

Notices of Intent

NOTICE OF INTENT

Department of Civil Service Board of Ethics

Records, Reports, Lobbyist Disclosure Act
(LAC 52:I.1303, 2113, and 2114)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has initiated rulemaking procedures to make amendments to the Rules for the Board of Ethics to bring the Rules into compliance with current statutory provisions and HB 108 of the 2006 Regular Legislative Session.

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

Title 52 ETHICS

Part I. Board of Ethics

Chapter 13. Records and Reports

§1303. Statements Filed Pursuant to Section 1111(E) of the Code of Governmental Ethics

A. Statements filed pursuant to Section 1111(E) of the Code of Governmental Ethics shall:

1. be made under oath; and
2. contain:
 - a. the name and address of the elected official;
 - b. the name and address of the person employing or retaining the official to perform the services;
 - c. the date of initial assistance;
 - d. a description of the nature of the work and the amount of the compensation for services rendered or to be rendered; and
 - e. a brief description of the transaction in reference to which services are rendered or to be rendered.

B. The executive secretary shall maintain these statements suitably indexed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 23:1298 (October 1997), amended LR 32:

Chapter 21. Executive Branch Lobbyist Disclosure Act §2113. Registration

A. Any individual who is employed or who is engaged for compensation to act in a representative capacity when lobbying constitutes one of the duties of such employment or engagement shall register, on forms provided by the board, as an executive branch lobbyist with the board within five days of employment or engagement. Persons who are engaged or employed to provide a professional service to a person and incidental to the provision of such service communicates with an executive branch official or makes an appearance or assists in an appearance before an executive

branch agency or official is not required to register as a lobbyist unless an expenditure is made.

B. Any individual who receives compensation of any kind, including reimbursement of expenditures, to act in a representative capacity when such compensation is received for the performance of services that include lobbying executive branch officials shall register, on forms provided by the board, as an executive branch lobbyist within five days of making expenditures of \$500 or more on executive branch officials in a calendar year for the purpose of lobbying.

C. Any individual who is not required to register under either Subsection A or B of this Rule but who registers as an executive branch lobbyist with the board shall file expenditure reports as required by the Lobbyist Disclosure Act and shall be liable for any late fee assessed for the late filing of a report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 31:1234 (June 2005), amended LR 32:

§2114. Registration, Disclosure

A. A lobbyist is required to list on his registration form the name and address of each person by whom he is employed or engaged and, if different, whose interests he represents, including the business in which that person is engaged, if expenditures are made by either the lobbyist, his employer or the principal with respect to lobbying on behalf of that person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 31:1235 (June 2005), amended LR 32:

Interested persons may direct their comments to R. Gray Sexton, Louisiana Board of Ethics, 2415 Quail Drive, 3rd Floor, Baton Rouge, LA 70808, telephone (225) 763-8777, until 4:45 p.m. on September 10, 2006.

R. Gray Sexton
Ethics Administrator

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Records, Reports, Lobbyist Disclosure Act

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

The estimated cost to implement the rules/amendments is \$272 in FY 06/07, which accounts for the cost to publish the Notice of Intent and the Rules in the State Register.

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

The proposed rules/amendments will have no anticipated 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 rules/amendments will have no effect on the cost or economic benefits of affected persons.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules/amendments will not have an effect on competition and employment.

Kathy M. Allen
Deputy General Counsel
0608#051

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Civil Service
Civil Service Commission**

Extraordinary Qualifications/Credentials

The State Civil Service Commission will hold a public hearing at 9 a.m. on Wednesday, September 13, 2006, in the auditorium of the Claiborne Building, 1201 North Third Street, Baton Rouge, Louisiana, to consider amendments to the Civil Service Rule 6.5(g).

Consideration will be given to the following:

Rule 6.5 (g) Extraordinary Qualifications/Credentials

Subject to provisions of Rule 6.29, if an applicant who is eligible for appointment under provisions of Chapters 7 and 8 of the Rules possesses extraordinary or superior qualifications/credentials above and beyond the minimum qualifications/credentials, the appointing authority may, at his own discretion, pay the employee at a rate above the minimum provided that:

1. such superior qualifications/credentials are verified and documented as job related,
2. the rate does not exceed the third quartile of the range for the affected job,
3. the rate is implemented in accordance with written policies and procedures established by the department,
4. the appointment is probational, provisional or a job appointment.

The employee may be paid upon hiring or at any time within one year of the hire date. If paid after the hiring date, the pay change must be prospective. The salaries of all current probational and permanent employees who occupy positions in the same job title and who possess the same or equivalent qualifications/credentials may be adjusted up to but not to exceed the amount of the percent difference between the special hiring rate and the regular hiring rate provided that the qualifications/credentials are also verified and documented as job related and that the rate is implemented in accordance with written policies and procedures established by the department; such policies shall be posted in a manner which assures their availability to all employees. Such adjustments shall only be made on the same date that the higher pay rate is given to the newly hired employee.

If an employee with permanent status resigns and is then rehired into either the same position or into the same job title or a lower level job in his career progression group at the same agency, the employee shall not be eligible for an

increase under this rule unless there has been a break in State service of at least 60 days.

Explanation: The proposed changes will clarify that this rule is intended for recruiting purposes and not for rehiring existing employees.

The changes to the rule will allow agencies the option to initially hire an extraordinarily qualified candidate at a lower rate of pay and then raise the rate prospectively at any time within one year of the hire date. This option will allow agencies to assure that the employee is a good fit for the agency before raising the employee's pay level.

Employees who resign and are then rehired into either the same position or into the same job title or a lower level job in his career progression group at the same agency, the employee shall not be eligible for an increase under this rule unless there is a break in service of at least 60 days.

Anne S. Soileau
Director

0608#026

NOTICE OF INTENT

**Department of Civil Service
Civil Service Commission**

Full Time Employees—Hours of Work;
Annual and Sick Leave

The State Civil Service Commission will hold a public hearing on Wednesday, September 13, 2006 to consider the following rule proposals. The hearing will begin at 9:00 a.m. and will be held in the auditorium of the Claiborne Building, 1201 N. Third Street, Baton Rouge, Louisiana.

The commission will consider the following proposed Rule amendments within Chapter 11 of the Civil Service Rules.

11.1 Full-Time Employees

(a) Subject to the provisions of subsections (b) and (c) hereof, the workweek for each full-time employee in the classified service shall be forty (40) hours; or an appointing authority may specify an alternate 80-hour, two-week work period for exempt employees.

- (b) ...
- (c) ...
- (d) ...

Explanation: This change to rule 11.1 will allow agencies to establish variable work schedules for EXEMPT employees who may work more than 40 hours in one week and less than 40 hours in another week, for a total of 80 hours worked in a pay period.

11.5 Earning of Annual and Sick Leave.

- (a) ...
- (b) ...
 1. ...
 2. ...
 3. ...
 4. ...
 5. ...
- (c) ...
- (d) No employee shall be credited with annual or sick leave

1. ...
2. ...
3. Repealed.
4. ...
5. ...
6. ...

Explanation: Rule 11.5(d)3 currently reads: While he is on leave with or without pay, until such time as he returns to active working duty, except where inability to return to duty is caused by illness or incapacity as defined by Rule 1.39.1 Repealing this section would remove the requirement that employees must return to work to be credited with leave that has been earned while on paid leave; however, employees still will not earn leave or be credited with leave while they are on leave without pay. In many current payroll systems, leave is automatically credited each payday, and adjustments must be calculated and made manually in order to properly adjust leave balances. The cost to the state of making this payroll adjustment each week is greater than any benefit received.

11.10 Payment for Annual Leave Upon Separation.

(a) Subject to Rule 11.18(a) and sub-section (b) of this rule, each employee upon separation from the classified service shall be paid the value of his accrued annual leave in a lump sum...

1. ...
2. ...

(b). No terminal payment for annual leave earned under these Rules shall exceed the value of 300 hours, computed on the basis of the employee's hourly rate of pay (includes base supplement) at the time of his separation. The hourly rate of pay for employees who are on detail shall not include the employee's pay in the detail position.

- (c) ...
- (d) ...

(e) When an employee who has been paid under this Rule for accumulated annual leave is reemployed in a classified position, he shall pay the Department which reemploys him the value of such annual leave at the rate paid him less the value of working hours for which he has been paid which intervene between the last day worked and the date of reemployment and shall be given credit for the number of hours of annual leave for which he has made reimbursement, except when:

1. an employee returns to work for the first time after retirement or
2. an employee is rehired into a job appointment or non-leave earning position, he/she shall not be required to make reimbursement.

- (f) ...
- (g) ...

Explanation: For Rule 11.10(b), the change will clarify which rate of pay should be used to calculate the leave payment when an employee who has been on detail leaves state service.

For rule 11.10(e), these changes would allow a retired employee to return to work immediately without having to repay his/her terminal leave payment. An employee could take advantage of this benefit only once. Also, these changes

would clarify the current practice that no repayment is required when an individual is rehired into a position into which leave cannot be transferred (job appointment, restricted appointment, other non-leave earning position).

11.19 Transferring Annual and Sick Leave Between Departments.

- (a) ...
- (b)
- (c) ...

(d) The annual and sick leave credits of a state employee earned under the provisions of a formal system of leave accrual and use, or employed by an entity that employs state classified employees on a regular basis, who enters the Classified Service, shall be certified and credited in the same manner as provided in this rule for classified employees.

Explanation: This change would allow the leave of unclassified employees in all branches of state government to be transferred with an employee who enters the classified service; it would also allow the leave of employees in the State Police system to transfer; however, the leave of employees like teachers who work for a local school board would NOT be transferable. This change offers a reciprocal arrangement to employees of the judicial and legislative branches who come to work in an executive branch classified position.

11.34 Crisis Leave Pool

Subject to the provisions of Rule 11.5(a), a department may establish a policy to implement and administer a pool of shared annual leave which may be used by employees who cannot work due to a crisis situation and who have insufficient appropriate paid leave to cover the absence needed for the crisis situation. An employee using leave from a crisis leave pool shall receive leave in sufficient quantity to ensure his wage replacement is 75 percent of the pay he would receive in a regularly scheduled workweek. A department's policy must have the approval of the Civil Service Commission prior to implementation. At minimum, policies must include the following conditions and elements:

1. ...
2. Each department shall specify the calendar year or the fiscal year as their "crisis leave pool policy year." The department's policy shall establish a cap on the amount of annual leave, which may be donated by an individual employee. No cap shall exceed 240 hours per employee per policy year ...
3. ...
4. ...
5. ...
6. ...
7. ...
8. ...
9. ...

Explanation: This change would allow an agency to choose either the calendar year or the fiscal year as the basis for their crisis leave pool.

Persons interested in making comments relative to these proposals may do so at the public hearing or by writing to the Director of State Civil Service, P.O. Box 94111, Baton Rouge, LA 70804-9111.

If any accommodations are needed, please notify us prior to the meeting.

Anne S. Soileau
Director

0608#023

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Initial Classification for New and Existing Schools and Instructional Staff (LAC 28:LXXIX.109, 110 and 303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to Nonpublic *Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §303, Instructional Staff; §109, Initial Classification for Existing Schools; and §110, Initial Classification for New Schools. The revision to §303 allows a graduate of a foreign university to teach a foreign language if that language is his/her native tongue notwithstanding his/her college major. The teacher must also earn 12 semester hours of professional education courses within a three year period. The addition of §110 provides a policy for approving new nonpublic schools in the first year of operation. The revisions to §109 restrict that policy to existing nonpublic schools. BESE approved the revision to §303 as a means of providing more foreign language teachers more foreign language teachers for nonpublic schools. Section 110 was added at the request of the Nonpublic School Commission so that new nonpublic schools could be approved and receive funding in their first year of operation.

Title 28

EDUCATION

Part LXXIX. Louisiana Handbook for Nonpublic School Administrators

Chapter 1. Operation and Administration

§109. Initial Classification for Existing Schools

A. Existing schools seeking initial approval must be classified as either approved or provisionally approved and must show evidence of one year of successful operation.

B. Existing schools seeking initial approval must report their October 1 enrollment along with an Annual School Report.

C. Upon receipt of the initial classification and BESE approval, Brumfield-Dodd approval may be requested through the Office of Communications and Legislative Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2343 (November 2003), amended LR 31:3073 (December 2005), LR 32:1416 (August 2006), LR 32:

§110. Initial Classification for New Schools

A. In January of the year prior to opening, the school must notify the DOE that the school will be opening the next August.

1. The school should complete a New School Application form which will include information on staff credentials, school calendar, daily schedule, projected class size, projected student registrations, and other information to meet provisional approval.

2. The DOE will examine the information and give provisional approval by June.

B. After the school receives provisional approval, the DOE will provide information to the school concerning applying for Brumfield v Dodd approval.

C. In August, the DOE will allocate nonpublic textbook funds and transportation funds as applicable based on the registered student count and compliance with academic approval requirements and Brumfield v Dodd approval.

D. Beginning in August, the DOE will schedule site visits to verify that the school is open and in compliance.

E. Upon verification of compliance with all criteria, the DOE will release funds.

1. If the school fails to receive full academic approval or Brumfield v Dodd approval, the allocation will be removed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:

Chapter 3. Certification of Personnel

§303. Instructional Staff

A. - A.3. ...

B. A secondary teacher may teach in areas other than the major field for a period of time that is less than one-half of the school day provided that he has earned at least 12 semester hours in each such area. (Exception may be made for teachers in Trade and Industrial Education classes.) These teachers must hold a degree from a regionally accredited institution and have earned 12 semester hours of professional education courses.

1. A graduate of a foreign university or college, notwithstanding his/her major in college, may teach a foreign language if that language is his/her native tongue. The teacher must also earn 12 semester hours of professional education courses within a three year period.

C. - I.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2344 (November 2003), amended LR 31:3075 (December 2005), LR 32:1417 (August 2006), LR 32:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted,

amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit comments until 4:30 p.m., October 9, 2006, to Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators Initial Classification for New and Existing Schools and Instructional Staff

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

The implementation of changes requires no cost or savings to state or local governmental units. The revision to §303 allows a graduate of a foreign university to teach a foreign language if that language is his/her native tongue notwithstanding his/her college major. The addition of §110 provides a policy for approving new nonpublic schools in the first year of operation. The revisions to §109 restrict that policy to existing nonpublic schools. There may be an increase in state spending if schools are approved in their first year of operation, but it is not possible to estimate the cost.

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)

The addition of §110 will allow new nonpublic schools approved in their first year of operation to receive textbook and transportation funds during the first year. There may be an increase in state spending if schools are approved in their first year of operation, but it is not possible to estimate the cost.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0608#043

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Notification and Reportable Quantity List
(LAC 33:I.3908, 3919, and 3931)(OS071)

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 Office of the Secretary regulations, LAC 33:I.3908, 3919, and 3931 (Log #OS071).

This proposed rule requires the owner or operator of any source that releases an unauthorized amount of a toxic air pollutant at a rate greater than the reportable quantity listed in LAC 33:I.3931 to determine compliance with the appropriate ambient air standard listed in LAC 33:III.5112, Table 51.2, when the modeling is requested by the department. The modeling results are to be reported within the time frame specified by the department at the time the modeling is requested. This will allow the department to investigate unexplained air toxics monitored concentrations without a readily identifiable source. This rule also modifies the table of reportable quantities in LAC 33:I.3931 for total highly reactive volatile organic compounds (HRVOC). Review of the HRVOC unauthorized reports over the last several years indicates that ethylene and propylene represent the largest amount and frequency of HRVOC releases. The table at LAC 33:I.3931 will be modified to indicate reportable quantities for ethylene, propylene, and total HRVOC. The notification requirements for the discovery of groundwater contamination are being restored to the original intent of the regulations prior to the amendment of LAC 33:I.3919 in August 2004. The basis and rationale for this rule are to provide the department a mechanism for the investigations of air toxic pollutants ambient air standard violations, to update the groundwater contamination notification procedures, and to update the reportable quantities table regarding HRVOC.

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 I. Office of the Secretary

Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

Subchapter A. General

§3908. Modeling

A. Upon request of the administrative authority, the owner or operator of any source that emits any unauthorized release of any toxic air pollutant into the atmosphere at a rate greater than the reportable quantity in LAC 33:I.3931 shall

determine the status of compliance with the applicable ambient air quality standards beyond the source's property line. The applicable ambient air standards are listed in LAC 33:III.5112, Table 51.2. The modeling results shall be submitted to the department within the time frame specified by the department at the time the modeling is requested.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:

Subchapter C. Requirements for Prompt Notification
§3919. Notification Requirements for Unauthorized Discharges with Groundwater Contamination Impact

A. In the event that any unauthorized discharge results in the contamination of the groundwaters of the state or otherwise moves in, into, within, or on any saturated subsurface strata, the discharger shall promptly notify the Office of Environmental Compliance, Emergency and Radiological Services Division, SPOC, within seven days.

B. Dischargers shall submit a written notification in accordance with LAC 33:I.3925 or any permit or license terms and conditions issued under the Louisiana Environmental Quality Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2076(D), 2183(I), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), repealed LR 19:1022 (August 1993), repromulgated and amended LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:1668 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2434 (October 2005), LR 32:

Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

§3931. Reportable Quantity List for Pollutants

A. - A.2.

B. Modifications or Additions. The following table contains modifications to the federal reportable quantity lists incorporated by reference in Subsection A of this Section, as well as reportable quantities for additional pollutants.

Pollutant	Synonym	CAS No. ¹	RCRA ² Waste Number	Pounds
Allyl chloride	3-Chloropropene	107051		1000/10 [@]
Aniline	Aminobenzene	62533	U012	5000/1000 [@]
Antimony*		7440360		5000/100 [@]
Antimony compounds		20008		100
Barium*		7440393		100
Barium compounds		20020		100
n-Butyl alcohol	1-Butanol	71363	U031	5000/1000 [@]

[See Prior Text in Carbonic dichloride - Propylene]				
Sweet pipeline gas (Methane/Ethane)				42000 (1,000,000 scf)
Vinyl acetate	Vinyl acetate monomer	108054		5000/100 [@]
Volatile organic compounds not otherwise listed ⁴				5000
Only those highly reactive volatile organic compounds listed below: ethylene and propylene ⁵				100 [†]

[See Prior Text in F003 - F005:Methyl ethyl ketone]				

* No reporting of releases into the ambient air of this metal is required if the diameter of the pieces of solid metal released is equal to or exceeds 100 micrometers (0.004 inches).

** The emissions of all glycol ethers shall be totaled to determine if a reportable quantity has been exceeded.

*** The emissions of all Polynuclear Aromatic Hydrocarbons (PAHs), excluding any PAHs otherwise listed, shall be totaled to determine if a reportable quantity has been exceeded.

¹ Chemical Abstracts Service Registry Number.

² Resource Conservation and Recovery Act of 1976, as amended.

³ Prompt notification of releases of massive forms of these substances is not required if the diameter of the pieces of the substance released is equal to or exceeds 100 micrometers (0.004 inches).

