property is located at the time the income is derived.

b. Rents or royalties from incorporeal immovables, such as mineral interests, are allocated to the state in which the property subject to the interest is located.

2. Interest from Controlled Corporation

a. Under the provisions of R.S. 47:287.738(F)(2), a corporation may elect to pay tax on interest income from a corporation that is controlled by the former through direct ownership of 50 percent or more of the voting stock of the latter.

b. The election is made for each taxable period by employing the method on the return or amended return.

c. If the election is made, interest from securities and credits that is received by the electing corporation from another corporation controlled by the former through the direct ownership of 50 percent or more of the voting stock of the latter, shall be allocated to the state or states in which the real and tangible personal property of the controlled corporation is located. The allocation shall be made on the basis of the ratio of the value of such property located in Louisiana to the value of such property within and without the state, as follows.

i. Real and tangible personal property includes all such property of the controlled corporation regardless of whether the property is idle or productive and regardless of the nature of the income that it produces.

ii. The value of Louisiana real and tangible property and real and tangible property within and without the state shall be the average value of such property at the beginning and close of the taxable period, determined on a comparable basis. If the average value does not fairly represent the average of the property owned during the year, the average value shall be obtained by dividing the sum of the monthly balances by the number of months in the taxable period.

iii. Value of Property to Be Used

(a). For purposes of this Subsection, the value of property to be used shall be determined using one of the following methods. The taxpayer will choose which valuation method to use on the first return filed following the effective date of this regulation on which a R.S. 47:287.738(F)(2) election is made by employing the chosen valuation method on the tax return. Once a valuation method is chosen, this valuation method must be used on all future returns upon which the R.S. 47:287.738(F)(2) election is made and cannot be changed without the approval of the secretary upon the showing of good cause:

(i). the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, amortization, depletion, and obsolescence; or

(ii). the value of property is cost to the taxpayer, so long as the property continues to be used in the taxpayer's trade or business;

(iii). the value of property is the value reflected on the taxpayer's books, so long as the value is not below zero.

(b). The secretary may require a different method of valuation or adjust reserves if the method elected by the taxpayer does not reflect the fair value of the property.

3. Royalties or Similar Revenue Received for the Use of Patents, Trademarks, Copyrights, Secret Processes, and Other Similar Intangible Rights

a. Royalties or similar revenue received for the use of patents, trademarks, copyrights, secret processes, and other similar intangible rights shall be allocated to the state or states in which such rights are used. The use referred to is that of the licensee rather than that of the licensor.

i. Example: X Company, Inc., a Delaware corporation with its commercial domicile in California, owns certain patents relating to the refining of crude oil, which at all times were kept in its safe in California. During 2006, the X Company, Inc. entered into an agreement with the Y Corporation whereby that company was given the right to use the patents at its refineries in consideration for the payment of a royalty based upon units of production. The Y Corporation used the patents exclusively at its Louisiana refinery and paid the X Company, Inc. the amount of \$100,000 for such use. The entire royalty income of \$100,000 is allocable to Louisiana.

ii. Example: ABC Company, Inc. is a trademark holding company incorporated in Delaware that owns certain trademarks relating to the sale of retail goods and/or services. In 2005, ABC entered into a licensing agreement with XYZ Retail Co. in which XYZ was authorized to use the trademark in exchange for consideration of royalty payments. In 2006, XYZ used the trademark to promote the sale of retail goods and/or services in Louisiana. The royalty payment attributable to the Louisiana stores was \$250,000. ABC must allocate the royalty income of \$250,000 to Louisiana.

b. Income from a mineral lease, royalty interest, oil payment, or other mineral interest shall be allocated to the state or states in which the property subject to such mineral interest is situated.

4. Income from Construction, Repair, or Other Similar Services

a. Income from construction, repair, or other similar services is allocable to the state or states in which the work is done.

b. The phrase other similar services means any work that has as its purpose the improvement of immovable property belonging to a person other than the taxpayer where a substantial portion of such work is performed at the location of such property.

i. It is not necessary that the services rendered actually result in the improvement of the immovable property.

ii. Mineral Properties. For the purpose of this Section, mineral properties, whether under lease or not, constitute immovable properties. Thus, the drilling of a well on a mineral lease is considered to have as its purpose the improvement of such property notwithstanding the fact that the well may have been dry.

c. Examples of other similar services include, but are not limited to:

i. landscaping services;

ii. the painting of houses;

iii. the removal of stumps from farmland; and

iv. the demolition of buildings.

B. Deduction of Expenses, Losses and Other Deductions
From the total gross allocable income from all sources and from the gross allocable income allocated to Louisiana there shall be deducted all expenses, losses, and other deductions, except federal income taxes, allowable under the Louisiana income tax law that are directly attributable to such income plus a ratable portion of the allowable deductions, except federal income taxes, that are not directly attributable to any item or class of gross income.