⁴ The emissions of all volatile organic compounds (VOCs), excluding any VOCs otherwise listed, shall be totaled to determine if a reportable quantity has been exceeded. VOC is defined in LAC 33:III.111, and exempt compounds are listed in LAC 33:III.2117.

⁵ The emissions of these highly reactive VOC shall be totaled to determine if an RQ has been exceeded.

[@] The first RQ listed denotes the reportable quantity that will apply to unauthorized emissions based on total mass emitted into or onto all media within any consecutive 24-hour period. The second RQ listed denotes the reportable quantity that will apply to unauthorized emissions based on total mass emitted into the atmosphere.

[†] The RQ listed denotes the reportable quantity that will apply to unauthorized emissions based on total mass emitted into the atmosphere for facilities in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, St. Charles, St. James, St. John the Baptist, Pointe Coupee, and West Feliciana.

[#] RQ for the state except the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, St. Charles, St. James, St. John the Baptist, Pointe Coupee, and West Feliciana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:751 (April 2004), LR 30:1669 (August 2004), amended by the Office of Environmental Assessment, LR 31:919 (April 2005),

amended by the Office of the Secretary, Legal Affairs Division, LR 32:603 (April 2006), LR 32:

A public hearing will be held on September 26, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the 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. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS071. Such comments must be received no later than October 3, 2006, 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 OS071. 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; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Notification and Reportable Quantity List

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 significant economic benefits to directly affected persons or non-governmental groups by the proposed rule.

In the event of a common unauthorized release, the regulated community may incur the cost of modeling if the department determines that such modeling is necessary to determine if any health standards beyond the facility's property were compromised. The cost of modeling for this type of release may range from \$1,000-3,000 depending on the complexity of the event. In extraordinary unauthorized releases,

this type of modeling is expected to cost between \$5,000 and \$10,000. However, it is not uncommon for the responsible facility to perform this modeling without the department's request. Therefore, in this instance, this change may not directly affect the company with regards to modeling.

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
0608#044

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Wetlands Assimilation (LAC 33:IX.1105, 1109, and 1113)(WQ068)

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 Water Quality regulations, LAC 33:IX.1105, 1109, and 1113 (Log #WQ068).

The proposed rule will amend the water quality standards in LAC 33:IX.Chapter 11 to protect wetland areas that may receive treated wastewater effluent. Wetlands are being proposed as a water body exception category. Definitions, which include classifications of wetlands types, and biological criteria for wetlands to receive treated and disinfected sanitary effluent are included in the rule. The current description of "biological and aquatic community integrity" is amended to include plants as indicative of the aquatic community in the case of wetlands. The proposed rule cites procedures in the department's current Water Quality Management Plan that further outline the implementation process. Subsidence in wetlands in southern Louisiana has been caused by a combination of impoundment by artificial levees and flood control drainage. These features have essentially stopped the inflow of water and natural soil building materials into the wetlands that would normally be present during spring flooding events. Extensive scientific studies (including use attainability analyses) conducted over the past ten years or more on wetland sites in southern Louisiana have demonstrated that controlled discharges of treated municipal wastewater to these wetlands helps to control subsidence and increases wetland productivity. The basis and rationale for this rule are to establish protective wetlands criteria and designated uses for wetlands that may receive treated wastewater inflow.

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 IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 11. Surface Water Quality Standards

§1105. Definitions

* * *

Bottomland Hardwood Swamps—those areas inundated or saturated by surface water or groundwater of negligible to very low salinity at a frequency and duration sufficient to support, and that under normal conditions do support, bottomland hardwood vegetation. These ecosystems are commonly found wherever streams or rivers occasionally cause flooding beyond their channel confines. They are deciduous forested wetlands, made up of different species of gum (*Nyssa* spp.), oak (*Quercus* spp.), dwarf palmetto (*Sabal minor*), and bald cypress (*Taxodium distichum*), and other species. These swamps cannot tolerate continuous flooding; typically areas are flooded two to six months per year.

Brackish Marshes—those areas inundated or saturated by surface water or groundwater of moderate salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, brackish emergent vegetation. Typical vegetation includes bulltongue (*Sagittaria* spp.), wild millet (*Echinochloa walteri*), bullwhip (*Scirpus californicus*), sawgrass (*Cladium jamaicense*), wiregrass (*Spartina patens*), three-cornered grass (*Scirpus olneyi*), and widgeongrass (*Ruppia maritima*). *Brackish marshes* are also characterized by interstitial water salinity that normally ranges between 3 and 15 parts per thousand (ppt) or practical salinity units (psu).

* * *

Cypress-Tupelo Swamps—those areas inundated or saturated by surface water or groundwater of negligible to very low salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, cypress-tupelo vegetation. Typical vegetation includes water tupelo (*Nyssa Sylvatica* var. *aquatica*), bald cypress (*Taxodium distichum*), red maple (*Acer rubrum*), buttonbush (*Cephalanthus occidentalis*), and common wax myrtle (*Myrica cerifera*). *Cypress-tupelo swamps* can tolerate continuously flooded conditions and are divided into two subtypes: continuously flooded and seasonally flooded. Continuously flooded swamps are those areas that have standing water present all year round. They range from forests with a closed canopy to open canopy conditions with understory freshwater emergent wetland vegetation. Seasonally flooded swamps are those areas that are typically flooded for more than six months per year. They typically have a closed canopy that limits understory vegetation.

* * *

Forested Wetlands—a category of wetlands that includes *bottomland hardwood swamps*, *cypress-tupelo swamps*, and *oligotrophic seasonally flooded pine forests* as defined in this Section.

* * *

Freshwater Emergent Wetlands (including *freshwater marshes*)—those areas inundated or saturated by surface water or groundwater of negligible to very low salinity at a frequency and duration sufficient to support, and that under normal circumstances do support, freshwater emergent

vegetation. Typical vegetation includes cattail (*Typha angustifolia*), bulltongue (*Sagittaria* spp.), maiden cane (*Panicum hemitomon*), water hyacinth (*Eichomia crassipes*), pickerelweed (*Ponterderia cordata*), alligatorweed (*Altemanthera philoxeroides*), and *Hydrocotyl* spp. *Freshwater emergent wetlands* also are characterized by interstitial water salinity that is normally less than 2 ppt or psu. There are two subtypes of *freshwater emergent wetlands*: floating and attached. Floating wetlands are those areas where the wetland surface substrate is detached and is floating above the underlying deltaic plain (also called "buoyant" and "flotant"). Attached wetlands are those areas where the vegetation is attached to the wetland surface and is contiguous with the underlying wetland substrate and can be submerged or emergent.

Freshwater Swamps and Marshes—Repealed.

Intermediate Marshes—Repealed.

* * *

Non-Forested Wetlands—a category of wetlands that includes *freshwater emergent wetlands*, *brackish marshes*, and *salt (saline) marshes* as defined in this Section.

* * *

Oligotrophic Seasonally Flooded Pine Forests—palustrine, seasonally saturated pine communities on hydric soils that may become quite dry for part of the year and generally occur in flat or nearly flat areas not associated with a river or stream system. They are usually dominated by loblolly pine (*Pinus taeda*). These pine forests are seasonally flooded and receive very low nutrient inputs. Because of their oligotrophic nature, these forests are characterized by unique understory vegetation communities that may include insectivorous plants.

* * *

Saline Marshes—Repealed.

Salt (Saline) Marshes—those areas that are inundated or saturated by surface water or groundwater of salinity characteristic of nearshore Gulf of Mexico ambient water at a frequency and duration sufficient to support, and that under normal circumstances do support, saline emergent vegetation. Typical vegetation includes oystergrass (*Spartina alterniflora*), glasswort (*Salicornia* spp.), black rush (*Juncus roemerianus*), saltwort (*Batis maritima*), black mangrove (*Avicennia germinans*), and salt grass (*Distichlis spicata*). *Salt marshes* are also characterized by interstitial water salinity that normally exceeds 16 ppt or psu.

* * *

Wetlands—those areas that have one or more of the following attributes: support hydrophytic (water tolerant) vegetation during most of the year; contain predominately undrained hydric (water saturated) soils; and/or are periodically inundated or saturated by surface water or groundwater.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2401 (December 1999), LR 26:2545 (November 2000), LR 29:557 (April 2003), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

§1109. Policy

Water quality standards policies concerned with the protection and enhancement of water quality in the state are discussed in this Section. Policy statements on antidegradation, water use, water body exception categories, compliance schedules and variances, short-term activity authorization, errors, severability, revisions to standards, and sample collection and analytical procedures are described.

A. - B.3.f. ...

C. Water Body Exception Categories. Some water bodies, because of natural water quality or physical limitations, may qualify for an excepted use classification. Whenever data indicate that an excepted classification is warranted, the department will recommend the exception to the administrative authority for approval. In all cases where exceptions are proposed, the concurrence of the regional administrator of the EPA must be obtained and the opportunity for public participation must be provided during the exceptions review process. In most cases, the proposed exception will be considered during the public participation process along with a permit application or management plan update. Exceptions are allowed for the following four categories of water bodies: certain intermittent streams, man-made water bodies, naturally dystrophic waters, and wetlands. Requests for excepted water use classifications may be considered for certain water bodies that satisfy one of the following descriptions.

1. - 3. ...

4. Wetlands

a. *Wetlands*, as defined in LAC 33:IX.1105, are a valuable resource to the state of Louisiana. Because of the state's natural low elevations, extensive riverine and riparian environments, and the presence of the Mississippi River delta, Louisiana has a large and diverse amount of wetland habitat. Specific values of Louisiana wetlands include commercial, recreational, and cultural uses. In addition, Louisiana wetlands provide important biological and physiochemical functions that include, but are not limited to, buffering against hurricanes and storms, holding excess floodwaters during high rainfall or high tides, recharging groundwater aquifers used for drinking water and irrigation, and improving water quality by filtering pollutants and taking up nutrients.

b. There are two basic types of Louisiana wetlands: forested wetlands and non-forested, or marsh, wetlands. Forested wetlands include bottomland hardwood swamps, continuously flooded cypress-tupelo swamps, seasonally flooded cypress-tupelo swamps, and oligotrophic seasonally flooded pine forests. Non-forested or marsh wetlands include floating freshwater emergent wetlands, attached freshwater emergent wetlands, brackish marshes, and salt (saline) marshes. Each of these wetland types are defined in LAC 33:IX.1105.

c. A wastewater discharge may be proposed for a wetland of any defined type only if the discharge will not cause impairment of the wetland or applicable general and site-specific criteria.

d. Wetlands are assigned the following designated uses: secondary contact recreation and fish and wildlife propagation.

e. The applicable biological criteria for water bodies classified as wetlands under this exception are found in LAC 33:IX.1113.B.13.

f. Procedures for a proposed discharge to water bodies classified as wetlands can be found in the current Water Quality Management Plan, Volume 3, Permitting Guidance for Implementation of Louisiana's Water Quality Standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:966 (October 1991), LR 20:883 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2546 (November 2000), LR 29:557 (April 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

§1113. Criteria

A. - B.11. ...

12. Biological and Aquatic Community Integrity. The biological and community structure and function in state waters shall be maintained, protected, and restored except where not attainable and feasible as defined in LAC 33:IX.1109. This is the ideal condition of the aquatic community inhabiting the unimpaired water bodies of a specified habitat and region as measured by community structure and function. The biological integrity will be guided by the fish and wildlife propagation use designated for that particular water body. Fish and wildlife propagation uses are defined in LAC 33:IX.1111.C. The condition of these aquatic communities shall be determined from the measures of physical, chemical, and biological characteristics of each surface water body type, according to its designated use (LAC 33:IX.1123). Reference site conditions will represent naturally attainable conditions. These sites should be the least impacted and most representative of water body types. Such reference sites or segments of water bodies shall be those observed to support the greatest variety and abundance of aquatic life in the region as is expected to be or has been recorded during past surveys in natural settings essentially undisturbed by human impacts, development, or discharges. This condition shall be determined by consistent sampling and reliable measures of selected, indicative communities of animals (i.e., fish, invertebrates, etc.) and/or plants as established by the department and may be used in conjunction with acceptable chemical, physical, and microbial water quality measurements and records as deemed appropriate for this purpose.

13. Wetlands Criteria. Due to effluent addition, the discharge area of a wetland shall have no more than a 20 percent reduction in the rate of total above-ground wetland productivity over a five-year period as compared to a reference area. The *discharge area* is the area of a wetland directly impacted by effluent addition, typically within a 100-meter radius of the discharge pipe(s). For each location, the discharge area will be defined by the volume of discharge. The *reference area* is the wetland area that is nearby and similar to the discharge area but that is not impacted by effluent addition. Above-ground productivity is

a key measurement of overall ecosystem health in the wetlands of south Louisiana. Primary productivity is dependent on a number of factors, and the methods for measurement of above-ground productivity are found in the current Water Quality Management Plan, Volume 3, Permitting Guidance for Implementation of Louisiana's Water Quality Standards.

14. Other Substances and Characteristics. General criteria on other substances and characteristics not specified in this Subsection will be developed as needed.

C. Numerical Criteria. Numerical criteria identified in LAC 33:IX.1123, Table 3, apply to the specified water bodies, and to their tributaries, distributaries, and interconnected streams and water bodies contained in the water management subsegment if they are not specifically named therein, unless unique chemical, physical, and/or biological conditions preclude the attainment of the criteria. In those cases, natural background levels of these conditions may be used to establish site-specific water quality criteria. Those water bodies officially approved and designated by the state and EPA as intermittent streams, man-made water bodies, naturally dystrophic waters, or wetlands may be excluded from some or all numerical criteria as stated in LAC 33:IX.1109. Although naturally occurring variations in water quality may exceed criteria, water quality conditions attributed to human activities must not exceed criteria when flows are greater than or at critical conditions (as defined in LAC 33:IX.1115.C).

C.1. - Table IA.Footnote d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR 17:1083 (November 1991), amended LR 20:883 (August 1994), LR 24:688 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2402 (December 1999), LR 26:2547 (November 2000), LR 27:289 (March 2001), LR 30:1474 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

A public hearing will be held on September 26, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the 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. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ068. Such comments must be received no later than October 3, 2006, 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 WQ068. 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; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Wetlands Assimilation**

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

This proposed rule is expected to have no significant costs to state or local governmental units. It is anticipated that there will be benefits to local governments through reduced costs for wastewater treatment. The wetlands can assimilate more treated wastes than existing water bodies, thus reducing the treatment expenses for local government.

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

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

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

There are no estimated significant costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment as a result of the proposed rule.

Herman Robinson, CPM
Executive Counsel
0608#045

Robert E. Hosse
Staff Director
Legislative Fiscal Officer

NOTICE OF INTENT

**Office of the Governor
Commission on Law Enforcement and Administration of
Criminal Justice**

General Subgrant Guidelines
(LAC 22:III.Chapter 63)

In accordance with the provision of R.S. 15:1204, R.S. 14:1207, and R.S. 49:950 et seq., the Administrative Procedure Act, the Commission on Law Enforcement and Administration of Criminal Justice hereby adopts rules and regulations relative to subgrants. There will be no impact on family earnings or the family budget as set forth in R.S. 49:972.

Title 22
CORRECTIONS, CRIMINAL JUSTICE, and LAW
ENFORCEMENT

Part III. Commission on Law Enforcement and
Administration of Criminal Justice

Subpart 6. Program Operational Policies

Chapter 63. POST Equipment and Training Grants

§6301. Adoption

A. The following operational policies are hereby adopted by the Peace Officer Standards and Training Council pursuant to LAC 22 Part III Subpart 3 Chapter 45:4511 and shall be effective upon approval of the Louisiana Commission on Law Enforcement as provided therein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:

§6303. Eligible Agencies

A. In addition to training, Act 562 of the 1986 Legislative Session provides for "assistance" to local law enforcement agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:

§6305. Eligible Purchases

A. Assistance funds may be used to purchase law enforcement or criminal justice-related equipment. These purchases may include, but are not limited to, the following items: portable radios, computer equipment, monitors, printers, scanners, electronic word processors, target systems (no targets), audio-visual equipment, television, VCR, telefax machines, training equipment and supplies, textbooks and manuals, surveillance equipment/cameras (grants for surveillance equipment will require a special condition), body armor (bullet-proof vests), and metal detectors. Video cameras, laptop computers, radio equipment (not radar), and cellular telephones are allowable for police automobiles.

B. When funds are used for portable radios, computers, etc., POST will allow accessories to be purchased with grant funds when used in purchasing a whole package. Example: portable radio with microphone, battery pack and carrying case, etc. It is restricted to purchase a microphone without purchasing the whole package.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:

§6307. Funding Restrictions

A. There is a general restriction prohibiting the funding of the following items:

1. all mobile vehicles (automobiles, vans, airplanes, boats, etc.), gasoline, tires, automobile repair and maintenance, insurance, uniforms, leather and accessories, firearms, tazers, and ammunition;

2. all office equipment and furniture: desks, typewriters, file cabinets, chairs, tables, credenzas, lamps, copiers, etc. Certified training academies may purchase copiers, student desks and/or chairs and file cabinets for proper storage of training records;

3. equipment purchased solely for recreational purposes is ineligible for funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:

§6309. Renovation

A. Act 562 assistance funds may not be used for renovation. Exceptions to this prohibition may be made by the full commission, if renovations are needed for a locally-funded, certified academy to maintain compliance with POST standards and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:

§6311. Training

A. In lieu of equipment purchases, a regional planning district may request funding to reimburse for in-service, specialized and advanced training costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:

§6313. Liquidation Period

A. The liquidation period for all Act 562 assistance grants shall be June 1 of each fiscal year. Use of residual funds during the year-end liquidation period is limited to those agencies who submit revenues on a regular basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:

A hearing has been scheduled on the proposed Rule and a meeting of the Louisiana Commission on Law Enforcement is scheduled for September 14, 2006, at the Lake Charles Civic Center. Interested persons may submit written comments on this proposed Rule no later than September 25, 2006 at 5 p.m. to Bob Wertz, Louisiana Commission on Law Enforcement, 1885 Wooddale Boulevard, Room 1230, Baton Rouge, LA 70806.

Michael A. Ranatza
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

RULE TITLE: General Subgrant Guidelines

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

The revision and simplification of existing rules will not have any impact on expenditures for state or local governmental units as policies which have been standard practice for many years have been incorporated into the administrative rules.

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

Implementation of the proposed rule will not effect revenue collections of state and local governmental units.

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

It is estimated that implementation of the proposed rules will have little or no effect on directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition or employment in the public or private sector as a result of this proposal.

Michael A. Ranatza
Executive Director
0608#033

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Office of Community Development**

**Local Government Assistance Program
(LAC 4:VII.Chapter 23)**

Under authority of House Bill 2 (Act 27) of the 2006 Regular Legislative Session, and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Division of Administration, Office of Community Development proposes to adopt LAC 4:VII.Chapter 23.