1. Interest Expense

a. The method of allocation and apportionment for interest set forth in these regulations is based on the approach that money is fungible and that interest expense is attributable to all activities and property regardless of any specific purpose for incurring an obligation on which interest is paid. Exceptions to the fungibility method are set forth in LAC 61:I.1130.B.1.b. The fungibility approach recognizes that all activities and property require funds and that management has a great deal of flexibility as to the source and use of funds and that the creditors of the taxpayer look to its general credit for repayment and thereby subject the money loaned to the risk of all of the taxpayer's activities. When money is borrowed for a specific purpose, such borrowing will free other funds for other purposes, and it is reasonable under this approach to attribute part of the cost of borrowing to such other purposes. Consistent with the principles of fungibility, except as otherwise provided, the aggregate of deductions for interest in all cases shall be considered related to all income producing activities and assets of the taxpayer and, thus, allocable to all the gross income that the assets of the taxpayer generate, have generated, or could reasonably have been expected to generate.

b. Exceptions to the fungibility method are allowed in the same circumstances that exceptions are allowed by IRC §861 and the regulations promulgated thereunder. These exceptions include:

i. the direct allocation of interest expense to the income generated by certain assets that are subject to qualified nonrecourse indebtedness;

ii. the direct allocation of interest expense to income generated by certain assets that are acquired in integrated financial transactions.

c. Interest Expense Applicable to Louisiana Gross Allocable Income. Interest expense that is applicable to assets that produce or that are held for the production of Louisiana gross allocable income shall be an item of deduction in determining net allocable income or loss from Louisiana.

i. Except as otherwise provided, the amount of interest that is applicable to such assets shall be determined by multiplying the amount of interest expense applicable to total allocable assets, determined without reference to the income limitation in the case of investments in U.S. government bonds and notes held as temporary cash investments, by a ratio, the numerator of which is the average value of assets that produce or that are held for the production of Louisiana allocable income and the denominator of which is the average value of assets that produce or that are held for the production of allocable income within and without Louisiana.

ii. When Louisiana net apportionable income is determined on the separate accounting method, refer to LAC 61:I.1132.C.2 for rules pertaining to the determination of the amount of interest expense applicable to Louisiana allocable income.

d. Interest Expense Applicable to Total Allocable Assets

i. Interest expense applicable to total allocable assets is interest expense that is applicable to assets that produce or that are held for the production of allocable income within and without Louisiana.

ii. When a R.S. 47:287.738(F)(2) election is made, assets that produce or that are held for the production of allocable income will include direct investments in 50 percent or more owned subsidiaries (other than normal trade accounts receivable) whether or not such investments, advances, or loans produce any income.

iii. The amount of interest that is applicable to assets producing or held for the production of allocable income shall be determined by multiplying the total amount of interest expense by a ratio, the numerator of which is the average value of assets that produce or that are held for the production of allocable income, and the denominator of which is the average value of all assets of the taxpayer.

iv. Although income exempt from Louisiana income tax, such as interest, is not taxable and is therefore not included in allocable income, the adjustment for the amount of interest expense applicable to assets producing such income is computed in the same manner as in the case of assets producing allocable income.

(a). For convenience of computation such assets are grouped with assets producing or held for the production of allocable income.

(b). Whenever interest expense applicable to U.S. government bonds and notes that are held as temporary cash investments determined as provided above, exceeds the amount of income derived from such investments, the interest expense that is attributable to such investments shall be limited to the amount of income derived from such investments.

(c). The amount of interest expense applicable to U.S. government bonds and notes that are held as temporary cash investments, determined without reference to the income therefrom, is that portion of the interest expense applicable to assets that produce or that are held for the production of allocable income, that the ratio of the average value of U.S. government bonds and notes held as temporary cash investments bears to the average value of all assets that produce or that are held for the production of allocable income.

e. Investments in Stock of Controlled Corporations
When a corporation holds stock in corporations controlled by direct ownership of 50 percent or more of the voting stock of the latter, the stock shall be included in the numerator of the Louisiana interest expense computation as Louisiana assets based on the following allocation.

i. This stock is to be attributed as Louisiana assets on the basis of the proportion of the respective amounts of income upon which Louisiana income tax has been paid to all income, including exempt income, earned everywhere of the controlled corporation.

ii. Stock held in corporations exempt from Louisiana income tax shall not be included as a Louisiana asset for the purpose of this computation.

f. Loans to Controlled Corporations

i. When a R.S. 47:287.738(F)(2) election is made and the electing corporation loans interest-bearing funds to corporations controlled by direct ownership of 50 percent or more of the voting stock of the controlled corporation, the receivable shall be included in the numerator of the Louisiana interest expense computation as Louisiana assets based on the following allocation.

(a). These receivables are to be attributed as Louisiana assets on the basis of the ratio of the value of the controlled corporation's real and tangible personal property located in Louisiana to the value of such property within and without Louisiana.