The proposed Rule will serve as guidelines for units of local government to apply for grants from the Office of Community Development for infrastructure related projects. The proposed Rule addresses the following areas of purpose, application process, payments and reimbursements, and programmatic assurances.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 23. Local Government Assistance Program

§2301. Purpose

A. The Local Government Assistance Program (LGAP) provides financial assistance to local units of government in rural areas. The LGAP program will be administered by the Office of Community Development (OCD).

B. All municipalities and parishes within the state of Louisiana are eligible to apply for assistance except the following HUD (Housing and Urban Development) entitlement cities: Alexandria, Baton Rouge, Bossier City, Kenner, Lafayette, Lake Charles, Monroe, New Orleans and Shreveport.

C. Local government classifications are defined as: Villages (pop. 1-999), Towns (pop. 1,000-4,999), Cities (pop. 5,000-35,000) and Parish governments.

D. OCD shall develop an application procedure satisfying the purposes and intentions of the LGAP.

E. The Office of Community Development applies the following guidelines to any project or activity funded.

1. At the start of each fiscal year, the executive director of OCD shall determine the equal funding level for all eligible parishes based on the total amount budgeted as aid to local governments for LGAP grants.

2. Applications will only be accepted for the following eligible activities; fire protection, sewer, water, renovations to essential governmental buildings, police protection, land acquisition, demolition, equipment, roads, drainage, and reasonable engineering costs (if associated with construction).

3. In some cases, an exception may be made to the eligible activities. In those instances, an overwhelming case must be made for the need for the project and documentation must be included which supports that the project will alleviate the identified health, safety, or quality of life concerns of the citizens of the locality.

4. Funds from this program cannot be used to pay consulting fees charged to a unit of government for the preparation of the application, for administrative costs by agents of the project sponsor or any third party. Also, funds cannot be used to pay for previously incurred debt, improvements to private property, overtime for government employees, administration, engineering only or planning only projects. LGAP funds are not intended for salary only projects or ongoing salaried positions.

5. Parish governments may request funding for projects that serve a parish-wide area or an unincorporated area within the parish.

6. Applicants may not exceed stated funding levels as outlined in the LGAP application guidelines for any fiscal year, except in those circumstances where other eligible applicants within each parish agree by resolution to allow funding levels to be exceeded.

7. Two-year contracts shall be issued for LGAP grants by OCD. Contract extensions and changes to the project must be requested in writing by the grantee and approved in writing by the executive director of OCD.

AUTHORITY NOTE: Promulgated in accordance with Act 27 of the 2006 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 32:

§2303. Application Process

A. LGAP applications are available from the Office of Community Development to all municipalities and parishes that request them. All requests for information may be submitted via mail to the Office of Community Development, P.O. Box 94095, Baton Rouge, LA 70804-9095.

B. Applications will be rated by OCD staff and award amounts will be based upon predetermined internal rating criteria.

C. All applicants must be authorized by law to perform governmental functions, and must be subject to state audit.

D. The most recent available population figures are used to determine the eligibility for funding of municipalities based on appropriations by the legislature (the funding is outlined in OCD application guidelines for LGAP funds).

E. There will be a level of funding set aside for applications that are determined to be of an emergency nature. Any unused emergency funds will be reallocated through the regular program.

AUTHORITY NOTE: Promulgated in accordance with Act 27 of the 2006 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 32:

§2305. Payments and Reimbursement

A. Grant recipients are required to maintain an audit trail verifying that all funds received under this program were used to fulfill the stated purpose identified in the approved application.

B. Payment shall be made to the grantee upon production of invoices and approval of the grantee's request for payment by OCD, according to the contract.

C. Use of grant funds for any project other than that described in the contract will be grounds for OCD to terminate the contract and revoke the funds for the project.

D. All invoices related to the project are the responsibility of the grantee, and must be submitted to and approved by OCD before the funds will be released to the grantee. The grantee remains responsible for payments to its vendors.

AUTHORITY NOTE: Promulgated in accordance with Act 27 of the 2006 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 32:

§2307. Programmatic Assurances

A. The grantee will hold harmless the State of Louisiana, Division of Administration, Office of the Governor, and Office of Community Development as a term and condition of the contract.

B. OCD will de-obligate funds from any unexpended amount; whether by failure to start a project in the agreed upon time frame in the contract or by unexpended funds in an officially closed project, or from revoked grant awards. All de-obligated funds will be reallocated through the regular program.

C. Failure of the grantee to abide by any article of the local agency assurances section of the grant application or the contract, including state audit procedures, federal and state laws, state ethics rules and policy guidelines of OCD, shall result in revocation of the grant award and the grantee will be required to repay the project funds to OCD.

D. No grantee will be allowed more than two open LGAP grants.

E. The grantee will assure that it will comply with R.S. 24:513 (State Audit Law), and state of Louisiana public bidding procedures, as well as comply with all other relevant federal and state laws, executive orders, and/or regulations. Failure to comply with any part of this contract will result in termination of this grant and will require that all funds paid be returned to the Office of Community Development.

AUTHORITY NOTE: Promulgated in accordance with Act 27 of the 2006 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Community Development, LR 32:

Family Impact Statement

These proposed Rules should not have any known or foreseeable impact on any family. There should be no known effect on: the stability of the family; the authority and rights of parents regarding the education and supervision of their children; the functioning of the family; on family earnings and family budget; the behavior and responsibility of children; or the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons may submit written comments to Suzie Elkins, Executive Director, Office of Community Development, P.O. Box 94095, Baton Rouge, LA 70804-9185; or physically delivered to Claiborne Building, Seventh Floor, 1201 N. Third St., Baton Rouge, LA 70804. All comments must be submitted (mailed or received) by 5 p.m., on September 11, 2006.

Michael Taylor
Director

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

RULE TITLE: Local Government Assistance Program

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

A total of \$10 million was appropriated in HB 2 (Act 27) of the 2006 Regular Legislative Session to the Division of Administration's Community Development Block Grant (CDBG) program to provide assistance to local governments for infrastructure related projects. Of the total allocation, \$1 million will be set aside for emergency infrastructure projects. Funding levels for future fiscal years is unknown and will be dependent upon legislative appropriations. Administrative costs associated with this program will be funded with state match dollars appropriated to the CDBG program and not through the \$10 million appropriation in Act 27 for the Local Government Assistance Program.

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

The implementation of the proposed rule will increase revenue collections of local governmental units. Due to the nature of this reimbursable program, local governments in certain instances may show grant awards as additional revenue in their budgets.

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

The implementation of this proposed rule will contribute to the overall benefit of citizens of the local governments receiving grant awards.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The implementation of this proposed rule will have a positive effect on employment in situations where contractors are hired to perform labor for projects.

Michael Taylor
Director
0608#034

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Office of Facility Planning and Control**

**Performance Based Energy Efficiency Contracting
(LAC 34:V.105)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the provisions of R.S. 39:1490(B), the Division of Administration, Office of Facility Planning and Control hereby gives notice of its intent to amend Title 34, Government Contracts,

Procurement and Property Control, Part V, Procurement of Professional, Personal, Consulting and Social Services, Chapter 1, Procurement and Property Control, Part V, Procurement of Professional, Personal, Consulting and Social Services, Subchapter A, General Provisions. These rule changes amend the previous Rule so as to comply with Act 604 of the 2006 Regular Session of the Louisiana Legislature. The effect of these rule changes is to remove the Department of Natural Resources from the process of review and evaluation of performance based energy efficiency contracts and removes the requirement that the commissioner of administration consult with the DNR to adopt rules and regulations to implement the performance-based energy efficiency contract process.

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.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part V. Procurement of Professional, Personal, Consulting and Social Services

Chapter 1. Procurement of Professional, Personal, Consulting and Social Services

Subchapter A. General Provisions

§105. Performance-Based Energy Efficiency Contracting

A. Preparation of Requests for Proposals

1. Performance contracts shall be considered to be consulting services contracts under the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and shall be awarded in accordance with the provisions of that Chapter, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section.

2. Prior to its preparation of an RFP, a state agency, as defined in R.S. 39:2 (hereinafter, "user agency") shall perform a needs analysis in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and the rules and regulations promulgated by the Division of Administration, through its Office of Contractual Review ("OCR") pursuant to that Chapter. Such needs analysis shall be in a form approved by the Commissioner of the Division of Administration or his designated agent and shall include a detailed audit of energy use.

3. Prior to its preparation of an RFP, a user agency shall submit its needs analysis to the Commissioner of the Division of Administration or his designated agent for approval.

4. Upon approval of a user agency's needs analysis pursuant to this Section, such user agency shall prepare an RFP in a form approved by OCR, which form shall require proposers to separately itemize the costs and savings associated with each proposed energy cost savings measure ("ECSM"). In accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and the rules and regulations promulgated by OCR pursuant to that Chapter, every RFP shall indicate the relative importance of price and other evaluation factors, shall clearly define the tasks to be performed under the performance contract, the

criteria to be used in evaluating the proposals and the time frames within which the work must be completed. Prior to advertising its RFP, a user agency shall submit it to the Commissioner of Administration or his designated agent and obtain his written consent to the advertisement of the RFP.

5. Upon approval of a user agency's RFP, such user agency shall advertise its RFP in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes and the rules and regulations promulgated by OCR pursuant to that Chapter.

B. Evaluation of Submitted Proposals

1. A user agency shall review any proposals it timely receives in response to its RFP and shall submit to the Office of Facility Planning and Control ("FPC") the results of its review, along with each proposal that is responsive and responsible and otherwise in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section. A user agency shall not make a final selection from among the proposals it submits to FPC.

2. Prior to the award of any performance contract, FPC shall evaluate all proposals submitted by a user agency for that performance contract. In its evaluation, FPC shall include suggestions, if appropriate, for the resolution of any unique issues arising in connection with a particular proposed performance contract. FPC's evaluation shall also include, but not be limited to, a consideration of the following:

a. whether proposed ECSMs are in compliance with the provisions of R.S. 39:1496.1;

b. whether proposed ECSMs will generate net savings, as those terms are defined in Subsection E of this Section; and

c. whether the proposed protocol for measuring and verifying the energy savings guaranteed in the contract conforms to the latest standards set forth by the International Performance Measurement and Verification Protocol.

3. FPC shall, within 60 days of the receipt of the submitted proposals, forward to the Commissioner of Administration or his designated agent its written evaluation of the submitted proposals, along with the results of the review of the submitted proposals by the user agency. FPC shall not make a final selection from among the proposals it forwards to the Commissioner of the Division of Administration except if FPC has been designated as the Commissioner's agent for that specific purpose.

4. Prior to the award of any performance contract, the Commissioner of the Division of Administration or his designated agent may retain an independent consultant in accordance with this Section. Such independent third-party consultant shall evaluate all proposals and written evaluations submitted to the Commissioner of the Division of Administration or his designated agent. Such evaluation shall be in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section. After completing its evaluation, an independent consultant shall submit to the Commissioner of the Division of Administration or his designated agent the written results of such evaluation. An independent consultant shall not make a final selection from among the proposals it evaluates.

5. Prior to retaining an independent third-party consultant pursuant to this Section, the Commissioner of the Division of Administration or his designated agent shall require every proposed independent consultant to execute a written certification verifying that he or she has no direct conflict of interest as to the user agency that requested the proposals to be evaluated, the proposals themselves and/or those who submitted the proposals to the user agency. Such written certification shall be in a form approved by the legislative auditor. In order to assist the legislative auditor in verifying the independence of a proposed independent consultant, such proposed independent consultant shall provide to the legislative auditor any documentation or information the legislative auditor requests. A proposed independent consultant shall not be retained, unless the legislative auditor has determined that such proposed independent consultant has no direct conflict of interest as to the user agency that requested the proposals to be evaluated, the proposals themselves and/or those who submitted the proposals to the user agency.

6. After completing his review of the submitted proposals and evaluations prepared by the independent consultant, if any, pursuant to this Section, the Commissioner of the Division of Administration or his designated agent shall provide written notification to a user agency that the Commissioner of the Division of Administration or his designated agent has consented to the award of a performance contract to a specified energy services company ("ESCO") or that he has not consented to the award of a performance contract. Pursuant to the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section, such consent shall be given to the responsible ESCO whose proposal is determined by the Commissioner of the Division of Administration or his designated agent to be the most advantageous to the state of Louisiana, taking into consideration all of the evaluation factors set forth in the RFP, as well as any evaluations or recommendations provided by the user agency, and the independent consultant, if any. In the event that the Commissioner of the Division of Administration or his designated agent determines that consent to the award of a performance contract would not be advantageous to the state of Louisiana, he shall provide the user agency with written reasons for his decision to withhold his consent.

7. Except as explicitly set forth in this Section, no party shall disclose information derived from submitted proposals prior to the consent by the Commissioner of the Division of Administration or his designated agent to the award of a performance contract to a specified ESCO.

C. Negotiation of Performance Contracts

1. A user agency shall negotiate with an approved ESCO a performance contract in a form approved by OCR. The process of such negotiation shall be in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section. The Commissioner of the Division of Administration or his designated agent may require that an independent consultant retained pursuant to this Section participate on behalf of a

user agency in the negotiation of a performance contract with an approved ESCO.

a. Notwithstanding any other provisions of this Section, every performance contract negotiated pursuant to this Section shall set forth the total units of energy saved, the method, device or financial arrangement to be used to establish the amount of such savings, the cost per unit of energy and, if applicable, the basis for any adjustment in the cost per unit of energy during the term of the contract.

b. Notwithstanding any other provisions of this Section, every performance contract negotiated pursuant to this Section shall, with respect to each ECSM included in such performance contract and in addition to fulfilling any other requirements set forth in this Section, state the following:

- i. the detailed scope of work to be performed pursuant to the performance contract;
- ii. the initial price to be paid by the user agency;
- iii. the annual energy cost savings guaranteed by the ESCO;
- iv. the annual maintenance savings guaranteed by the ESCO, including, but not limited to, services, parts, materials, labor and equipment;
- v. the annual new maintenance costs, including operating expenses added as a result of new equipment installed or service performed by the ESCO; and
- vi. the total annual savings guaranteed by the ESCO. *Total annual savings* means annual energy cost savings plus annual maintenance savings minus annual new maintenance costs.

c. Notwithstanding any other provisions of this Section, no payment shall be made to an ESCO pursuant to a performance contract unless such performance contract complies with Paragraph C.1.

2. The term of every performance contract negotiated pursuant to this Section and term of any obligation incurred by a user agency to fund a performance contract shall be for a period equal to the lesser of 20 years or the average life of the equipment installed by the ESCO and shall contain a guarantee of energy savings, which guarantee shall, at a minimum, ensure total annual savings sufficient to fully fund any financing arrangement entered into pursuant to such performance contract.

3. Every performance contract negotiated pursuant to this Section shall contain the following clause: "The continuation of this contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the contract. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which funds have been appropriated. Such termination shall be without penalty or expense to the agency, board or commission except for payments which have been earned prior to the termination date."

4. A user agency shall submit a negotiated performance contract to OCR for its review and approval. A user agency's submission of a negotiated performance contract shall be in accordance with the provisions of Title 39, Chapter 16 of the Louisiana Revised Statutes, the rules and regulations promulgated by OCR pursuant to that Chapter, and this Section.

5. At the time a performance contract is executed, the contracting ESCO shall submit a certified or cashiers check, payable to the Commissioner of the Division of Administration or his designated agent, in a sum equal to no more than 2 1/2 percent of the total value of the proposed performance contract. The percentage of such total value and the means of calculating such total value shall be determined by the Commissioner of the Division of Administration or his designated agent and shall be set forth in the performance contract.

D. Audits of Performance Contracts

1. An ESCO that enters into a performance contract shall provide the user agency with all performance information and other reports required by the performance contract.

a. An ESCO's reports to the user agency shall conform with the standards of the International Performance Measurement and Verification Protocol.

b. An ESCO's reports to the user agency shall, in addition to fulfilling any other requirements set forth in its performance contract or in this Section, state the following:

i. the name of the user agency;
ii. the ESCO's name and address;
iii. whether the payment obligation under the performance contract is either:

(a). set as a percentage of the annual energy cost savings attributable to the services or equipment under the performance contract; or

(b). guaranteed by the ESCO to be less than the annual energy cost savings attributable to the services or equipment under the performance contract;

iv. the total annual savings guaranteed by the ESCO;

v. the total amount the user agency is required to pay under the performance contract and the term of the contract;

vi. the total amount paid to date by the user agency and the amount paid each year to date under the performance contract;

vii. any costs paid by the user agency which were associated with the set-up or maintenance of the performance contract or with repair or maintenance of the equipment used under the performance contract;

viii. the annual cost to the user agency of energy or other utilities beginning two years prior to operation of the performance contract and during the operation of the performance contract; and

ix. the annual energy cost savings each year, shown also as a percentage of the annual amount to be paid by the user agency under the performance contract. When calculating annual energy cost savings, maintenance savings shall be included. *Maintenance savings* means operating expenses eliminated and future capital replacement expenditures avoided by the user agency as a result of new equipment installed or services performed by the ESCO.

2. Upon a request by a user agency, by the Commissioner of the Division of Administration or his designated agent or by the legislative auditor, an ESCO shall provide any working documents, accounting records or other materials relating to costs, pricing or any other aspect of the ESCOs performance pursuant to a performance contract. Documents, records and other materials provided by an

ESCO in accordance with this Section shall be subject to review and verification by a user agency, by the Commissioner of the Division of Administration or his designated agent, by the legislative auditor, or by an independent third party selected by a user agency, by the Commissioner of the Division of Administration or by the legislative auditor.

3. User agencies shall provide to the legislative auditor copies of all performance information and other reports submitted by an ESCO pursuant to a performance contract or this Section. The legislative auditor shall conduct periodic audits of performance contracts, both during the term of such performance contracts and upon the completion of such performance contracts.

E. Retention by User Agencies of Net Savings Generated by Energy Cost Savings Measures

1. Pursuant to R.S. 39:254.B(1), a user agency that is able to demonstrate net savings from implementing an ECSM by means of a performance contract may retain its net savings relating to such ECSM, until the investment costs of implementing the ECSM are paid in full, and thereafter may retain one half of such net savings over the remaining useful life of the ECSM. Such retained net savings shall be from funds appropriated or allocated to the user agency for utility costs.

2. The Commissioner of the Division of Administration or his designated agent shall develop and promulgate such rules and regulations as are necessary to provide for the measurement and verification of net savings relating to ECSMs.

3. For the purposes of these rules, ECSM refers to a repair, equipment modification, procedure, course of action or other step taken which lowers energy costs.