(b). For the purpose of the allocation, real and tangible personal property includes all such property of the controlled corporation regardless of whether the property is idle or productive and regardless of the nature of the income that it produces.

ii. Receivables Resulting from Loans of Non-Interest Bearing Funds. When a R.S. 47:287.738(F)(2) election is made:

(a). receivables resulting from loans of non-interest bearing funds to controlled corporations are deemed to be assets producing or held for the production of allocable income for the purpose of determining the amount of interest expense applicable to assets that produce or that are held for the production of allocable income from sources within and without Louisiana;

(b). when receivables resulting from loans of non-interest bearing funds to controlled corporations have a Louisiana business situs, or, in the absence of a business situs, the lending corporation has a Louisiana commercial domicile, such receivables shall not be included in the numerator of the interest expense allocation formula for the purpose of LAC 61:I.1130.B.1.c., unless the secretary, in order to clearly reflect Louisiana apportionable and allocable net income, imputes interest income on such receivables.

g. Average Value

i. Except as otherwise provided in this Section, average value shall mean the value at the beginning of the taxable period plus the value at the end of the taxable period, the sum of which is divided by two.

ii. If the average value as calculated above does not fairly represent the average of the property owned during the year, the average value shall be obtained by dividing the sum of the monthly balances by the number of months in the taxable period.

h. Value of Property to Be Used

i. For purposes of this Subsection, the value of property to be used shall be determined using one of the following methods. The taxpayer will elect which method to use on the first income tax return filed for the taxable period following the taxable period in which these regulations take effect by employing the elected method on the tax return. Once made, the election is irrevocable, without the approval of the secretary upon the showing of good cause:

(a). the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, amortization, depletion, and obsolescence; or

(b). the value of property is cost to the taxpayer, so long as the property continues to be used in the taxpayer's trade or business; or

(c). the value of property is the value reflected on the taxpayer's books, so long as the value is not below zero.

ii. The secretary may require a different method of valuation or adjust reserves if the method elected by the taxpayer does not reflect the fair value of the property.

iii. Intangible assets that produce or that are held for the production of allocable income within and without Louisiana may acquire a business situs in more than one state. The percentage of the value of the asset that is to be attributed to Louisiana is a factual determination required to be made with respect to each asset and will take into consideration such factors as:

(a). the number of locations at which the asset is used;

(b). the number of days during the taxable period the asset is used within and without Louisiana;

(c). the amount of income that the asset generated within and without Louisiana; and

(d). the earning power of the asset at the time the interest expense is generated.

i. Examples. The following examples are applicable for both foreign and domestic corporations.

(a). Example 1. The XYZ Corporation has incurred interest expense in the amount of \$150,000 during the year 2006 and has not elected to treat interest income from 50 percent or more owned subsidiaries as taxable income. The subsidiary of XYZ Corporation earns no income in Louisiana. During 2006 XYZ Corporation derived total allocable and exempt income and Louisiana allocable income as follows.

	Louisiana	Total
*Interest from 80% owned Subsidiary	\$ -0-	\$10,000
*Interest (interest bearing checking)	-0-	5,000
*Dividends	-0-	5,000
Net rent income	10,000	10,000
Trademark royalty income	4,000	10,000
Total	\$14,000	\$40,000

*Exempt but included with allocable income only for convenience in computing the applicable expense.

(i). Its assets, liabilities, and net worth as of January 1, 2006, and December 31, 2006, were as follows.

Assets	01/01/06	12/31/06
Cash (currency on hand)	\$ 10,000	\$ 10,000
Cash (non-interest bearing checking)	90,000	140,000
Cash (interest bearing checking)	110,000	220,000
Accounts receivable	780,000	800,000
Inventories	600,000	1,000,000
Stocks - 80% owned subsidiary	100,000	100,000

Assets		01/01/06		12/31/06
Trademark		80,000		80,000
Loan to 80% owned subsidiary		310,000		430,000
Real estate (rental property)	\$ 100,000		\$100,000	
Less depreciation reserve	20,000		25,000	
Net		80,000		75,000
Real estate	5,000,000		5,125,000	
Less depreciation reserve	1,080,000		1,300,000	
Net		3,920,000		3,825,000
Total Assets		\$6,080,000		\$6,680,000

Louisiana Allocable Assets	
January 1, 2006 - Rental property	\$ 80,000
**January 1, 2006 - Trademark asset	32,000
December 31, 2006 - Rental property	75,000
**December 31, 2006 - Trademark asset	40,000
Total	\$227,000
Average Louisiana allocable assets	113,500
Average total allocable assets	792,500
Ratio of Louisiana average to total average allocable assets	.14322
Interest expense attributed to total allocable or exempt assets	18,633
Interest expense allocated to Louisiana allocable assets (.14322 x \$18,633)	2,668

**For purposes of this example, it has been assumed that the ratio of trademark royalties for the prior month from Louisiana sources to total trademark royalties for the prior month is representative of the value of the asset attributable to Louisiana at balance sheet date. In December 2005, Louisiana trademark royalties were \$480 and total trademark royalties were \$1,200. In December 2006, Louisiana trademark royalties were \$550 and total trademark royalties were \$1,100.

Liabilities and Net Worth			
Accounts payable	\$ 400,000		\$1,000,000
Bonds	3,000,000		3,000,000
Total Liabilities		\$3,400,000	\$4,000,000
Capital stock	2,080,000		2,080,000
Earned surplus	600,000		600,000
Net Worth:		2,680,000	2,680,000
Total Liabilities and Net Worth		\$6,080,000	\$6,680,000

(ii). The amount of interest that is applicable to the assets that produce or are held for the production of allocable or exempt income within and without Louisiana is \$18,633, determined as follows.