4. For the purposes of these rules, *net savings* from the implementation of ECSMs shall be defined as measurable and verifiable energy cost savings that directly result from such implementation and shall be determined in accordance with the following provisions.

a. ESCOs shall employ energy savings measurement techniques that embody the best practical methods of determining net savings generated by the ECSMs to be evaluated. Such measurement techniques shall be fully defined and set forth in the RFP and performance contract that includes the ECSMs. In selecting a measurement technique, an ESCO shall consider the complexity of the ECSM to be evaluated and other factors that may affect energy use, such as changes in the mission of a facility, population, space utilization and weather.

b. Energy savings measurement may be based upon estimates, calculations or computer models, if metering is not practical.

c. Every RFP and performance contract shall set forth in detail the method to be used by an ESCO in order to determine the unit energy costs by which an energy baseline and energy savings are to be multiplied. For the purposes of these rules, an energy baseline shall be defined as the amount of energy that would be consumed annually without implementation of a given ECSM and shall be based upon historical metered data, engineering calculations, submetering of buildings or other energy-consuming systems, building load simulations, statistical regression analysis, or some combination of these methods.

d. The selection of every energy savings measurement technique and method of determining unit energy costs or energy baseline shall be subject to the approval of the Commissioner of the Division of Administration or his designated agent, who shall have the authority to modify such techniques and methods if he determines, in his sole discretion, that such modification is warranted by changed conditions or other circumstances affecting the accuracy or appropriateness of such techniques and methods.

e. Net savings must be real savings of money that the state of Louisiana either is currently spending or has budgeted to spend in the future. Such money must be available in the state's budget for payments against the performance contract involved. Net savings may be either recurring or one-time cost savings.

f. Examples of net savings shall include, but not be limited to, recurring operation, maintenance and repair tasks, which are currently performed by the state or its agents and which are directly related to the energy-consuming system affected by an ECSM. The savings associated with such tasks shall be net savings, if the ESCO assumes such tasks, reduces the burden of such tasks or eliminates such tasks. The Commissioner of the Division of Administration or his designated agent shall determine whether an ESCO's action with respect to a given recurring task generates net savings and shall determine the value of such net savings.

g. Net savings may also include one-time cost savings of money budgeted by the state and available to fund a project or task that is made unnecessary by the implementation of an ECSM. The Commissioner of the Division of Administration or his designated agent shall determine whether an ESCO's action with respect to a given one-time project or task generates net savings and shall determine the value of such net savings.

h. Any utility company rebates or other incentives arising in connection with the implementation of an ECSM shall be the property of the user agency. An ESCO shall provide any assistance necessary in order to permit a user agency to apply for and receive such rebates or other incentives.

F. Grandfathered Performance Contracts

1. Notwithstanding any other provision of this Section, where an RFP or a proposed performance contract is exempt from the application of Subparagraphs (a) through (d) of R.S. 39:1496.1.E(1), the selected ESCO shall, at the time a performance contract is executed, submit a certified or cashier's check, payable to the Commissioner of the Division of Administration or his designated agent, in a sum equal to no more than 1 percent of the total value of the proposed performance contract. The percentage of such total value and the means of calculating such total value shall be determined by the Commissioner of the Division of Administration or his designated agent and shall be set forth in the performance contract.

2. Where an RFP or a proposed performance contract is exempt from the application of Subparagraphs (a) through (d) of R.S. 39:1496.1.E(1), such RFP or proposed performance contract shall not be subject to the application of Subsection A or B of this Section but shall be subject to the remaining provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office Facility Planning and Control, LR 31:640 (March 2005), amended LR 32:

All interested persons are invited to submit written comments on the proposed regulations. Comments must be received no later than September 11, 2006, at 4:30 p.m., and should be sent to Manuel J. Martinez, Facility Planning and Control, P.O. Box 94095, Baton Rouge, LA 70804-9095 or to fax (225) 342-7624.

Jerry W. Jones
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Performance Based Energy Efficiency Contracting

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

There is no anticipated net cost to the state as a result of this rule change. Under the existing rule, the projected cost of \$25,000 annually plus a 10% increase each year in FY 07 was to be incurred by DNR when performance based energy efficiency contracts were issued. No contracts have been issued to date under the existing rule. In the future, as contracts are issued, the aforementioned cost burden will shift to the Office of Facility Planning and Control. The source of funds for this expense will be an administrative fee which was authorized by Act 989 of 2003.

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

There is no expected impact on revenue collections of state or local governmental units due to this rule.

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

This rule has no expected impact upon costs and/or economic benefits to any persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no expected impact upon competition and employment.

Jerry W. Jones
Director
0608#047

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Office of Information Technology

Submitting and Receiving Electronic Bids (LAC 4:XV.Chapter 7)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and in order to comply with the legislative mandates of Act 831 of the 2003 Regular Session and Act 203 of the 2006 Regular Session of the Louisiana Legislature, the Office of the Governor, Division of Administration, Office of Information Technology (OIT), proposes to adopt standards relative to submitting and receiving electronic bids.

**Title 4
ADMINISTRATION**

Part XV. Information Technology

Chapter 7. Submitting and Receiving Electronic Bids for Public Works Contracts and for the Purchase of Materials and Supplies by Political Subdivisions

§701. General Provisions

A. Electronic bid is to be an alternative, rather than exclusive, method to a paper bid.

B. In addition to including the information required for paper bidding, when accepting bids electronically, the advertisement must:

1. specify any special condition or requirement for the submission;

2. contain the electronic address of the public entity.

C. Online Service Provider Minimum Requirements

1. Compliance with applicable law and rules:

a. Public Works contract law—R.S. 38:2212;

b. materials and supplies contract law—R.S. 38:2212.1;

c. the Louisiana Uniform Electronic Transaction Act—R.S. 9:2601-2619, particularly R.S. 9:2619(A) which provides that the commissioner of administration shall encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this state, other states, federal government, and nongovernmental persons interacting with governmental agencies of this state [R.S. 9:2619(A)] while recognizing that, if appropriate, standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing most appropriate standard for particular application. [R.S. 9:2619(B)];

d. Louisiana Administrative Code, Title 4, Part XV, Chapter 7—"Implementation of Electronic Signatures in Global and National Commerce Act—P.L. 106-229";

e. security standards promulgated by the Office of Information Technology of the state's Division of Administration.

2. Be accessible over Internet via a modem or a network connection.

3. Be available daily, 7 days a week, 24 hours daily, except for maintenance, and be reliable with better than 99.95 percent uptime with backup.

4. Provide two-way service—publishes on the Internet public works bid-related information from the political subdivision to the contracting community, and allows online, secure public works bid submission from the contracting community to the political subdivision.

5. Automatically send bid receipt to bidder whenever a bid is submitted to the provider, with the receipt digitally signed by the provider and using the same technology used by the bidder to sign the bid.

6. Have accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

7. Ensure that bid cannot be read by anyone until the public bid opening. When bid is submitted to the provider, bid must be encrypted before sending using the political subdivision's key. Encryption level must ensure security.

8. Ensure that if a bidder requests that an electronic bid be withdrawn before the bid deadline, it will not be passed on, or be accessible, to the political subdivision.

9. Ensure that only the last electronic bid submission from a person is kept and passed on, or made accessible, to the political subdivision.

10. Ensure that bid is not passed on, or accessible, to political subdivision until the public bid opening.

11. Enable electronic bid bond submission and verification with at least two participating surety agencies.

12. Ensure secure digital signature.

13. Uses public/private key pair technology for encrypting and digitally signing documents.

14. Provide telephone support desk, at a minimum, from 8 a.m. to 7 p.m., Monday through Friday, except for legal holidays. Provides voice mail after business hours with messages being addressed the next business day. E-mail and fax support addresses are available 24 hours a day and be answered the next business day.

AUTHORITY NOTE: Promulgated in accordance with Act 831 of the 2003 Regular Session of the Louisiana Legislature and Act 203 of the 2006 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 32:

Family Impact Statement

Pursuant to R.S. 49:972, the Office of Information Technology has considered the impact of the proposed Rule and found that if adopted, the proposed Rule would have no impact on the stability or the functioning of the family, the authority and rights of the parents regarding the education and supervision of their children, family earnings and family budget, or the ability of the family or a local government to perform any function contained in the Rule.

Interested persons may submit written comments on this proposed Rule to Jerry Guillot, Chief Counsel, Louisiana Advisory Commission on Intergovernmental Relations, P.O. Box 94183, Baton Rouge, LA 70804. All comments received on or before September 11, 2006 will be considered.

Rizwan Ahmed
Chief Information Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Submitting and
Receiving Electronic Bids**

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

There are no implementation costs to the state associated with this rule change. For political subdivisions with the technical infrastructure already in place to support the receipt of electronic bids, there are no anticipated implementation costs. For political subdivisions without the necessary technical infrastructure in place, there will be varying implementation costs dependent upon the implementation methodology.

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

There are no estimated effects on revenue collections of state or local governmental units.

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

Any estimated costs to directly affected persons or non-governmental groups should be recouped in paper and transportation savings.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment.

Rizwan Ahmed
Chief Information Officer
0608#052

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Louisiana Recovery Authority**

Louisiana Recovery Authority
(LAC 4:VII.Chapter 25)

Notice is hereby given, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., that the Office of the Governor, Louisiana Recovery Authority, pursuant to authority vested in the Louisiana Recovery Authority by R.S. 49:220.1 et seq., proposes to adopt rules governing the Louisiana Recovery Authority Board, LAC 4:VII (Chapter 22), to provide for the operation and governance of the Louisiana Recovery Authority Board and task forces and committees of the board.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 25. Louisiana Recovery Authority

§2501. Board Members, Terms of Office, Expense Reimbursement

A. The Louisiana Recovery Authority Board shall provide leadership and oversight for the activities of the Louisiana Recovery Authority. The board shall consist of 33 members. Twenty-nine members shall be appointed by and serve at the pleasure of the governor subject to Senate confirmation with no less than two members appointed from each congressional district. In addition to the appointed members, the speaker and speaker pro tempore of the House of Representatives and the president and president pro tempore of the Senate, or their designees who shall be members of the Louisiana Legislature, shall be members of the board.

B. Appointed board members shall serve six year staggered terms. Of the initial members appointed, no more than nine members shall serve terms of two years, no more than 10 members shall serve terms of four years and no more than 10 members shall serve terms of six years, as designated by the governor.

C. Vacancies in the office of an appointed board member shall be filled in the manner of the original appointment for the remainder of such term.

D. Appointed members of the board shall serve without compensation, but may be reimbursed for reasonable and necessary travel expenses upon the approval of the chairman in accordance with the State General Travel Regulations, PPM 49. Ex officio members of the board may seek per

diem and mileage reimbursement in accordance with the rules of his respective house of the legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of the Governor, Louisiana Recovery Authority, LR 32:

§2503. Selection of Chairman and Vice Chairman, Election of Other Officers

A. The chairman and vice chairman of the board shall be selected by the governor. The board may elect other officers as it deems necessary to provide functions required as assigned by the board.

B. The chairman of the board shall be the principal executive officer of the board and shall, in general, supervise and control all of the business and affairs of the board. The chairman shall, when present, preside at all meetings and shall perform duties incident to the office of the chairman and other such duties as may be prescribed by the members of the board from time to time.

C. The vice chairman shall perform the duties of the chairman in the absence of the chairman or in the event of his death, inability, or refusal to act. When acting as the chairman, the vice chairman shall have all the powers of and be subject to all the restrictions placed upon the chairman. The vice chairman shall perform such other duties as from time to time may be assigned to him by the chairman or members of the board.

D. In the event the board creates the office of secretary, the secretary shall keep the minutes of the meetings in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of state law, be custodian of the board records and keep a register of the post office address of each member which shall be furnished to the secretary by such member, and, in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the chairman or by the members of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of the Governor, Louisiana Recovery Authority, LR 32:

§2505. Meetings

A. The board shall meet according to a schedule established by the board, at the call of the chairman, and as otherwise provided by the board.

B. Notice of meetings shall be given to board members and to the general public in accordance with R.S. 42:7.

C. All meetings of the board shall be open, except as otherwise provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of the Governor, Louisiana Recovery Authority, LR 32:

§2507. Committees and Task Forces

A. The board shall appoint an audit committee to ensure best practices and procedures in the management of any funds received, expended, or disbursed by the Louisiana Recovery Authority. The audit committee shall receive and review all reports produced by the inspector general, the legislative auditor, the independent accounting firm or firms engaged by the state or any agency of the state, and by any

audit firm or firms retained by the Louisiana Recovery Authority. The audit committee shall present all findings of such reports to the board and make recommendations to the board as appropriate.

B.1. In addition to the audit committee, the board may also create task forces and committees as appropriate which may include members of the board and other stakeholders and conduct work through the use of such task forces and committees, provided that all final decisions shall be by a vote of the board.

2. Task forces and committees shall include, but not be limited to the following:

- a. Economic and Workforce Development Task Force;
- b. Public Safety Task Force;
- c. Infrastructure and Transportation Task Force;
- d. Housing Task Force;
- e. Environmental Task Force;
- f. Public Health and Healthcare Task Force;
- g. Human Services Task Force;
- h. Education Task Force;
- i. Long Term Community Planning Task Force;
- j. Federal Legislative Task Force;
- k. State and Local Legislative Task Force;
- l. Coastal Protection Committee.

C. The chairman of the board shall appoint the chairman, vice chairman, and members of each task force and committee and shall also appoint members to fill vacancies created on task forces and committees, unless otherwise provided by law or these rules.

D. Task forces and committees shall meet at the call of their respective chairman and as otherwise provided by the board.

E. Notice of meetings shall be given to task force and committee members and to the general public in accordance with R.S. 42:7.

F. All meetings of the task forces and committees shall be open, except as otherwise provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of the Governor, Louisiana Recovery Authority, LR 32:

§2509. Rules of Order

A. All meetings of the board, committees, and task forces shall be conducted in accordance with Robert's Rules of Order, unless otherwise provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of the Governor, Louisiana Recovery Authority, LR 32:

§2511. Manner of Acting

A. The act of the majority of the members present at a meeting at which a quorum is present shall be the act of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of the Governor, Louisiana Recovery Authority, LR 32:

§2513. Voting

A. Each member of the board entitled to vote as provided by law shall be entitled to one vote, which he must be present to cast. Upon the demand of any member, the vote for officers and upon any question before the meeting shall be by viva-voce and shall be recorded in the meeting minutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of the Governor, Louisiana Recovery Authority, LR 32:

§2515. Order of Business, Public Comments

A. The order of business for all meetings shall be as follows:

1. roll call;
2. reading and approval of minutes of preceding meeting;
3. reports of officers;
4. reports of committees or task forces;
5. unfinished business;
6. public comment;
7. new business;

B. The board shall receive public comments from interested individuals who have submitted cards requesting time to speak regarding an agenda item before the board, prior to taking a vote on such item. Public comments shall be limited to three minutes for each individual, unless otherwise provided by the board. The board may also allow for public comments at other times during a board meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:220.1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of the Governor, Louisiana Recovery Authority, LR 32:

Inquiries concerning the proposed Rule may be directed to Alesia Wilkins, General Counsel, Louisiana Recovery Authority, 525 Florida Street, Baton Rouge, LA 70801.

Interested persons may submit data, views, arguments, information, or comments on the proposed Rule in writing, to the Louisiana Recovery Authority, 525 Florida Street, Baton Rouge, LA 70801, Attention: Alesia Wilkins, General Counsel, Louisiana Recovery Authority. Written comments must be submitted to and received by the Authority within 10 days from the date of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the Authority within 20 days of the date of this notice.

Andy Kopplin
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Louisiana Recovery Authority

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

The proposed rules will not result in any fiscal or economic impact since the Louisiana Recovery Authority Board is currently operating under the provisions provided for in the proposed rules through by-laws previously adopted by the Board.

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

There will be no direct effect on revenue collections of state or local governmental units as a result of the proposed rules.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The Proposed rules will not effect competition and employment.

Andy Kopplin
Executive Director
0608#035

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

Corporate Title
(LAC 10:I.1101)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Commissioner of the Office of Financial Institutions gives notice of intent to adopt the following Rule to implement the parity provisions of R.S. 6:902(B) to provide state chartered savings and loan associations with the same authority consistent with federal associations in furtherance of an incidental to the exercise of the powers of associations chartered by this office.

There is no family impact associated with this proposed Rule, as provided for in R.S. 49:972.

Title 10

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

Part I. Financial Institutions

**Chapter 11. Powers of Homesteads and Building and
Loan Associations**

§1101. Corporate Title

A. A federal savings association may use the word "bank" in its title since this word is not considered to misrepresent the nature of this institution or the services it offers. Similarly, R.S. 6:712(A) states that "an association shall not adopt a corporate name which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation." Since savings associations are chartered to conduct the "business of banking," as defined in R.S. 6:2(3), the commissioner deems it necessary and in the best interest of state-chartered associations to grant parity with federal savings associations and allow the inclusion of the word "bank" in their corporate names.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:902(B).

HISTORICAL NOTE: Promulgated by Office of Governor, Office of Financial Institutions, LR 32:

All interested persons are invited to submit written comments on this proposed Rule no later than 4:30 p.m., September 20, 2006, to John D. Fields, Deputy Chief

Examiner, Office of Financial Institutions, Post Office Box 94095, Baton Rouge, LA 70804-9095, or by hand-delivery to 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809.

John Ducrest
Commissioner

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

RULE TITLE: Corporate Title

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

There are no implementation costs or savings to state or local governmental units associated with this proposal. The proposed rule will allow a thrift to use the word "bank" in its name.

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

There will be no impact on the revenue collections of state or local governmental units.

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

The proposed rule will have no net impact on the financial institutions covered by this rule with respect to any estimated costs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

John Ducrest
Commissioner
0608#071

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Investment Adviser Registration Procedure
(LAC 10:XIII.1301-1311)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and with R.S. 51:701 et seq., of the Louisiana Securities Law (hereinafter referred to as "LSL"), the Office of Financial Institutions hereby gives Notice of Intent to adopt LAC 10:XIII.1301-1311, a Rule to establish the procedure and requirements for the registration of Investment Adviser firms. This Rule is being promulgated to effectuate the purpose, administration, and enforcement of the LSL, R.S. 51:701, et seq. This Rule shall become effective on January 1, 2007.