	Allocable Assets		Total Assets	
	01/01/06	12/31/06	01/01/06	12/31/06
Loan to 80% owned subsidiary	\$310,000	\$ 430,000	\$ 310,000	\$ 430,000
Cash (interest bearing checking)	110,000	220,000	110,000	220,000
Rental property (net)	80,000	75,000	80,000	75,000
Stocks - 80% owned subsidiary	100,000	100,000	100,000	100,000
Trademark asset	80,000	80,000	80,000	80,000
Other assets	0	0	5,400,000	5,775,000
Totals	\$680,000	\$ 905,000	\$6,080,000	\$ 6,680,000
1-1-06 totals		\$ 680,000		\$ 6,080,000
Totals		\$1,585,000		\$12,760,000
Average		792,500		6,380,000
Ratio				.12422
Interest expense attributed to total allocable or exempt assets (.12422 x \$150,000)				18,633

(iii). The amount of interest expense that is applicable to the assets that produce or are held for the production of Louisiana allocable income is \$2,668 determined as follows.

(b). Example 2. Assume the same facts as Example 1 except that XYZ Corporation has elected under R.S.47:287.738(F)(2) to treat interest income from its 50 percent or more owned subsidiary as taxable allocable income. The ratio of the value of real and tangible personal property of the controlled corporation located in Louisiana to the value of such property within and without Louisiana is 10 percent for both the beginning and ending balance sheets. Therefore, 10 percent of the interest from the subsidiary is allocated to Louisiana and 10 percent of the receivable is attributed to Louisiana. In addition, the ratio of the subsidiary's income earned within Louisiana upon which Louisiana income tax has been paid to income earned everywhere of the subsidiary in the prior and current years is five percent. Therefore five percent of XYZ's investment in the subsidiary is attributed to Louisiana. Example 1 would change as follows:

(i). Total allocable and exempt income and Louisiana allocable income would be.

	Louisiana	Total
*Interest from 80% owned Subsidiary	\$ 1,000	\$10,000
**Interest (interest bearing checking)	-0-	5,000
**Dividends	-0-	5,000
Net rent income	10,000	10,000
Trademark royalty income	4,000	10,000
Total	\$15,000	\$40,000

(ii). The amount of interest that is applicable to the assets that produce or are held for the production of allocable or exempt income within and without Louisiana remains \$18,633, calculated in the same manner. The only difference is that the loan to the subsidiary is now an allocable asset. The amount of interest expense that is applicable to the assets that produce or are held for the production of Louisiana allocable income or to the portion of the investment in a 50 percent or more owned subsidiary that has produced income that has been taxed by Louisiana is \$3,656 determined as follows.

Louisiana Allocable Assets	
January 1, 2006 - Rental property	\$ 80,000
January 1, 2006 - Trademark asset	32,000
**January 1, 2006 - Stock of subsidiary	5,000
January 1, 2006 - Loan to subsidiary	31,000
December 31, 2006 - Rental property	75,000
December 31, 2006 - Trademark asset	40,000
**December 31, 2006 - Stock of subsidiary	5,000
December 31, 2006 - Loan to subsidiary	43,000
Total	\$311,000
Average Louisiana allocable assets	155,500
Average total allocable assets	792,500
Ratio of Louisiana average to total average allocable assets	.19621
Interest expense attributed to total allocable or exempt assets	18,633
Interest expense attributed to Louisiana (.19621 x \$18,633)	3,656

* Taxpayer has elected to be taxed on certain interest income.

** Exempt but included only for convenience in computing the applicable expense.

2. Overhead Expense

a. Overhead Expense Attributable to Total Gross Allocable Income Derived from Rent of Immovable or Corporeal Movable Property or from Construction, Repair, or Other Similar Services

i. Overhead expense attributable to Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services shall be deducted from such income for the purposes of determining Louisiana net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying overhead expense attributed to total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services by the arithmetical average of two ratios, as follows:

(a). the ratio of the amount of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross allocable income from such sources;

(b). the ratio of the amount of direct cost incurred in the production of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of such income.

ii. Overhead expense attributable to total gross allocable income derived from rent of immovable or corporeal movable property or from construction, repair, or other similar services shall be deducted from such income for the purposes of determining total net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying total overhead expense by the arithmetical average of two ratios, as follows:

(a). the ratio of the amount of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross income derived from all sources;

(b). the ratio of the amount of direct cost incurred in the production of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of gross income from all sources.

iii. If the taxpayer has not maintained documents or records sufficient to compute the ratios required by this Subparagraph, the secretary shall, upon examination, determine the method by which to attribute overhead expense.

b. Overhead Expense Attributable to All Other Items of Gross Allocable Income. Overhead expense attributable to items of gross allocable income derived from sources within and without Louisiana, except gross allocable income from rent of immovable or corporeal movable property or from construction, repair or other similar services, may be determined by any reasonable method that clearly reflects net allocable income from such items of income.