Title 10

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

Part XIII. Investment Securities

Subpart 1. Securities

**Chapter 13. Investment Adviser Registration
Procedure**

§1301. Definitions

A. *Federal Covered Adviser*—an investment adviser firm required to be registered with the U.S. Securities and

Exchange Commission pursuant to Section 203 of the Investment Advisers Act of 1940.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:

§1303. Examination Requirements

A. Any investment adviser firm applying for registration under R.S. 51:703(D), or renewal of any such registration, shall provide the commissioner with proof that each of its investment adviser representatives has met one of the two following examination requirements:

1. successfully passed the Uniform Investment Adviser Law Examination (Series 65 examination); or

2. successfully passed the General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

AUTHORITY NOTE: Promulgated in accordance with R.S.51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:

§1305. Waivers

A. The examination requirement set out in §1303 above, shall not apply to any individual who holds one of the following professional certifications:

1. Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

3. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

4. Chartered Financial Analyst (CFA) awarded by the Association for Investment Management and Research;

5. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

6. such other professional certifications as the commissioner may approve upon written request from an applicant for registration. Such request shall include sufficient information regarding the certifying organization and its requirements, as determined by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:

§1307. Continuing Education

A. Investment adviser representatives subject to this rule shall complete the continuing education and/or recertification requirements necessary to maintain such examination or professional certification standards.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:

§1309. Grandfather Provision

A. Investment adviser representatives of any investment adviser firm registered under R.S. 703(D) on the effective date of this rule need not satisfy the examination or professional certification criteria for a period of two years.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:

§1311. Exemption

A. The requirements of this rule shall not apply to investment adviser representatives employed by a federal covered adviser.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:703(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:

Family Impact Statement

Pursuant to R.S. 49:972, and prior to adoption of the proposed Rule LAC 10:XIII.1301-1311, Investment Adviser Registration Procedure, the Office of Financial Institutions considered the impact of the proposed Rule, and found the proposed Rule, if adopted, would have no effect on the stability or the functioning of the family, the authority and rights of parents regarding the education and supervision of their children, family earnings and family budget, the behavior and personal responsibility of children, or the ability of the family or a local government to perform the function as contained in the proposed Rule.

All interested persons are invited to submit written comments on this proposed Rule no later than 4:30 p.m., September 20, 2006, to Rhonda Reeves, Deputy Commissioner of Securities, P.O. Box 94095, Baton Rouge, LA, 70804-9095, or by hand delivery to the Office of Financial Institutions, 8660 United Plaza Boulevard, Second Floor, Baton Rouge, LA 70809-7024.

John Ducrest, CPA
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Investment Adviser

Registration Procedure

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

The proposed rule will have no implementation costs or savings to the state of Louisiana or any other governmental unit.

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

The proposed rule will have no effect on revenue collections for the state of Louisiana or any other governmental unit.

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

Representatives of state-registered investment adviser firms will be required to pass securities industry examination(s) or obtain an industry certification at a cost of between \$120 and \$1,000. Although the examination and certification requirements are only necessary at the time of initial application, each investment adviser representative must also meet the necessary continuing education or recertification requirements to maintain such examination or professional certification.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

The proposed rule is expected to have minimal impact on competition and employment in the public or private sector.

John Ducrest, CPA
Commissioner
0608#050

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Dentistry**

Dental Hygienist/Anesthesia
(LAC 46:XXXIII.701 and 1507)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.701 and 1507. No preamble has been prepared. This Notice of Intent regarding LAC 46:XXXIII.701 was printed as an Emergency Rule in the July 20, 2006 *Louisiana Register*.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXIII. Dental Health Profession

Chapter 7. Dental Hygienist

§701. Authorized Duties

A. - D. ...

E. In accordance with Act 744 of the regular session of the Louisiana legislature, effective June 29, 2006, dental hygienists may work under the general supervision of dentists licensed to practice in the state of Louisiana.

F. Under general supervision, a dental hygienist may provide to patients of record, for not more than five consecutive business days, all dental hygiene services (except local anesthesia and root planning which must be under direct supervision) if all of the following conditions are satisfied:

1. the dental hygienist has at least three years, or an equivalent amount of experience, in the practice of dental hygiene;

2. the dental hygienist has current CPR certification and complies with the established protocols for emergencies which the supervising dentist has established;

3. the supervising dentist has examined the patient of record not more than nine months prior to the date that the dental hygienist provides the dental hygiene services;

4. the dental hygienist provides dental hygiene services to the patient of record in accordance with a written treatment protocol prescribed by the supervising dentist for the patient;

5. the patient of record is notified in advance of the appointment that the supervising dentist will be absent from the location;

6. no licensed dental hygienist, under general supervision, may delegate or supervise any dental hygiene duties for an expanded duty dental assistant; and

7. the dentist is responsible for all actions of the dental hygienist during treatment of patients under general supervision.

G. The following limitations also apply to the practice of dental hygiene under general supervision.

1. No entity other than a public institution or school supervised by a Louisiana licensed dentist, or an office owned by a dentist or group of dentists licensed in Louisiana, may employ dental hygienists to provide treatment for patients of record under general supervision.

2. No duly licensed and registered dentist shall supervise more than two dental hygienists under general supervision at any one time.

3. No duly licensed and registered dentist shall supervise a dental hygienist for more than five consecutive business days or for more than 20 total days in any calendar year.

4. No patient can be seen twice consecutively under general supervision.

5. An examination fee must not be charged if a patient is seen under general supervision.

6. No person shall practice dental hygiene in a manner which is separate or independent from a supervising dentist, or establish or maintain an office or a practice that is primarily devoted to providing dental hygiene services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:791 (November 1988), amended LR 15:965 (November 1989), LR 19:206 (February 1993), LR 22:22 (January 1996), LR 22:1217 (December 1996), LR 24:1116 (June 1998), LR 27:1892 (November 2001), LR 32:

Chapter 15. Anesthesia/Analgesia Administration

§1507. General Anesthesia/Deep Sedation

A. When general anesthesia or deep sedation are administered, the provisions of this Subsection apply:

1. no dentist shall administer general anesthesia or deep sedation unless said dentist has received authorization by the board evidenced by receipt of a permit from the board;

2. in order to receive authorization the dentist must show and produce evidence that he complies with the following provisions:

a. completion of an oral and maxillofacial surgery training program accredited by the Commission on Dental Accreditation of the American Dental Association which includes anesthesiology and related academic subjects as required in §1509 of this Chapter; or successful completion of a program which complies with Part II of the American Dental Association Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dental Education at the Advanced Level;

b. provide proof of current certification in the cardiopulmonary resuscitation course "Advanced Cardiac Life Support" as defined by the American Heart Association, or its equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 32:

Interested persons may submit written comments on these proposed rule changes to C. Barry Ogden, Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA 70130. Written comments must be submitted to and received by the board within 60 days of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of this notice.

C. Barry Ogden
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Dental Hygienist/Anesthesia

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

Other than the rule publication costs, which are estimated to be \$200 in FY 06-07 it is not anticipated that the proposed rule amendments will result in any material costs or savings to the Board of Dentistry, any state unit or local governmental unit. Notification of these rule changes will be included in a mass mailing to all licensees, which has already been budgeted for notification of such rule changes.

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

There will be no effect on revenue collections of state or local governmental units.

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

The proposed rule will allow licensed dental hygienists (1856) to provide dental hygiene services to the public under the general supervision of a licensed dentist pursuant to Act 744 of the 2006 regular session of the legislature.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

C. Barry Ogden
Executive Director
0608#015

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

Home and Community Based Services Waivers
Adult Day Health Care
(LAC 50:XXI.2105, 2107, 2305, 2309, and 2901)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services proposes to amend LAC 50:XXI.2105, 2107, 2305, 2309, and 2901 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing home and community-based waiver services for adult day health care in LAC 50:XXI.Chapters 21-39 (*Louisiana Register*, Volume 30, Number 9). An Adult Day Health Care (ADHC) program provides direct care to individuals who have a physical and/or mental impairment and enhances the individual's maximum level of independence while allowing them to remain in their own homes and communities. The Office of Aging and Adult Services now proposes to amend the provisions governing the Request for Services Registry to: 1) clarify procedures for the allocation of ADHC waiver opportunities; 2) amend the provisions governing the medical certification process to remove preadmission screening and annual resident review requirements; and 3) eliminate the use of the Title XIX Medical-Social Information Form (Form 90-L).

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.

Title 50

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

Subpart 3. Adult Day Health Care

Chapter 21. General Provisions

§2105. Definitions

* * *

Participant—Title XIX applicant or recipient.

Recipient—an individual who has been found eligible for Title XIX benefits or vendor payments.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:623 (June 1985), amended LR 13:181 (March 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1149 (September 1997), LR 25:1100 (June 1999), repromulgated, LR 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:

§2107. Request for Services Registry

A. The Department of Health and Hospitals, (DHH) is responsible for the Request for Services Registry, hereafter referred to as "the registry", for the Adult Day Health Care Waiver (ADHC). An individual who wishes to have his or her name placed on the registry shall contact a toll free telephone number which shall be maintained by the department.

B. When funding is appropriated for a new ADHC waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible ADHC waiver opportunity assignment.

C. Adult Day Health Care Waiver opportunities shall be offered based upon the date of first request for services, with

priority given to individuals who are in a nursing facility but could return to their home if ADHC Waiver services are provided. Priority shall also be given to those persons who have indicated that they are at imminent risk of nursing facility placement.

1. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for a nursing facility level of care, but who are not at imminent risk of nursing facility placement.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:835 (April 2002), repromulgated LR 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:

Chapter 23. Provider Participation

§2305. Medical Certification Process

A. The adult day health care provider must submit a complete admissions packet to the Department within 20 working days of the date of admission.

1. The date of admission or the date of the plan of care, whichever is later, shall be the effective date of certification. If the admission packet is incomplete, a denial of certification notice will be issued indicating the reason(s) for denial.

2. ...

3. If the missing information is received after the 20-day time frame and the applicant meets all eligibility criteria, certification shall be issued with an effective date no earlier than the date that all required documents were received by the Department.

B. A complete admission packet must contain the following forms:

1. Form 148W which includes the date of Medicaid application if the date of application is later than the date of admission;

2. Adult Day Health Care Social Assessment (ADHC I) which shall not be completed more than 30 days prior to admission and is completed, signed and dated by a social worker with a masters degree;

3. Adult Day Health Care Nursing Assessment (ADHC 2) which shall not be completed more than 30 days prior to admission, and if completed by a licensed practical nurse, must be countersigned by a registered nurse who must also provide recommendations, if necessary; and

4. a plan of care which shall not be completed more than 30 days prior to admission and shall include:

- a. problems and needs identified in the assessments;
- b. approaches/services to be used for each problem;
- c. discipline or job title of staff member responsible for each approach;

- d. frequency of each approach/service;
- e. review/resolution dates; and
- f. discharge as a goal.

NOTE: The diagnosis should not be used as a problem.

C. When an individual presents with a psychiatric disorder, a psychiatric evaluation is required with the admission packet and must include the following components:

1. history of present illness;
2. mental status;
3. diagnostic impression;
4. assessment of strengths and weaknesses;
5. recommendations for therapeutic interventions; and
6. prognosis.

D. When there is a diagnosis of mental retardation/developmental disability, a psychological evaluation is required with the admission packet and must include the following components:

1. intellectual quotient; and
2. adaptive level functioning.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:633 (June 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1155 (September 1997), repromulgated LR 30:2038 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:

§2309. Interdisciplinary Team Assessments

A. - D.2. ...

E. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:625 (June 1985), amended LR 13:181 (March 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1152 (September 1997), repromulgated LR 30:2039 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:

§2901. Recipient Rights/Privileges

A. - E.1. ...

2. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:626 (June 1985), amended LR 13:181 (March 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1154 (September 1997), repromulgated LR 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 28, 2006 at 9:30 a.m. in Room 188, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written

comments is 4:30 p.m. on the next business day following the public hearing.

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

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

**RULE TITLE: Home and Community Based Services
Waivers—Adult Day Health Care**

**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 06-07. It is anticipated that \$544 (\$272 SGF and \$272 FED) will be expended in FY 06-07 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 06-07. It is anticipated that \$272 will be expended in FY 06-07 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 the provisions governing the Request for Services Registry to: 1) clarify procedures for the allocation of Adult Day Health Care (ADHC) Waiver opportunities (approximately 630 waiver recipients); 2) amend the provisions governing the medical certification process to remove preadmission screening and annual resident review requirements; and 3) remove Form 90-L requirements. The Level of Care Eligibility Tool (LOCET) will replace preadmission screening, annual resident review, and Form 90-L. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 06-07, FY 07-08, and FY 08-09.

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

This rule has no known impact on competition and employment.

Jerry Phillips
Acting Medicaid Director
0608#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**

Home and Community-Based Services Waivers
New Opportunities Waiver
(LAC 50:XXI.13901 and 13915)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental

Disabilities proposes to adopt LAC 50:XXI.13901 and 13915 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services implemented a new home and community based services waiver, the New Opportunities Waiver (NOW) designed to enhance the support services available to individuals with developmental disabilities (*Louisiana Register*, Volume 30, Number 6). The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities now proposes to amend the June 20, 2004 Rule to remove the requirement that direct support staff providing Individual and Family Supports-Night services be awake and alert and replace it with language that would allow the direct support staff to sleep under certain conditions and to allow the billing of two one-way trips per day in lieu of one round trip per day under the Transportation for Day Habilitation and Supported Employment Models.

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 the implementation of this proposed Rule will have a positive effect on family functioning, stability or autonomy as described in R.S. 49:972 as it will allow more flexibility and utilization of services for participants in the New Opportunities Waiver.

Title 50

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

Subpart 11. New Opportunities Waiver

Chapter 139. Covered Services

§13901. Individualized and Family Support Services

A. - A.1.a. ...

2. Individual and Family Supports-Night (IFS-Nights) is direct support and assistance provided during the recipient's sleeping "night" hours. Night hours are considered to be the period of time when the recipient is asleep and there is a reduced frequency and intensity of required assistance. IFS-Night services are not limited to traditional nighttime hours. The IFS-Night worker must be immediately available and in the same residence as the recipient to be able to respond to the recipient's immediate needs. Documentation of the level of support needed, based on the frequency and intensity of needs, shall be included in the CPOC with supporting documentation in the provider's services plan. Supporting documentation shall outline the recipient's safety, communication, and response methodology planned for and agreed to by the recipient and/or their authorized representative identified in their circle of support. The IFS-Night worker is expected to remain awake and alert unless otherwise authorized under the procedures noted below.

a. Recipients who are able during sleeping hours to notify direct support workers of their need for assistance

may choose the option of IFS-Night services where staff is not required to remain awake.

b. The recipient's support team shall assess the recipient's ability to awaken staff. If it is determined that the recipient is able to awaken staff and requests that the IFS-Night worker be allowed to sleep, the CPOC shall reflect the recipient's request.

c. Support teams should consider the use of technological devices that would enable the recipient to notify/awaken IFS-Night staff. (Examples of devices include wireless pagers, alerting devices such as a buzzer, a bell or a monitoring system.) If the method of awakening the IFS-Night worker utilizes technological device(s), the service provider will document competency in use of devices by both the recipient and IFS-Night staff prior to implementation. The support coordinator will require a demonstration of effectiveness of this service no less than quarterly.

d. A review shall include review of log notes indicating instances when IFS-Night staff was awakened to attend to the recipient. Also included in the review is acknowledgement by the recipient that IFS-Night staff responded to their need for assistance timely and appropriately. Instances when staff did not respond appropriately will immediately be brought to the support team for discontinuation of allowance of the staff to sleep. The service will continue to be provided by awake and alert staff.

e. Any allegation of abuse/neglect during sleeping hours will result in the discontinuation of allowance of the staff to sleep until investigation is complete. Valid findings of abuse/neglect during night hours will require immediate revision to the CPOC.

B. - G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1202 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:

§13915. Transportation for Day Habilitation and Supported Employment Models

A. Transportation provided for the recipient to the site of the day habilitation or supported employment model, or between the day habilitation and supported employment model site (if the recipient receives services in more than one place) is reimbursable when day habilitation or supported employment model has been provided. Reimbursement may be made for a one-way trip if reason is documented in provider's transportation log. There is a maximum fee per day that can be charged for transportation regardless of the number of trips per day.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1205 (June 2004), amended by the Department of Health and Hospitals, Office of the

Secretary, Office for Citizens with Developmental Disabilities, LR 32:

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 28, 2006 at 9:30 a.m. in Room 188, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Home and Community-Based Services Waivers—New Opportunities Waiver

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 06-07. It is anticipated that \$408 (\$204 SGF and \$204 FED) will be expended in FY 06-07 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 06-07. It is anticipated that \$204 will be expended in FY 06-07 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 the rules for the New Opportunities Waiver (NOW) to remove the requirement that direct support staff providing Individual and Family Supports-Night (IFS-Night) service be awake and alert and replace it with language that would allow the direct support staff to sleep under certain conditions and to allow the billing of two one-way trips per day in lieu of one round trip per day under the Transportation for Day Habilitation (approximately 9,680 trips per year) and Supported Employment Models (approximately 92,410 trips per year). It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 06-07, FY 07-08, and FY 08-09.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Jerry Phillips
Acting Medicaid Director
0608#066

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

Nursing Facilities—Licensing Nurse Aide Training and Competency Evaluation Program (LAC 48:I.10001-10079)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 48:I.10001-10083 as authorized by R.S. 36:254 and P.L. 100-203. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Omnibus Budget Reconciliation Act of 1987, P.L. 100-203, required that the state specify training and evaluation programs for nurse aides, including the establishment of a nurse aide registry. In compliance with P.L. 100-203, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the Nurse Aide Training and Competency Evaluation Program (*Louisiana Register*, Volume 17, Number 8). In January 1996, the bureau promulgated the August 1991 Rule in a codified format in Title 50 of the Louisiana Administrative Code (*Louisiana Register*, Volume 22, Number 1).

The department now proposes to repeal the current provisions governing the Nurse Aide Training and Competency Evaluation Program in LAC 50:VII and repromulgate these provisions in LAC 48:I under the licensing standards for nursing facilities. This action is being taken to clarify the regulations governing certified nurse aides and nurse aide training, to ensure compliance and consistency with federal regulations and to place the provisions in the appropriate section in the Administrative Code.

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.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 100. Nurse Aide Training and Competency Evaluation Program

Subchapter A. General Provisions

§10001. Definitions

Abuse—

1. the willful infliction of physical or mental injury;
2. causing deterioration by means including, but not limited to:
 - a. sexual abuse;
 - b. exploitation; or
 - c. extortion of funds or other things of value to such an extent that the resident's health, moral or emotional well-being is endangered; or

3. the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

Department—the Louisiana Department of Health and Hospitals.

Misappropriation—taking possession without the permission of the resident who owns the personal belongings, or the deliberate misplacement, exploitation or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

Neglect—the failure to provide goods and services to the resident that are necessary to avoid physical harm, mental anguish or mental illness.

Nursing Homes or Nursing Facilities—any entity or facility serving two or more persons, who are not related to the operator by blood or marriage, that undertakes to provide maintenance, personal care or nursing for persons who are unable to properly care for themselves by reason of illness, age or physical infirmity.

Trainee—an individual who is enrolled in a nurse aide training and competency evaluation program, whether at a nursing facility or educational facility, with a goal of becoming a certified nurse aide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

Subchapter B. Training and Competency Requirements §10011. General Provisions

A. All nurse aide training and competency evaluation programs must be approved by the department.

B. Training and competency evaluation programs may be provided by:

1. community colleges;
2. vocational-technical programs; and
3. other educational entities.

C. Nursing facilities may provide the classroom and clinical training portion of the program but the competency evaluation must be administered by an entity approved by the department.

D. Each training and competency evaluation program must:

1. maintain qualified, approved personnel for classroom and clinical instruction;
2. protect the integrity of the competency evaluations by keeping them secure;
3. utilize a pass rate of a least 70 percent for each individual student; and
4. assure the curriculum meets federal and state requirements.

E. Clinical instruction must be conducted in a nursing home or a hospital-based skilled nursing facility unit.

F. Training programs that do not meet the minimum standards and cannot provide an acceptable plan for correcting deficiencies will be eliminated from participation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10013. Trainee Responsibilities

A. Each nurse aide trainee should be clearly identified as a trainee during all clinical portions of the training. Identification should be recognizable to residents, family members, visitors and staff.

B. Trainees must take the competency evaluation (through skills demonstration and either written or oral examination) within 30 days after completion of the training program and be certified within 4 months from the date they begin training.

1. Trainees will be provided with a maximum of three opportunities within one year following completion of the training program to successfully complete the competency evaluation program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10015. Training Curriculum

A. Each nurse aide training program shall provide all trainees with a nursing facility orientation that is not included in the required 80 hours of core curriculum. The orientation program shall include, but is not limited to:

1. an explanation of the facility's organizational structure;
2. the facility's policies and procedures;
3. discussion of the facility's philosophy of care;
4. description of the resident population; and
5. employee rules.

B. Core Curriculum

1. The curriculum content for the Nurse Aide Training Program must include material which provides a basic level of knowledge and demonstrable skills for each individual completing the program. The content should include the needs of populations which may be served by an individual nursing facility.

a. The core curriculum must be a minimum of 80 hours in length and consist of 40 classroom hours and 40 clinical hours.

b. Each unit objective must be behaviorally-stated for each topic of instruction. Each objective must state performance criteria which are measurable and will serve as the basis for the competency evaluation.

i. The unit objectives will be reviewed with the trainees at the beginning of each unit so each trainee will know what is expected of him/her in each part of the training.

c. All facility-based nurse aide training programs must adapt the content and skills training application to the specific population being served.

C. Minimum Curriculum

1. The goal of the nurse aide training and competency evaluation program is the provision of quality services to residents by nurse aides who are able to:

a. communicate and interact competently on a one-to-one basis with residents as part of the team implementing resident care;

b. demonstrate sensitivity to the resident's emotional, social and mental health needs through skillful, directed interactions;

c. assist residents in attaining and maintaining functional independence;

d. exhibit behavior to support and promote the rights of residents; and

e. demonstrate proficiency in the skills needed to support the assessment of the health, physical condition and well-being of residents.

2. Non-facility based training programs must provide 32 hours of instruction prior to a trainee's direct involvement with a resident. Sixteen or more hours shall be devoted to supervised skills training and 16 hours shall be provided in the classroom and, at a minimum, shall include:

- a. communication and interpersonal skills;
- b. infection control;
- c. safety and emergency procedures;
- d. promoting residents' independence; and
- e. respecting residents' rights.

3. Facility-based training programs must provide at least 16 hours of instruction prior to a trainee's direct involvement with a nursing facility resident. The 16 hours of instruction shall be devoted to areas listed in Paragraph C of this §10015.

D. The training program must address the psychosocial, physical and environmental needs, as well as the medical needs of the residents being served by the nursing facility. It must also teach trainees about the attitudes and behaviors that make a positive impact on the emotional conditions of residents and focus on the restoration and maintenance of the resident's independence.

E. The training program must be developed and conducted to ensure that each nurse aide, at a minimum, is able to demonstrate competencies in the following areas:

1. basic nursing skills including, but not limited to:
 - a. bed-making;
 - b. taking vital signs;
 - c. measuring height and weight;
 - d. caring for the resident's environment;
 - e. measuring fluid and nutrient intake and output;
 - f. assisting in the provision of proper nutritional care;
 - g. ambulating and transferring residents;
 - h. using body mechanics;
 - i. maintaining infection control and safety standards;
 - j. attaining and maintaining proficiency in cardiopulmonary resuscitation;
 - k. caring for residents when death is imminent;
 - l. recognizing abnormal signs and symptoms of common diseases and conditions; and
 - m. caring for residents suffering from Alzheimer's disease or dementia;
2. personal care skills including, but not limited to:
 - a. bathing, including mouth care;
 - b. grooming and dressing;
 - c. toileting;
 - d. assisting with eating and hydration; and
 - e. skin care;
3. mental health and social service needs including, but not limited to:
 - a. modifying his/her own behavior in response to a resident's behavior;
 - b. identifying developmental tasks associated with the aging process and using task analysis to increase independence;

c. providing training in and the opportunity for self-care according to a resident's capabilities;

d. demonstrating principles of behavior modification by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated;

e. demonstrating skills which support age-appropriate behavior by allowing the resident to make personal choices;

f. providing and reinforcing behavior consistent with maintaining a resident's dignity; and

g. utilizing a resident's family as a source of emotional support;

4. basic restorative services including, but not limited to:

a. the use of assistive devices in ambulation, eating and dressing;

b. maintenance of range of motion;

c. proper turning and positioning in a bed and a chair;

d. transferring a resident;

e. bowel and bladder training; and

f. care and use of prosthetic devices, such as hearing aids, artificial eyes or artificial limbs; and

5. maintaining a resident's rights including, but not limited to:

a. assisting a resident to vote;

b. providing privacy and maintaining confidentiality;

c. allowing the resident to make personal choices to accommodate individual needs;

d. giving assistance in resolving grievances;

e. providing needed assistance in getting to, and participating in, resident and family groups and other activities;

f. maintaining reasonable care of a resident's personal possessions;

g. providing care which frees the resident from abuse, mistreatment or neglect and reporting any instances of poor care to appropriate facility staff; and

h. maintaining the resident's environment and care so as to minimize the need for physical and chemical restraints.

F. Curriculum Approval

1. To get a nurse aide training program approved, the facility or school must submit the following items to the department:

a. a copy of the curriculum and final exam;

b. the name of the coordinator and instructors with:

i. a resume for each; and

ii. a copy of a train the trainer certificate or verification of competence to teach adult learners as defined by the state; and

c. the time slots for each topic of classroom and clinical instruction.

2. If a school is applying for approval, it must identify the physical location used for classroom instruction and for clinical experience. A school must also submit clinical contracts and copies of final exams.

3. If a facility or school that has an approved curriculum ceases to provide a nurse aide training and competency evaluation program for a two year period, it must reapply and receive approval from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10017. Training Instructors

A. Program Coordinator. Every nurse aide training program must have a program coordinator who provides general supervision of the training received by the nurse aide trainees.

1. The program coordinator must be a registered nurse (RN) and must have the following experience and qualifications:

a. a minimum of two years of nursing experience, of which at least one year must be in caring for the elderly or chronically ill, obtained through employment in any of the following:

i. a nursing facility/unit;

ii. a geriatrics department;

iii. a chronic care hospital;

iv. other long-term care setting; or

v. experience in varied responsibilities including, but not limited to, direct resident care or supervision and staff education; and

b. completion of VTIE, CTTIE, "train-the-trainer" type program or a master's degree or higher.

2. The program coordinator may supervise no more than two nurse aide training programs and must be on the premises where the program is being conducted for at least 50 percent of the duration of the program.

B. Program Trainers. Qualified resource personnel from the health field may participate as program trainers.

1. Qualified resource personnel must have a minimum of one year of experience in their field and must be licensed, registered and/or certified, if applicable, and may include:

a. registered nurses;

b. licensed practical/vocational nurses;

c. pharmacists;

d. dietitians;

e. social workers;

f. sanitarians;

g. fire safety experts;

h. nursing home administrators;

i. gerontologists;

j. psychologists;

k. physical and occupational therapists;

l. activities specialists; and

m. speech/language/hearing therapists.

2. All program trainers must have a minimum of one year of current experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

3. The training program may utilize other persons such as residents, experienced aides and ombudsmen as resource personnel if these persons are needed to meet the planned program objectives or a specific unit of training.

C. Licensed practical (vocational) nurses, under the general supervision of the primary instructor, may provide classroom and skills training instruction and supervision if they have two years of experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

1. Such experience is normally obtained through employment in:

- a. a nursing facility;
- b. a geriatrics department;
- c. a chronic care hospital; or
- d. other long-term care setting.

2. Experience in resident care, supervision and staff education is preferred.

D. The ratio of instructors to trainees in clinical training is 1:10 and the ratio of instructors to trainees in the classroom should not exceed 1:23.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10019. Training Program Responsibilities

A. The facility/school shall not accept a nurse aide trainee into a training program until the facility or school determines that the nurse aide trainee:

1. has not been convicted or found guilty by a court of law of:

- a. abusing, neglecting or mistreating the elderly or infirm; or
- b. misappropriating a resident's property; or

2. has not had a finding of abuse, neglect, mistreatment or misappropriation of a resident's property placed on the Nurse Aide Registry or the Direct Service Worker Registry.

B. For facility-based training programs, the facility can permit trainees to provide only that care for which they have demonstrated competency.

C. Any entity responsible for the nurse aide training and competency evaluation program must report to the Nurse Aide Registry within 30 days the names of all individuals who have satisfactorily passed the competency evaluation.

D. When a nurse aide has successfully completed a training and competency evaluation program, in a non-facility based program, the entity must submit the appropriate form to the Louisiana Nurse Aide Registry so that the nurse aide can be certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10021. Competency Evaluation

A. Written or oral examinations will be provided by an entity or organization approved by the department. The examination will reflect the content and emphasis of the training program and will be developed in accordance with accepted educational principles.

B. The written evaluation component will be given in English unless the aide will be working in a facility in which the predominant language is something other than English. In this case, the examination may be taken in the written predominant language used in the facility, dependent upon the availability of a translator who will maintain the integrity of the examination.

C. A substitute examination, including an oral component, will be developed for those nurse aides with limited literacy skills. This examination must contain all of the content that is included in the written examination and

must include a written reading comprehension portion that will determine competency to read job-related information.

D. The evaluation program must be developed and conducted to ensure that each nurse aide, at a minimum, is able to demonstrate competencies listed in Paragraph E. of §10015.

E. For the skills training component of the evaluation program, each nurse aide training program will develop a performance record of duties/skills taught which will verify proficiency attained.

1. The performance record will consist of, at a minimum:

a. a listing of the duties/skills expected to be learned in the program; and

b. space to note satisfactory or unsatisfactory performance of each task including:

i. the date of the performance; and

ii. the name of the instructor supervising the performance.

2. At the completion of the nurse aide training program, the nurse aide and his/her employer will receive a copy of this record. If the individual did not successfully perform all duties/skills on this performance record, he/she will receive training for all duties and skills not satisfactorily performed until satisfactory performance is confirmed.

F. The skills demonstration of the competency evaluation program will consist of a minimum performance of five tasks, all of which are included in the performance record. These five tasks will be selected for each aide from a pool of evaluation tasks which have been ranked according to degree of difficulty. A random selection of tasks will be made with at least one task from each degree of difficulty being selected. Such evaluation tasks may include, but are not limited to:

1. making an occupied bed;

2. taking and recording a resident's blood pressure, temperature, pulse and respirations;

3. orienting a new resident to the facility;

4. performing a range of motion exercises;

5. giving a bed bath;

6. positioning a resident on his/her side; and

7. responding to a demented resident who is calling out, yelling or indicating distress or anger.

G. Task-related evaluation items will be developed to evaluate the non-task oriented competency of the trainee, such as communication and psychosocial skills. The skills demonstration portion of the competency evaluation may be held in either a nursing facility or in a laboratory equipped for this purpose.

H. In the case of nursing facilities that provide their own training programs, the facility may contact an approved entity to provide competency evaluation. The clinical portion of the competency evaluation must be given in a nursing facility, but must be administered by personnel not associated with the facility. The competency evaluation may be proctored by facility personnel if the competency evaluation is:

1. secured from tampering;

2. standardized;

3. scored by a testing, educational or other organization approved by the state or scored by the state itself; and

4. requires no actual administration or scoring by facility personnel.

I. The examiner conducting the clinical competency evaluation for any individual trainee must be approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10023. Compliance with Training and Competency Evaluation

A. The department shall review all components of a training and competency evaluation program for compliance with federal and state regulations.

1. For facility-based programs, after initial approval of a training and competency evaluation program, the department will conduct an initial one year post-approval review at the annual survey to determine the program's implementation of and compliance with the requirements.

2. For non-facility based programs, the department will conduct an initial one year post-approval review and thereafter will conduct a review every two years.

B. After the one year post-approval review, an on-site review of the program will be conducted at least every two years.

C. Programs not meeting minimum requirements may be terminated if the program does not provide an acceptable plan for correcting deficiencies.

D. Programs refusing to permit unannounced visits by the department will be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10025. Nurse Aide Responsibilities

A. A nurse aide must perform at least eight hours of nursing or nursing-related services in an approved setting during every consecutive 24-month period for pay after completion of a training and competency evaluation program to maintain certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

Subchapter C. Nurse Aide Registry

§10033. General Provisions

A. The Department of Health and Hospitals shall develop and maintain a registry for individuals who have successfully completed a nurse aide training and/or competency evaluation program. Each individual listed on the registry will have the following information maintained and retrievable:

1. name;
2. address;
3. Social Security number;
4. phone number;
5. place of employment;
6. date of employment;
7. date employment ceased;

8. state certification number; and
9. documentation of any investigation including codes for specific findings of a resident's:

- a. abuse;
- b. neglect;
- c. misappropriated property; and
- d. an accurate summary of findings only after actions on findings are final.

B. Certifications are renewable every two years. The registry will verify renewals and whether the nurse aide has worked at least eight hours in an approved setting every 24 months after attaining certification.

C. Employers must use the registry to determine if a prospective hire is a certified nurse aide and if there is a finding placed on the registry that he/she has abused, neglected or misappropriated a resident's property or funds.

D. If there is a final and binding administrative decision to place a finding on the registry or if there is a final conviction, guilty plea or no contest plea to a crime(s) by a nurse aide against the elderly, infirm or a nursing facility resident, the department shall place the adverse finding on the registry. Record of the occurrence and associated findings will remain permanently on the registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10035. Certification by Reciprocity

A. Nurse aides may become certified by reciprocity from other states. Applicants must submit to the Nurse Aide Registry the following information:

1. his/her name;
2. his/her Social Security number;
3. the certification number in the other state;
4. the address of the other state's registry;
5. his/her former place of employment; and
6. the date of employment and termination.

B. After verification of certification in the other state, the registry will certify the aide in Louisiana. Likewise, the registry will be responsible for granting reciprocity to other states.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

Subchapter D. Provider Participation

§10045. Provider Responsibilities

A. A person cannot be employed as a nurse aide or nurse aide trainee by a facility for more than four months unless he/she has satisfactorily completed an approved training and competency evaluation program.

B. A person cannot be employed as a nurse aide or nurse aide trainee if there is a final administrative or judicial court decision that the nurse aide or trainee has:

1. committed abuse, neglect or mistreatment of the elderly, infirm or nursing facility resident; or
2. misappropriated a resident's property.

C. The provider must complete and send the appropriate form to the Registry to notify the Registry of employment or termination of a certified nurse aide.

D. All facilities will continue to provide on-going training on a routine basis in groups and, as necessary in specific situations, on a one-to-one basis.

1. Each nurse aide must receive and be compensated for 12 hours of on-going training per year.

2. Training can be received in the unit as long as it is:
- directed toward skills improvement;
 - provided by appropriately trained staff; and
 - documented.

E. No nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide competency evaluation program may be charged for any portion of the program.

F. If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide competency evaluation program, the state must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

Subchapter E. Violations

§10055. Disqualification of Training Programs

A. The department prohibits nursing facilities from offering nurse aide training programs when the facilities have:

1. been determined to be out of compliance by the Medicaid or Medicare Programs until the end of a two-year period during which time no survey or investigation finds any deficiencies; or

2. operated under a waiver granted on the basis of a demonstration that the facility is unable to provide RN coverage in excess of 48 hours during a week.

B. The department may prohibit nursing facilities from offering nurse aide training programs when the facilities have been sanctioned with:

- civil monetary penalties of \$5,000 or more;
- termination of vendor payments;
- a ban on new admissions;
- placement under temporary management or closure of a facility with transfer of residents; or
- extended or partial extended survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10057. Allegations of Nurse Aide Wrong-Doing

A. The department, through its Bureau of Appeals, has provided for a process for the review and investigation of all allegations of wrong-doing by nurse aides employed in nursing facilities. Certified nurse aides and nurse aide trainees must not:

- use verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion on a resident in a nursing facility; or
- neglect a resident or commit misappropriation of a resident's property or funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10059. Notice of Violation

A. When there are substantiated charges against the nurse aide, either through oral or written evidence, the department will notify the individual(s) implicated in the investigation of the following information by certified mail:

1. the nature of the violation(s) and the date and time of each occurrence;

2. the department's intent to report the violation(s) to the Nurse Aide Registry; and

3. the right to request an informal dispute resolution and/or the right to an administrative hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10061. Informal Dispute Resolution

A. When a nurse aide feels that he/she has been wrongly accused, the following procedure shall be followed.

1. The nurse aide may request an informal dispute resolution (IDR) within 15 calendar days of the receipt of the agency's notice of violation. The request for an IDR must be made to the department in writing.

2. The IDR is designed:

- to provide an opportunity for the nurse aide to informally review the situation;

- for the agency to offer alternatives based on corrections or clarifications, if any; and

- for the nurse aide to evaluate the necessity for seeking an administrative hearing.

3. An IDR meeting will be arranged within 20 days of the request.

4. During the IDR, the nurse aide will be afforded the opportunity to:

- talk with agency personnel involved in the situation;

- review pertinent documents on which the alleged violation is based;

- ask questions;

- seek clarifications; and

- provide additional information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

Subchapter F. Administrative Hearings

§10071. General Provisions

A. Within 30 calendar days after receipt of the department's notice of violation or the notice of the results of an informal dispute resolution, the nurse aide may request an administrative hearing.

1. The request for an administrative hearing must be made in writing to the department's Bureau of Appeals.

2. The request must contain a statement setting forth the specific charges with which the nurse aide disagrees and the reasons for this disagreement.

3. Unless a timely and proper request is received by the Bureau of Appeals, the findings of the department shall be considered a final and binding administrative determination.

a. Notification of the finding of abuse, neglect and/or misappropriation will then be sent to the Nurse Aide Registry to be recorded.

B. When an administrative hearing is scheduled, the Bureau of Appeals shall notify the nurse aide, his/her representative and the agency representative in writing.

1. The notice shall be mailed no later than 15 calendar days before the scheduled date of the administrative hearing and shall contain the:

- a. date of the hearing;
- b. time of the hearing; and
- c. the place of the hearing.

C. The administrative hearing shall be conducted by an administrative law judge from the Bureau of Appeals as authorized by the Administrative Procedure Act, R.S. 49:950 et seq., and according to the following procedures.