3. Generally, direct and indirect expenses, other than interest expenses, attributed to allocable income from foreign sources for federal purposes are deductible in arriving at total net allocable income. Expenses, other than interest expenses, sourced pursuant to federal law and regulations to allocable income from foreign sources are presumed to be actual expenses attributed to such income.

C. This regulation shall not restrict the authority of the secretary to adjust the allocation of items of income and expense when the secretary determines that such adjustments are necessary in order to clearly reflect the taxpayer's Louisiana income.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.81, R.S. 47:287.92, R.S. 47:287.93, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:101 (February 1988), repromulgated by the Department of Revenue, Policy Services Division, LR 30:477 (March 2004), amended LR 31:

Family Impact Statement

The proposed amendment of LAC 61:I.1130, regarding the computation of net allocable income from Louisiana sources should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. The implementation of this proposed Rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budgets;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function;

Any interested person may submit written data, views, arguments or comments regarding this proposed Rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments

must be submitted no later than 4:30 p.m., Thursday, October 27, 2005. A public hearing will be held on Friday, October 28, 2005, at 9 a.m. in the River Room located on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Computation of Net Allocable
Income from Louisiana Sources**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The implementation of this proposed regulation, which updates the corporation income tax regulation relating to the allocation of items of income and expense, will have no impact on the agency's costs.

The implementation of this proposed regulation will have no impact upon any local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

Proposed regulatory changes related to updating corporate income tax regulations will have no effect on revenue collections of state or local governmental units.

The proposed regulations also implement portions of Act 401 of the 2005 Regular Legislative Session (HB 679). Act 401, in its entirety, is estimated to reduce State General Fund revenues by \$4.8 million in FY 2006-07, \$4.4 million in FY 2007-08, \$3.9 million in FY 2008-09, and \$3.5 million in FY 2009-10. The portions of these total fiscal effects associated with these specific proposed regulations implementing that Act is indeterminable.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Statutory changes related to Act 401 of the 2005 Regular Legislative Session will decrease the tax payments of affected businesses by an estimated \$4.8 million in FY 2006-07. Tax reductions for affected businesses associated with these specific proposed regulations implementing that Act are indeterminable.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This proposed regulation should have no effect on competition or employment.

Cynthia Bridges
Secretary
0509#054

Robert E. Hosse
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT
Department of Revenue
Policy Services Division**

**Donations to the Louisiana Military Family Assistance Fund
(LAC 61:III.1101)**

Under the authority of R.S. 47:120.31, 297.5, 306.2, and 1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:III.1101 to provide for the administration of Acts 2005, No. 151, which authorizes donations to the

Louisiana Military Family Assistance Fund by designation on state income and sales tax returns.

Title 61

REVENUE AND TAXATION

**Part III. Department of Revenue Administrative
Provisions and Miscellaneous**

Chapter 11. Donations

**§1101. Donations to the Louisiana Military Family
Assistance Fund**

A. Taxpayers filing individual or corporate income or sales and use tax returns may designate all or any portion of a refund, credit, or vendor's compensation as a donation, or may donate an amount greater than the tax or refund due to the Louisiana Military Family Assistance Fund (Fund) at the time that the tax returns are submitted to the Department of Revenue.

1. For corporate and individual income tax, returns for tax periods beginning on or after January 1, 2005, may include a designated donation.

2. For sales and use tax, returns for tax periods beginning on or after January 1, 2006, may include a designated donation.

B. To make a donation to the fund, the taxpayer must comply with all of the requirements for proper payment of the tax due including filing a correct return and paying all taxes, interest, and penalties due.

1. The taxpayer must properly designate the amount of the donation intended on the tax return form.

2. The taxpayer may donate all or a portion of any refund, credit, or vendor's compensation to the fund by designating the amount to be donated on the appropriate line of the return.

3. The taxpayer may contribute additional amounts to the fund by increasing the amount of the payment made for taxes, interest, and penalties due and designating the amount to be donated on the appropriate line of the return. Any additional donation must accompany the return. Donations not accompanying the filing of a return will be returned.

4. Once a taxpayer has made the election to donate, the taxpayer may not change the donation amount after the tax return has been filed.

C. Adjustments to Donation Amounts

1. Donation of Vendor's Compensation or Overpayments

a. If a taxpayer elects to donate all or any portion of an expected overpayment and the amount of the overpayment is reduced because of return errors or disallowance of vendor's compensation, the donation amount will be reduced accordingly.

b. If a taxpayer elects to donate all or any portion of their vendor's compensation or an expected overpayment and the taxpayer has other outstanding liabilities for other taxes or tax periods, the overpayment will first be applied to the outstanding tax liabilities and the donation amount will be reduced accordingly.

c. If a taxpayer elects to donate all or any portion of their vendor's compensation or an expected overpayment and the taxpayer is subject to other offsets, garnishments, liens, or seizures, the overpayment will first be applied to those legal responsibilities and the donation amount will be reduced accordingly.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Donations to the Louisiana
Military Family Assistance Fund**

2. Additional Donations. If a taxpayer elects to contribute additional amounts by increasing the amount of the tax return payment and the amount due on the return is increased because of return errors or disallowance of vendor's compensation or the taxpayer fails to pay in full the amount shown due on the return, the taxes due will not be considered properly paid as required by §1101.B and the donation amount will be reduced accordingly.