1. An audio recording of the hearing shall be made.

2. A transcript will be prepared and reproduced at the request of a party to the hearing, provided he bears the cost of the copy of the transcript.

3. Testimony at the hearing shall be taken only under oath, affirmation or penalty of perjury.

4. Each party shall have the right to:

- a. call and examine parties and witnesses;
- b. introduce exhibits;
- c. question opposing witnesses and parties on any matter relevant to the issue, even though the matter was not covered in the direct examination;
- d. impeach any witness regardless of which party first called him to testify; and
- e. rebut the evidence against him/her.

5. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of such evidence improper over objection in civil or criminal actions.

a. Documentary evidence may be received in the form of copies or excerpts.

6. The administrative law judge may question any party or witness and may admit any relevant and material evidence.

7. Each party has the burden of proving whatever facts he/she must establish to sustain his/her position.

a. The burden of producing evidence to substantiate the written allegation(s) will be on the department and the provider of services.

b. When the charge of abuse, neglect or misappropriation is substantiated, the nurse aide may not rest on the mere denial in his/her testimony and pleading(s) but must set forth specific facts and produce evidence to disprove or contest the charge(s).

D. Any party may appear, and be heard, at any appeals proceeding through an attorney or a designated representative. The representative shall have a written authorization to appear on behalf of the provider.

1. A person appearing in a representative capacity shall file a written notice of appearance on behalf of a provider identifying:

- a. his/her name;
- b. address;
- c. telephone number; and
- d. the party being represented.

E. At the conclusion of the administrative hearing, the administrative law judge shall:

1. take the matter under advisement; and
2. shall prepare a written proposed decision which will contain:

- a. findings of fact;
- b. a determination of the issues presented;
- c. a citation of applicable policy and regulations;

and

- d. an order.

F. The written proposed decision is provided to the secretary of the department. The secretary may:

1. adopt the proposed decision;
2. reject the proposed decision based upon the record;

or

3. remand the proposed decision to the administrative law judge to take additional evidence:

a. if the proposed decision is remanded, the administrative law judge shall submit a new proposed decision to the secretary.

G. The decision of the secretary shall be final and binding upon adoption, subject only to judicial review by the courts. A copy of the decision shall be mailed to the nurse aide at his/her last known address and to any representative thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10073. Preliminary Conferences

A. Although not specifically required, the Bureau of Appeals may schedule a preliminary conference. The purposes of the preliminary conference include, but are not limited to:

1. clarification, formulations and simplification of issues;
2. resolution of controversial matters;
3. exchange of documents and information;
4. stipulations of fact to avoid unnecessary introduction of evidence at the formal review;
5. the identification of witnesses; and
6. other matters as may aid disposition of the issues.

B. When the Bureau of Appeals schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear on a specific date and at a specific time and place.

C. When the preliminary conference resolves all or some of the matters in controversy, a summary of the findings agreed to at the conference shall be provided by the administrative law judge. When the preliminary conference does not resolve all of the matters in controversy, an administrative hearing shall be scheduled on those matters still in controversy.

1. The hearing shall be scheduled within 30 calendar days following the completion of the preliminary conference or at a time mutually convenient to all parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10075. Witnesses and Subpoenas

A. Each party shall arrange for the presence of their witnesses at the hearing.

B. A subpoena to compel the attendance of a witness may be issued by the administrative law judge:

1. upon written request by a party and a showing of the need for such action; or
2. on his own motion.

C. An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda or other records shall be made in writing to the administrative law judge. The written application shall:

1. give the name and address of the person or entity upon whom the subpoena is to be served;
2. precisely describe the material that is desired to be produced;
3. state the materiality thereof to the issue involved in the proceeding; and
4. include a statement that, to the best of the applicant's knowledge, the witness has such items in his possession or under his control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10077. Continuances or Further Hearings

A. The administrative law judge may continue a hearing to another time or place, or order a further hearing on his own motion or at the request of any party who shows good cause.

B. Where the administrative law judge, at his/her discretion, determines that additional evidence is necessary for the proper determination of the case, he/she may:

1. continue the hearing to a later date and order the party(s) to produce additional evidence; or
2. close the hearing and hold the record open in order to permit the introduction of additional documentary evidence:

a. any evidence submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

C. Written notice of the time and place of a continued or further hearing shall be given. When a continuance of further hearing is ordered during an administrative hearing, oral notice of the time and place of the continued hearing may be given to each party present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10079. Failure to Appear at Administrative Hearings

A. If a nurse aide fails to appear at an administrative hearing, a notice/letter of abandonment may be issued by the

Bureau of Appeals dismissing the appeal. A copy of the notice shall be mailed to each party.

B. Any dismissal may be rescinded upon order of the Bureau of Appeals if the nurse aide:

1. makes written application within 10 calendar days after the mailing of the dismissal notice; and
2. provides evidence of good cause for his/her failure to appear at the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 28, 2006 at 9:30 a.m. in Room 188, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Nursing Facilities Licensing—Nurse Aide Training and Competency Evaluation Program

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 06-07. It is anticipated that \$2,652 (\$1,326 SGF and \$1,326 FED) will be expended in FY 06-07 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 06-07. It is anticipated that \$1,326 will be expended in FY 06-07 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 repromulgate provisions governing the Nurse Aide Training and Competency Evaluation Program to clarify the regulations governing certified nurse aides (approximately 53,000 statewide) and nurse aide training, to ensure compliance and consistency with federal regulations and to place the provisions in the appropriate licensing section in the Administrative Code. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 06-07, FY 07-08 and FY 08-09.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Jerry Phillips
Acting Medicaid Director
0608#064

Robert E. Hosse
Executive Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Nursing Facilities
Nurse Aide Training and Competency Evaluation Program
(LAC 50:II.10143 and 10145)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to repeal LAC 50:II.10143 and 10145 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the Nurse Aide Training and Competency Evaluation Program (*Louisiana Register*, Volume 17, Number 8). In January 1996, the bureau promulgated the August 1991 Rule in a codified format in Title 50 of the Louisiana Administrative Code (*Louisiana Register*, Volume 22, Number 1).

The department now proposes to repeal the current provisions governing the Nurse Aide Training and Competency Evaluation Program in LAC 50:VII and repromulgate these provisions in LAC 48:I under the licensing standards for nursing facilities. This action is being taken to place the provisions in the appropriate section in the Administrative Code.

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.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 3. Standards for Payment

Chapter 101. Nursing Facilities

Subchapter E. Nurse Aide Training and Competency

Evaluation Program

§10143. OBRA Requirements

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), repealed LR 32:

§10145. State Review of Compliance with Program Requirements

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), repealed LR 32:

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 28, 2006 at 9:30 a.m. in Room 188, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Nursing Facilities—Nurse Aide Training and Competency Evaluation Program

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 06-07. It is anticipated that \$408 (\$204 SGF and \$204 FED) will be expended in FY 06-07 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 06-07. It is anticipated that \$204 will be expended in FY 06-07 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)

The Department proposes to repeal the current provisions governing the Nurse Aide Training and Competency Evaluation Program in LAC 50:VII and repromulgate provisions in LAC 48:I under licensing standards. This action is being taken to place the provisions in the appropriate section in the Administrative Code. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or nongovernmental groups in FY 06-07, FY 07-08 and FY 08-09.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Jerry Phillips
Acting Medicaid Director
0608#063

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

Personal Care Services—Long Term
(LAC 50:XV.12901 and 12905)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services proposes to amend LAC 50:XV.12901 and 12905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing the coverage of personal care services as an optional service under the Medicaid State Plan (*Louisiana Register*, Volume 29, Number 6). The bureau amended the general provisions, standards for participation and the place of service requirements that were contained in the June 20, 2003 Rule (*Louisiana Register*, Volume 30, Number 12). The Office of Aging and Adult Services now proposes to amend the provisions governing long term personal care services to eliminate the need for physician prescription of the services and to eliminate the preadmission screening and annual resident review requirements.

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 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12901. General Provisions

A. The purpose of personal care services is to enable an individual whose needs would otherwise require placement in a nursing facility to remain safely in that individual's own home. The mission of Medicaid-funded personal care services is to supplement the family and/or community supports that are available to maintain the recipient in the community. This service program is not intended to be a substitute for available family and/or community supports. Personal care services must be provided in accordance with an approved service plan and supporting documentation. In addition, personal care services must be coordinated with the other Medicaid services being provided to the recipient and will be considered in conjunction with those other services. Personal care services will be provided in a manner consistent with the basic principles of consumer direction as set forth in §12907.

B. ...

C. Authorization. Personal care services (PCS) shall be authorized by the Bureau of Health Services Financing or its designee. The department or its designee will review the completed assessment, supporting documentation, plan of

care or any other pertinent documents to determine whether the recipient meets the medical necessity criteria for personal care services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:

§12905. Recipient Qualifications

A. - B. ...

1. meets the medical standards for admission to a nursing facility and requires assistance with at least one or more activities of daily living;

B.2. - 3.c. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:

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 Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 28, 2006 at 9:30 a.m. in Room 188, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Personal Care Services—Long Term

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 06-07. It is anticipated that \$272 (\$136 SGF and \$136 FED) will be expended in FY 06-07 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 06-07. It is anticipated that \$136 will be expended in FY 06-07 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 the provisions for long term personal care services to eliminate the need for physician prescription of the services and to eliminate the preadmission screening and annual resident review requirements (for approximately 400 long term personal care recipients). The Level of Care Eligibility Tool (LOCET) will replace preadmission screening and annual resident review. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 06-07, FY 07-08, and FY 08-09.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Jerry Phillips
Acting Medicaid Director
0608#062

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Nursing Facilities—Standards for Payment
Medical Eligibility Determination
Admission Review and Pre-Admission Screening
(LAC 50:II.10146 and 10157)**

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services proposes to amend LAC 50:II.10146 and 10157 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed the standards for payment governing nursing facility services and adopted revised provisions in LAC 50:II (*Louisiana Register*, Volume 22, Number 1). The bureau subsequently adopted LAC 50:II.10146 to establish medical eligibility determination requirements for nursing facility services and hospice care in a nursing facility (*Louisiana Register*, Volume 23, Number 10). The Office of Aging and Adult Services now proposes to amend the provisions governing medical eligibility determination and pre-admission screening for the purpose of clarification and to eliminate the use of the Title XIX Medical-Social Information form (Form 90-L).

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 the implementation of this proposed Rule will have no effect on family functioning as described in R.S. 49:942.

**Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Medical Assistance Program
Subpart 3. Standards for Payment**

**Chapter 101. Nursing Facilities
Subchapter F. Vendor Payment**

§10146. Medical Eligibility Determination

A. The following documentation requirements and procedures are required in order to determine medical eligibility for nursing facility services and hospice care in a nursing facility.

B. The following time frames must be met when requesting a medical eligibility determination for an individual admitted to a nursing facility. Conversion from Medicare status to Medicaid vendor payment is considered a new admission.

1. Appropriate documentation of admission information must be received within 20 working days of admission.

2. If incomplete information is received, certification of medical eligibility will be denied. The reason for denial will be given as incomplete information provided.

3. If additional information is subsequently received within the initial 20-working-day time frame, and the resident meets all requirements, the effective date of certification is the date of admission.

4. If the additional information is received after the initial 20-day time frame and the resident meets all of the requirements, the effective date of the certification shall be the date that all completed information is received.

C. Documentation Requirements for New Admissions

1. Notice of Admission or Change (Form 148) which:
a. verifies the individual's admission as a private pay resident or indicates that Medicaid or Medicare certification is being requested; and

b. provides the date of the resident's application for Medicaid if later than the date of admission;

2. a physician's order which specifies the applicant's current health status and the recommendation for nursing facility admission;

NOTE: The physician's order must be signed by a physician licensed in Louisiana and dated not more than 30 days prior to admission or application if the resident applies for Medicaid after admission; and

3. Pre-Admission Screening/Readmission Screening (Level I PAS/RAS) form which:

a. is signed and dated by a physician licensed in Louisiana; and

b. lists a diagnosis and medication on the Statement of Medical Status form that is consistent with PAS/RAS;

NOTE: If a second level screen is indicated due to a diagnosis or suspected diagnosis of mental illness or mental retardation, it must be completed prior to admission unless approved by the Office of Aging and Adult Services (OAAS) under a categorical determination.

D. Documentation Requirements for Readmission from the Hospital

1. A Form 148 which indicates:

a. the date Medicaid billing was discontinued if the bed was held; or

b. the date the resident was discharged to the hospital if the bed was not held; and

c. the date of the resident's readmission to the facility and whether they are readmitted as Medicare or Medicaid status.

2. A transfer form, discharge summary or physician's orders which specifies diagnosis, medication regime, level of care, and includes a dated physician's signature; and

3. - 3.c.Note ...

E. Documentation Requirements for Facility to Facility Transfer

1. ...

2. The receiving facility must complete:

a. A Form 148 indicating date of admission; and

b. A transfer form or physician's orders which includes the diagnosis, medication regime, level of care, physician's signature and date.

F. Documentation Requirements for New Admission to SNF 18 (Medicare) with Medicaid Co-Insurance

1. - 1.b. ...

2. A physician statement completed within 30 days of admission;

3. - 3.Note ...

G. Documentation Requirements for Readmission from the Hospital Directly to SNF 18 (Medicare)

1. A Form 148 which indicates the date that Medicaid co-insurance will be effective. No further information is required until the resident converts to Medicaid vendor payment.

H. Documentation Requirements for Termination of Medicare with Change from Medicaid Co-Insurance to Medicaid Vendor Payment

1. A Form 148 which indicates the date that the Medicare benefit period ends and the first date of Medicaid coverage;

2. A new or updated physician's statement. An updated physician's statement may be submitted in lieu of having a new one completed. An updated physician's statement is one that has been reviewed by the attending physician, includes any changes in diagnosis or treatment regimen, and has been re-signed and dated by the physician. This is viewed as a new admission because Medicare is a different payment source and the resident must be considered discharged from Medicare status in order to convert from Medicare to Medicaid. For this reason, another physician's statement is required and must be submitted within 20 working days of admissions; and

3. - 3.Note ...

I. Documentation Requirements Regarding the Death of a Resident. A Form 148 which specifies whether the death of the resident occurred in the nursing facility or in the hospital and the date of death.

J. Documentation Requirements for Admission to a Skilled Nursing/Infectious Disease (SN-ID) LOC

1. - 1.c. ...

d. Medical eligibility will be considered upon receipt of the following information.

i. For all new admissions, a Form 148, physician's order, and Form PAS/RAS must be completed as required for other nursing facility admissions. When requesting a level of care change, a Form 149-B may be submitted in lieu of the physician's order.

1.ii. - 2.b. ...

c. Medical eligibility will be considered upon receipt of the following information.

i. For all new admissions, a Form 148, physician's order, and Form PAS/RAS must be completed the same as for other nursing facility admissions. When requesting a level of care change, a Form 149-B may be submitted in lieu of the physician's order.

ii. - ii.(e). ...

K. The following time frames must be met when requesting a medical eligibility determination for hospice care in a nursing facility. These requirements are in addition to those previously published January 20, 1996 in the Medicaid Standards for Payment for Nursing Facilities (Chapter 25, Admission Review and Preadmission Screening).

1. - 4. ...

5. If additional information necessary to make a determination is received after the initial 20-day time frame, the effective date shall be no earlier than the date all completed information is received.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1317 (October 1997), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:

Subchapter H. Admission Review and Pre-Admission Screening

§10157. General Provisions

A. Evaluative data for medical certification for IC I and IC II, skilled levels of care shall be submitted to the appropriate OAAS Regional Admission Review Office. This includes data for the following:

1. ...

2. applications for persons already in nursing facilities;

3. transfers of persons from one facility to another;

4. - 5. ...

B. A pre-admission Level of Care Eligibility Tool (LOCET) assessment shall be performed by an appropriate professional for Medicaid applicants or recipients requesting nursing facility admission.

C. Prior to admitting a resident to the facility, the following information is required for documentation into the medical record:

1. a physician's order which includes the applicant's medical history, diagnosis, history of mental illness, mental retardation, or developmental disability;

2. - 12. ...

13. the recommended level of care within the facility;

14. ...

NOTE: The medical/social evaluation shall not be completed more than 30 days prior to admission and a physician must personally approve a recommendation that an individual be admitted to a nursing facility.

D. Alternate Attending Physician. If the physician who performed the pre-admission examination does not provide continuing care after admission to the facility, the following steps shall be taken to secure an attending physician.

1. The resident or responsible party shall obtain an alternate physician within 48 hours after admission.

2. If they are unable to obtain a physician, the facility shall be responsible for obtaining one within two working days with the resident's or responsible party's approval. There shall be documentation of contact with the physician within the required time frame.

3. The new physician shall perform the following tasks in the course of his normal treatment regimen within seven days of assuming care:

- a. examine the resident;
- b. review the information provided by the physician who conducted the pre-admission examination; and
- c. furnish the facility with either a signed concurrence with the original physician's orders or submit alternate orders.

E. Tuberculosis Testing as Required by Public Health. Chapter II of the Public Health Manual, The Control of Diseases, Section 2:026 requires that any person admitted to a nursing facility shall have a complete history and physical examination by a licensed physician within 30 days prior to or 48 hours after admission. Any nursing facility resident who has complied with this provision shall be exempt from re-examination, i.e., upon transfer to another residential facility, the record of examination is transferred with the resident.

1. In compliance with the requirement for a complete history and physical examination, laboratory tests shall be completed and must include the following:

- a. purified protein derivative skin test for tuberculosis (PPD-5TU) given by the Mantoux method intradermally; and
- b. for residents over 35 years of age, a chest X-ray (completed no more than two weeks prior to admission).

2. The skin test and X-ray, if applicable, shall be evaluated by a licensed physician prior to the resident's admission to a nursing facility.

3. Office of Public Health (OPH) policy requires that a resident with evidence of active tuberculosis cannot be admitted to a nursing facility unless the examining physician states that the resident:

- a. is on an effective drug regimen;
- b. is responding to the prescribed treatment; and
- c. presents no imminent danger to the nursing facility's staff and other residents.

4. These statements shall be in writing, signed by the physician, and dated no more than two weeks prior to the resident's admission.

5. Additionally, no resident who has been diagnosed as having active tuberculosis or as being an asymptomatic carrier of this disease shall be admitted to a nursing facility, except under the supervision of the State Health Office (OPH). Tuberculosis is a reportable disease and shall be reported to the State Health Office through the public health unit in the parish where the nursing facility is located.

NOTE: A negative chest X-ray will allow the facility to admit the resident; provided, however, a Mantoux PPD test will be administered within 72 hours after admission. In a case where the medical record indicates resident has previously tested positive, a Mantoux PPD should not be performed.

F. Medical—Social Information. A physician's order and Form PASARR-1 shall be submitted for all applicants and recipients seeking initial certification. It is only required that Part A of the PASARR be completed by the facility.