3. Taxpayers will be notified of any donation adjustments.

4. The department will not seek to collect amounts designated as a donation by the taxpayer if the donation amount is adjusted as provided by §1101.C.1-2.

AUTHORITY NOTE: Adopted in accordance with R.S. 47:120.31, 297.5, 306.2 and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 31:

Family Impact Statement

1. The Effect on the Stability of the Family. Implementation of this proposed Rule will improve the stability of needy military families who receive assistance from the Louisiana Military Family Assistance Board.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of this proposed Rule will have a positive effect on family earnings and family budget of military families who receive assistance from the Louisiana Military Family Assistance Board.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Linda Denney, Senior Policy Consultant, Policy Services Division, Department of Revenue, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Wednesday, October 26, 2005. A public hearing will be held on Thursday, October 27, 2005, at 1 p.m. in the Griffon Room on the First Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Acts 2005, No. 151 enacted R.S. 47:120.31, 297.5, and 306.2, which allow taxpayers filing individual or corporate income or sales and use tax returns to donate all or any portion of a refund, credit, or vendor's compensation, or make an additional donation to the Louisiana Military Family Assistance Fund at the time that the tax returns are filed with the Department of Revenue.

Implementation of this proposed rule will result in first-year costs of \$55,000 for programming the Department's DELTA tax system to account for the monies donated to the fund and adding scanning capabilities for data capture of the five new lines on the sales tax return and the one new line on the income tax returns. Subsequent years' administrative costs should be minimal.

There will be no implementation costs for local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed rule, which allows taxpayers filing individual or corporate income or sales and use tax returns to donate all or any portion of a refund, credit, or vendor's compensation, or make an additional donation to the Louisiana Military Family Assistance Fund at the time that the tax returns are filed, will have no effect on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule will provide financial assistance to qualifying military family members who make need-based claims that are approved by the Louisiana Military Family Assistance Board as provided by R.S. 46:122.

This proposed rule will affect taxpayer receipts or income to the extent that taxpayers elect to donate to the Louisiana Military Family Assistance Fund.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will have no effect on competition or employment.

Cynthia Bridges
Secretary
0509#028

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Management and Finance**

Substance Abuse Testing of Employees (LAC 67:I.101-119)

The Department of Social Services, Office of the Secretary, proposes to amend Title 67, Part I of the Louisiana Administrative Code, Subpart 1 General Administration.

Title 67
SOCIAL SERVICES

Part I. Office of the Secretary

Subpart 1. General Administration

Chapter 1. Substance Abuse Testing

§101. Introduction and Purpose

A. ...

B. The state of Louisiana has a long-standing commitment to working toward an alcohol-free, drug-free workplace. In order to curb the use of illegal drugs by employees of the state of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for state employees. Further, the Governor of the State of Louisiana issued Executive Orders Number KBB 2005-08 and KBB 2005-11 providing for the promulgation by executive agencies of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees, pursuant to R.S. 49:1001 et seq.

C. The Department of Social Services fully supports these efforts and is committed to an alcohol-free, drug-free workplace.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1145 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§105. Definitions

* * *

Safety-Sensitive or Security-Sensitive position determined by the appointing authority to contain duties of such nature that the compelling state interest to keep the incumbent drug-free outweighs the employee's privacy interests. Executive Orders Number KBB 2005-08 and KBB 2005-11 set forth the following non-exclusive list of examples of safety-sensitive and/or security-sensitive positions in state government:

1. - 8. ...

Under the Influence for the purposes of this policy, alcohol, a drug, chemical substance, or the combination of alcohol, a drug, chemical substance that affects an employee in any detectable manner. The symptoms or influence are not confined to that consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of influence can be established by a professional opinion or a scientifically valid test.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1145 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§107. DSS Drug-free Workplace Policy

A. It shall be the policy of DSS to maintain a drug-free workplace and a workforce free of substance abuse (see DSS Policy 4-08). Employees are prohibited from reporting for work, performing work, or otherwise being on any duty status for DSS with the presence in their bodies of alcohol, illegal drugs, controlled substances, or designer (synthetic) drugs at or above the initial testing levels and confirmatory

testing levels as established in the contract between the State of Louisiana and the official provider of drug testing services. Employees are further prohibited from illegal use, possession, dispensation, distribution, manufacture, or sale of controlled substances, designer (synthetic) drugs, and illegal drugs at the work site and while on official state business, on duty or on call for duty.

B. To assure maintenance of a drug-free workforce, it shall be the policy of DSS to implement a program of drug testing in accordance with Executive Orders Number KBB 2005-08 and KBB 2005-11, R.S. 49:1001 et seq., and all other applicable federal and state laws, as set forth below.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1146 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§109. Conditions Requiring Drug Tests

A. DSS shall require alcohol/drug testing under the following conditions.

1. Reasonable Suspicion: Any employee shall be required to submit to an alcohol/drug test if there is a reasonable suspicion (as defined in this policy) that the employee is using illegal drugs or is under the influence of alcohol while on duty. At least two supervisors/managers must concur there is reasonable suspicion before an employee is required to submit to an alcohol/drug test. Supervisors shall decide who will drive the employee to the testing site.

2. Post-Accident: Each employee involved in an accident that occurs during the course and scope of employment shall be required to submit to an alcohol/drug test if the accident:

a. involves circumstances leading to a reasonable suspicion of the employee's alcohol/drug use;

b. results in serious injury or a fatality; or

c. ...

3. Rehabilitation Monitoring: Any employee who is participating in a substance abuse after-treatment program or who has a rehabilitation agreement with the agency shall be required to submit to periodic drug testing.

4. Pre-Employment: A prospective employee who is given a conditional offer of employment shall sign and be given a copy of the DSS Conditional Offer of Employment Agreement form. Each prospective employee shall be required to submit to drug screening at the time and place designated by the appointing authority or designee following a conditional job offer contingent upon a negative drug-testing result. A prospective employee who tests positive for the presence of drugs in the initial screening or who fails to cooperate in the testing shall be eliminated from consideration for employment. Employees transferring to DSS from other state agencies without a break in service are exempt from pre-employment testing.

5. ...

6. Safety-Sensitive and Security-Sensitive Positions Random Resting. Every employee in a safety-sensitive or security-sensitive position shall be required to submit to alcohol/drug testing as required by the appointing authority, who shall periodically call for a sample of such employees, selected at random by a computer-generated

random selection process, and require them to report for testing. All such testing shall, if practicable, occur during the selected employee's work schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1146 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§111. Procedure

A. Alcohol/drug testing pursuant to this policy shall be conducted for the presence of any illegal drugs including, but not limited to, cannabinoids (marijuana metabolites), cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines in accordance with the provisions of R.S. 49:1001 et seq. DSS reserves the right to test employees for the presence of any alcohol, illegal drugs or controlled substance when there is a reasonable suspicion to do so.

B. The human resources director of each Office shall be involved in any determination that one of the above-named conditions requiring alcohol/drug-testing exists. Upon such determination, the appointing authority or designee for each Office shall notify the supervisor of the employee to be tested, who shall immediately notify the employee where and when to report for the testing.

C. - C.4. ...

5. The laboratory shall use a concentration cut-off of 0.08 or more for the initial positive finding in testing for alcohol.

6. All positives reported by the laboratory must be confirmed by gas/chromatography/mass spectrometry.

7. All confirmed positive results of alcohol/drug testing shall be reported by the laboratory to a qualified medical review officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1146 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§113. Confidentiality

A. All information, interviews, reports, statements, memoranda, and/or test results received by DSS through its alcohol/drug testing program are confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in an administrative or disciplinary proceeding or hearing, or civil litigation where drug use by the tested individual is relevant. These records will be kept in a locked confidential file just as any other medical records are retained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1147 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§115. Responsibilities

A. The Secretary of DSS is responsible for the overall compliance with this policy and shall submit to the Office of the Governor, through the Commissioner of Administration, a report on this policy and drug testing program; describing the process, the number of employees affected, the categories of testing being conducted, the associated costs of

testing, and the effectiveness of the program by December 1 of each year.

B. The appointing authority or designee is responsible for administering the alcohol/drug testing program; determining when drug testing is appropriate; receiving, acting on, and holding confidential all information received from the testing services provider and from the medical review officer; and collecting appropriate information necessary to agency defense in the event of legal challenge.

C. All supervisory personnel are responsible for assuring that each employee under their supervision is aware of and understands this policy, and signs a receipt form acknowledging the policy. Each employee must be given a copy of the receipt form in the new hire package.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1147 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§117. Violation of the Policy

A. Positive Test Result. All initial screening tests with positive results must be confirmed by a second more accurate test with the results reviewed by a medical review officer. Any breath test resulting in 0.08 alcohol concentration will be considered an initial positive result. In these cases, the confirmation test will be performed within 30 minutes, but not less than 15 minutes, of completion of the screening test. Urine samples will be tested using the split sample method, with the confirmation test performed on the second half of the sample in the event of an initial positive result. Any employee reported with a confirmed positive test shall either be suspended with pay pending investigation or shall have the safety/security sensitive duties removed from his/her position pending preparation and approval of disciplinary action up to and including dismissal, as set forth in DSS Policy 4-07. At a minimum the following actions will be taken in the instance of a first confirmed positive test.

1. The employee shall be subject to disciplinary action as determined by the appointing authority.

2. ...

3. The employee shall be screened on a periodic basis for not less than 12 months nor more than 60 months. Follow-up testing, return to duty testing, counseling and any other recommended treatment will be at the cost of the employee and not the department. Post accident or return to duty tests which are positive will result in the employee's dismissal.

B. Refusal to Test

1. Any employee refusing to submit to a breath test for the presence of alcohol or a urine test for the presence of drugs will be subject to the consequences of a positive test. A refusal is defined as a verbal refusal, abusive language to the supervisor or personnel performing the test, or tampering of any sample, container, equipment or documentation of the sampling process. If a test is determined to be invalid, it is not considered a refusal and no disciplinary action will be taken. Inability to perform the testing procedures must be documented by a medical physician and recorded in the employee's personnel file.

2. If an employee alleges that, because of medical reasons, he/she is unable to provide a sufficient amount of

breath to permit a valid breath test, the Breath Alcohol Technician (BAT) will instruct the employee to try a second time to provide an adequate amount of breath. If an employee is unwilling to submit to the test, then the results of the test will be subject to the consequences of a positive test. If an employee is unable to provide a sufficient quantity of urine, the collector will discard the insufficient specimen and instruct the individual to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the employee has provided a new urine specimen. If the employee remains unable to provide a sufficient specimen, the collector must discard the insufficient specimen, discontinue testing and notify the Agency Human Resources Director or his/her designee of his/her actions. In these instances, the Agency Human Resources Director or his/her designee shall inform the appointing authority immediately. The appointing authority shall direct the employee to have a medical evaluation, within five working days (at the agency's expense) conducted by an agency selected licensed physician with expertise in the medical issues surrounding a failure to provide a sufficient specimen. The physician will provide to the appointing authority, a report of his/her conclusions as to whether the employee's inability to provide a sufficient specimen is genuine or constitutes a refusal to test. If the conclusion of refusal to test is reached, it will be subject to the consequences of a positive test.

C. Reasonable Suspicion of Adulterated/Substituted Sample. A specimen temperature that measures outside the range of 90 to 100 degrees Fahrenheit constitutes a reason to believe that an employee has adulterated or substituted the specimen. The collector must immediately conduct a new collection using direct observation procedures.

D. Challenging Test Results. If a current or prospective employee receives a confirmed positive test result, he/she may challenge the test results within 72 hours of actual notification, with the understanding that he/she may be placed on suspension pending investigation, until the challenge is resolved. A written explanation of the reason for the positive test result may be submitted to the medical review officer. Employees who are on legally prescribed and obtained medication for a documented illness, injury or ailment will be eligible for continued employment upon receiving clearance from the medical review officer.

E. Other Violations. Each violation and alleged violation of this policy will be handled on an individual basis, taking into account all data, including the risk to self, fellow employees, clients, and the general public.

F. Failure to comply with provision of the policy, including but not limited to, the following, will be grounds for disciplinary action:

1. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1147 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

§119. Attachment A Safety-Sensitive and Security-Sensitive Positions Within DSS

A. A candidate for one of the following positions will be required to pass a drug test before being placed in such a

position, whether through appointment or promotion and employees who occupy these positions will be subject to random alcohol/drug testing.

Louisiana Rehabilitation Services	Administrative Specialist 3 (Position 060871) Client Services Worker Rehabilitation Aide
Office of Family Support	Social Services Analyst 1 & 2 (All positions in Support Enforcement) Social Services Analyst Supervisor (All positions in Support Enforcement) Support Enforcement District Manager 1 & 2 Support Enforcement Regional Administrator
Office of Community Services	Administrative Coordinator 3 (Positions in Field Services – Parish and Regional Offices) Administrator Coordinator 2 (Positions in Field Services – Parish and Regional Offices) Child Welfare Services Assistant Trainee Child Welfare Services Assistant Child Welfare Counselor/Adoption Child Welfare Specialist 1 Child Welfare Specialist 2 Child Welfare Specialist 3 Child Welfare Specialist 4 Child Welfare Specialist Trainee Social Service Counselor 1 Social Service Counselor 2
Office of the Secretary/Office of Management and Finance	Accountant 3 (178446) Administrative Coordinator 1 (002112, 002913) Administrative Coordinator 2 (001979) Auditor Supervisor (124684) Licensing Specialist 1 CDSS Licensing Specialist 2 CDSS

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 25:1148 (June 1999), amended by the Department of Social Services, Office of Management and Finance, LR 31:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule will have no effect on the stability of the family.

2. What effect will this have on the authority and right of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will have no effect on family earnings or budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this Rule is strictly an agency function.

Interested persons may submit written comments by October 24, 2005, to Terri P. Ricks, Undersecretary, Office

of the Secretary, Post Office Box 3776, Baton Rouge, LA, 70821-3776. She is responsible for responding to inquiries regarding this proposed Rule.

Ann S. Williamson
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Substance Abuse Testing of Employees

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation of this rule will result in additional costs associated with testing for alcohol use when an employee is under reasonable suspicion for being under the influence of alcohol while on duty. The costs are based on the assumption of testing an average of 53 employees per year, or 1 percent of DSS staff, suspected of alcohol use while on duty at a rate of \$12 per breath test. The cost is estimated at \$636 for the annual testing and \$374 for the publication in the *Louisiana Register*.

The minimal cost of publishing the rule, printing policy changes is expected to be approximately \$374 and is routinely included in the agency's annual budget.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this rule will have no effect on state or local revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The rule will result in no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment in the public or private sectors.

Terri R. Ricks
Undersecretary
0509#033

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office