1. The Form PASARR-1 shall be signed by the physician.

a. The physician shall date the Form PASARR-1 on the actual date he completes and signs the form. This will be the date medical certification begins.

2. A specific classification of care shall be indicated by the physician.

3. A transfer form, doctor's orders, or a statement signed by a physician who has knowledge of the case shall be completed on or before the date of transfer of a resident from one nursing facility to another.

4. Notification of Admission or Change (Form 148) shall be submitted to the OAAS regional office for admission or change in resident status.

a. Mental Status Evaluation. For persons with a mental health diagnosis, if either a current (within 30 days of application) mental status evaluation by a psychiatrist or a discharge summary from a mental health facility is available; it may be submitted with the Form PASARR-1. A psychiatrist shall sign and date these documents.

b. Psychological Evaluation. For persons with a diagnosis of mental retardation, if a psychological evaluation conducted by a psychologist is available, it may be submitted with Form PASARR-1. The evaluation shall not have been performed more than 90 days before the date certification is sought.

c. Insufficient Data. Additional documentation may be requested by letter if for any reason the data submitted is insufficient. If the PASARR-1 is not complete, it will be returned. The requested information must be received within 30 days from the date of the request.

d. Denial Due to Insufficient Data. If incomplete or insufficient data is submitted and the facility fails to respond to a request for additional data, a Notice of Medical Certification shall be issued indicating the person is not eligible due to insufficient documentation of the need for the requested services.

e. Screening for Active Treatment and Specialized Services. If the information on the Form PASARR-1 indicates the possibility of the need for active treatment for MR and/or specialized services for MI, an independent assessment will be completed by representatives of the Office of Mental Health (OMH) or the Office for Citizens with Developmental Disabilities (OCDD).

NOTE: Medical certification cannot be guaranteed for a Medicaid applicant or recipient admitted to a facility before a service determination from the appropriate state agency is obtained.

G. Pre-Admission Screening. The nursing facility may not admit an individual with a diagnosis of mental illness or mental retardation without a pre-admission screening. The purpose of the pre-admission screening annual resident review process (PASARR) is to identify persons who have mental illness (MI) or mental retardation (MR). The form used is PASARR-1 which addresses the specific identifiers of mental illness or mental retardation that indicate that a more in-depth evaluation is needed to determine the need for specialized services. The need for this in-depth assessment does not necessarily mean that the individual cannot be admitted to a nursing facility, only that the need for other services must be determined.

1. Mental Illness (MI). An individual is considered to have a serious mental illness (MI) if the individual has a major mental disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition (DSM III-R). A mental disorder may include schizophrenia, mood, paranoid, panic, or other severe anxiety disorder, somatoform disorder, personality disorder, other psychotic disorder, or another mental disorder that may lead to a chronic disability. Not inclusive would be a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as previously defined.

2. Mental Retardation (MR) and Related Conditions. An individual is considered to have MR if he/she has a level of retardation (mild, moderate, severe, or profound) as described in the American Association of Mental Deficiency's Manual on Classification in Mental Retardation (1983), page 1. Mental retardation refers to significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. These provisions also apply to persons with "related conditions," as defined by federal regulations. *Person with related conditions* means an individual who has a severe, chronic disability that meets all of the following conditions:

- a. it is attributable to:
 - i. cerebral palsy or epilepsy; or
 - ii. any other condition, other than mental illness, found to be closely related to MR because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with MR, and requires treatment or services similar to those required for these persons (any other condition includes autism);
- b. it is manifested before the person reaches age 22;
- c. it is likely to continue indefinitely;
- d. it results in substantial functional limitations in three or more of the following areas of major life activity:
 - i. self-care;
 - ii. understanding and use of language;
 - iii. learning;
 - iv. mobility;
 - v. self-direction; and
 - vi. capacity for independent living.

H. Categorical Determinations. In order to arrange appropriate care for residents in nursing homes, the state of Louisiana has defined certain categories of resident care needs. Individuals who fall into these categories may have a determination made regarding their need for specialized services or nursing care without an elaborate assessment. In each case that specialized services is determined not to be necessary, however, it remains the responsibility of the nursing facility to notify the appropriate agency if the resident's mental illness or mental retardation service needs changes and becomes a barrier to utilizing nursing facility services, or they become a danger to themselves or others. The following advance group determinations are made by OAAS and are for nursing facility care only. The state's mental health or mental retardation authorities must still make a determination regarding the need for specialized services for MI or MR.

H.1. - I.2. ...

J. If an individual has been identified as having a diagnosis of mental illness and/or mental retardation, the following process is followed prior to admission.

1. The Form PASARR-1 is completed, signed, and dated by the attending physician.

2. The Form PASARR-1 is forwarded to the appropriate agency (OMH or OCDD) for a screening determination to be made. A copy of the Form PASARR-1 is also submitted to the OAAS regional office with an indication that a second level screening has been requested.

3. OMH or OCDD will either make the service determination upon receipt or if further evaluation is necessary the Form PASARR-1 will be forwarded within two working days to an independent assessment team for Level II screening and recommendation of services needed by the resident.

4. If Level II screening is required, an assessment team will visit the resident to complete the evaluations.

5. After all necessary screening is completed OMH or OCDD will submit a written service determination to the OAAS Regional Office and the facility indicating whether nursing facility services are appropriate. The OAAS Regional Office will issue a Form 142 approving or denying medical certification.

6. All evaluation material will be forwarded to the nursing facility by OMH or OCDD for each resident evaluated.

7. A PAS determination must be made in writing within eight working days of referral by the agency or facility which performs the Level I identification screen. If a facility feels that an applicant for admission qualifies for one of the advance group determinations the following procedure should be followed.

a. The facility will submit form PASARR-1 to the department for review.

b. If approved, a categorical determination will be issued to the facility with the applicable time limitation for that category.

c. Based upon this approval, the facility may admit the individual but is still required to forward a copy of the admit packet to the state mental health or mental retardation authority so that they may make a determination for specialized services in the facility. Part C is exempt from further referral for MI or MR unless the stay exceeds 30 days.

8. Annual Resident Review. All residents of a Medicaid SNF/NF with mental illness and/or mental retardation must be reviewed for services annually regardless of whether they were first screened under the PASARR requirements.

a. To the maximum extent practicable in order to avoid duplicate testing and effort, the PASARR must be coordinated with the routine resident assessment required.

K. - K.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 28, 2006 at 9:30 a.m. in Room 188, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

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

**RULE TITLE: Nursing Facilities—Standards for
Payment—Medical Eligibility Determination
Admission Review and Pre-Admission Screening**

**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 06-07. It is anticipated that \$1,428 (\$714 SGF and \$714 FED) will be expended in FY 06-07 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 06-07. It is anticipated that \$714 will be expended in FY 06-07 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 the provisions governing medical eligibility determination and pre-admission screening for nursing facility services for the purpose of clarification and to eliminate the use of the Title XIX Medical-Social Information form (Form 90-L)(for approximately 12,000 nursing facility applicants and residents). The Level of Care Eligibility Tool (LOCET) will replace preadmission screening and Form 90-L. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 06-07, FY 07-08, and FY 08-09.

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

This rule has no known impact on competition and employment.

Jerry Phillips
Acting Medicaid Director
0608#065

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation**

Fees (LAC 43:XIX.701, 703, and 707)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, the Office of Conservation proposes to amend LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The proposed action will adopt Statewide Order No. 29-R-06/07 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation Fee Schedule for the collection of Application, Production, and Regulatory Fees, and will replace the existing Statewide Order No. 29-R-05/06.

Title 43

NATURAL RESOURCES

**Part XIX. Office of Conservation--General Operations
Subpart 2. Statewide Order No. 29-R**

Chapter 7. Fees

§701. Definitions

* * *

Application for Site Clearance—an application to approve a procedural plan for site clearance verification of platform, well or structure abandonment developed by an operator/lessee and submitted to the Commissioner of Conservation, as authorized by LAC 43:XL311 et seq., or successor regulations.

* * *

BOE—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 6.0.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:

§703. Fee Schedule for Fiscal Year 2006-2007

A. Application Fees

Application Fees	Amount
* * *	
Application for Site Clearance	\$600
* * *	

B. Regulatory Fees

1. Operators of each permitted Type A Facility are required to pay an annual Regulatory Fee of \$6,706 per facility.

2. Operators of each permitted Type B Facility are required to pay an annual Regulatory Fee of \$3,353 per facility.

3. Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay \$682 per well.

4. Operators of record of permitted Class III and Storage wells are required to pay \$682 per well.

C. ...

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers:

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	14
Tier 2	1-5,000	75
Tier 3	5,001-15,000	215
Tier 4	15,001-30,000	355
Tier 5	30,001-60,000	565
Tier 6	60,001-110,000	780
Tier 7	110,001-9,999,999	959

E. - E.3. ...

F. Pipeline Safety Inspection Fees

1. Owners/Operators of jurisdictional gas pipeline facilities are required to pay an annual Gas Pipeline Safety Inspection Fee of \$18 per mile, or a minimum of \$320, whichever is greater.

2. Owners/Operators of jurisdictional hazardous liquids pipeline facilities are required to pay an annual Hazardous Liquids Pipeline Safety Inspection Fee of \$18 per mile, or a minimum of \$320, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:

§707. Severability and Effective Date

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-06/07 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This Order (Statewide Order No. 29-R-06/07) supersedes Statewide Order No. 29-R-05/06 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR

29:2502 (November 2003), LR 30:2494 (November 2004),), LR 31:2950 (November 2005), LR 32:

Family Impact Statement

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed Rule on family as defined therein.

1. The proposed Rule will have no effect on the stability of the family.

2. The proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule will have no effect on the functioning of the family.

4. The proposed Rule will have no effect on family earnings and family budget.

5. The proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The proposed Rule will have no effect on the ability of the family or local government to perform any function as contained in the proposed Rules.

Comments and views regarding the proposed fees will be accepted until 4:30 p.m., Monday, October 2, 2006. Comments should be directed, in writing, to Todd Keating, Director, Engineering Division, Office of Conservation, P.O. Box 94275, Capitol Station, Ninth Floor, Baton Rouge, LA 70804-9275 (Re: Docket No. 06-866—Proposed Statewide Order No. 29-R-06/07).

A public hearing will be held at 9 a.m., Wednesday, September 27, 2006 in the LaBelle Hearing Room, located on the First Floor, LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Fees**

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

There are no implementation costs (savings) to state or local governmental units resulting from this action.

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

Proposed Statewide Order No. 29-R-06/07 establishes the Louisiana Office of Conservation Fee Schedule for the collection of application, production, and regulatory fees by the Office of Conservation and will replace the existing Statewide Order No. 29-R-05/06 and will retain the maximum revenue caps authorized in R.S. 30:1 et seq. The Proposed Rule will retain the existing fee schedule for all Application Fees, but will also add the definition for a Site Clearance Application and the corresponding \$600 Application Fee, as previously authorized by R.S. 43:311. R.S. 30:21 et seq., R.S. 30:560, and R.S. 30:706 provide that the Commissioner of Conservation shall periodically and/or annually review the fees collected, and the Office of Conservation has established a practice of annually evaluating all applicable fees. This revision will authorize the collection of this application fee consistent with the Agency's other fee collections. The Production Tier Fee in

NOTICE OF INTENT

**Department of Natural Resources
Office of the Secretary**

**Oyster Lease Acquisition and Compensation Program
(LAC 43:I.Chapter 8)**

the FY 06/07 Fee Schedule has been reduced an average 6.29% overall due to the increased number of participating wells. The Regulatory Fees for Class I Injection Wells will remain at the same level as those charged in FY 05/06; however, the Regulatory Fees for Class II and III Injection Wells, and Type A and B Commercial Facilities have increased by approximately 2.4% due to the declining numbers of wells and facilities. The Office of Conservation will collect approximately the same revenue for these fees in FY 06/07 as in FY05/06, or approximately \$7,260,807.

Additionally, the passage of Act Nos. 222 and 223 of the 2004 Regular Legislative Session, authorizes the Office of Conservation to determine by rule annually, in accordance with the Administrative Procedure Act, the pipeline safety inspection fees charged for the approximately 45,266 miles of state regulated jurisdictional gas distribution and gas transmission pipelines (R.S. 30:560) and approximately 4,886 miles of state jurisdictional hazardous liquids pipelines (R.S. 30:706). Although the Office of Conservation is authorized to collect a "fee not to exceed \$22.40 per mile, or a minimum of \$400, whichever is greater" for these state jurisdictional gas and hazardous liquids pipelines, it should be emphasized that the Agency is proposing a FY 06/07 fee of only \$18.00 per mile, or a minimum of \$320, whichever is greater, which is an increase of \$3.00 per mile, or \$55 for the minimum fee, from those fees charged in FY 05/06, but is still substantially less than the maximum fees authorized by statute. Although this is the first increase for these fees since FY 98/99, it is necessary due to: (1) the Agency's FY 06/07 appropriation reduction of \$313,843 in State General Funds from FY 05/06, and (2) the Agency's reduction of \$476,947 from the balance of the Oil & Gas Regulatory Statutory Dedicated Fund, as mandated by Executive Order No. KBB 2005-82. Historically, the balance from the Oil & Gas Regulatory Statutory Dedicated Fund has been sufficient from the previous fiscal year(s) to offset the need to increase these fees; however, the FY 05/06 reduction eliminated most of the Fund's balance. The Office of Conservation is projected to collect approximately \$902,736 for the pipeline safety inspection fees in FY 06/07, or \$147,827 more than collected in FY 05/06.

No local governmental units will be impacted by this action.

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

The proposed rule will replace the existing Office of Conservation Fee Schedule. The proposed Statewide Order No. 29-R-06/07 will retain the existing revenue caps for fees assessed to industries under the jurisdiction of the Office of Conservation, as authorized by R.S. 30:21 et seq., R.S. 30:560, and R.S. 30:706, and is expected to reach approximately \$8,163,543 for FY 06/07.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The passage of Statewide Order No. 29-R-06/07 will have no effect on competition and employment.

Gary P. Ross
Assistant Commissioner
0608#037

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Under the authority of the laws of the state of Louisiana and in accordance with provisions of Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950, including the Oyster Lease Acquisition and Compensation Program under R.S. 56:432.1, with the general authority of the Department of Natural Resources under Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950, and with the Administrative Procedure Act, R.S. 49:950 et seq., the secretary hereby gives notice that rulemaking procedures have been initiated to promulgate rules to govern the Oyster Lease Acquisition and Compensation Program, LAC 43:I.851, 853, 855, 857, 859, 861, 863, 865, 867, and 869 and to replace or repeal the existing provisions of LAC 43:I.Chapter 8, Subchapter B and Subchapter C in their entirety.

The proposed Rule governs the administration of the Oyster Lease Acquisition and Compensation Program by the department, in accord with R.S. 56:432.1, for the acquisition of and compensation for oyster leases or portions of oyster leases upon which occurs or will occur dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration. The proposed Rule repeals the existing provisions of LAC 43:I.Chapter 8, Subchapter B and Subchapter C in their entirety as the authorizing statutory provisions of the former Oyster Lease Relocation Program have been replaced or repealed by Acts 2006, No. 425. The basis and rationale for this proposed Rule are to implement Acts 2006, No. 425, and to comply with the new provisions of R.S. 56:432.1 enacted thereunder.

This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Chapter 8. Coastal Protection, Conservation, and Restoration

Subchapter B. Oyster Lease Acquisition and Compensation Program

§850. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2288 (December 1998), repealed LR 32:

§851. Purpose and Authority

A. This Subchapter sets forth the rules for the acquisition of and compensation for oyster leases by the department when necessary for purposes of coastal protection, conservation, or restoration. The department may acquire oyster leases, in whole or in part, for such purposes on behalf of the state to the extent that the leases are or may be directly affected by the dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a coastal protection, conservation, or restoration project.

B. These regulations are adopted pursuant to Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950, including the Oyster Lease Acquisition and Compensation Program under R.S. 56:432.1 and the general authority of the department under Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:421, et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§852. Notification of Leaseholders

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2288 (December 1998), repealed LR 32:

§853. Construction and Usage

A. The following shall be observed regarding the construction and usage of these regulations.

1. Unless otherwise specifically stated, the singular form of any noun includes the plural and the masculine form of any noun includes the feminine.

2. Unless otherwise specifically stated, all references to *section* are to Sections of this Subchapter.

3. Any reference to *days* in this Subchapter shall refer to calendar days.

4. The day of the event from which a designated time period begins to run shall not be included in the computation of a period of time allowed or prescribed in these regulations. The last day of the period is to be included in the computation of a period of time allowed or prescribed in these regulations, unless it is a legal holiday, in which case the period runs until the end of the next day that is not a legal holiday. Nonetheless, the effective date of acquisition shall be on the date set by the department pursuant to these regulations and R.S. 56:432.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:421, et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§854. Exchange

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2289 (December 1998), repealed LR 32:

§855. Definitions

A. The following shall apply for purposes of these regulations.

Affected Acreage—the portion of an affected lease located within a direct impact area of a project.

Affected Lease—an existing oyster lease identified by the department from records provided and maintained by DWF as being located, in whole or in part, within a direct impact area of a project.

Coastal Protection, Conservation, or Restoration—any project, plan, act, or activity for the protection, conservation, restoration, enhancement, creation, preservation, nourishment, maintenance, or management of the coast, coastal resources, coastal wetlands, and barrier shorelines or islands, including but not limited to projects authorized under any comprehensive coastal protection master plan or annual coastal protection plan issued pursuant to Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950.

Department—the Department of Natural Resources, its secretary, or his designee.

Direct Impact Area—the physical location upon which dredging, direct placement of dredged, or other materials, or other work or activities necessary for the construction or maintenance of a project is planned to occur or has occurred.

DWF—the Department of Wildlife and Fisheries, its secretary, or his designee.

Effective Date of Acquisition—the date set by the department in accordance with these regulations and R.S. 56:432.1 upon which the affected lease or affected acreage shall revert back to the state of Louisiana, free and clear of any lease or other obligation or encumbrance.

Leaseholder—the last lessee of record, or his designee, of an oyster lease let by DWF pursuant to R.S. 56:425, et seq., as identified in records provided and maintained by DWF.

Marketable Oysters—includes both seed and market-size oysters as defined by DWF.

Oyster Resource Survey—any survey or sampling to obtain information that may include but is not limited to oyster density (via square meter samples), oyster condition, bottom condition, bottom type, oyster standing crop, oyster physiology, oyster mortality, water depth, water temperature, water salinity, and assessment of oyster reef community organisms.

Potential Impact Area—the physical location upon which dredging, direct placement of dredged, or other materials, or other work or activities necessary for the construction or maintenance of a coastal protection, conservation, and restoration project is projected, possible, or estimated to occur.

Potentially Affected Acreage—the portion of a lease located within the potential impact area of a project.

Potentially Affected Lease—an existing oyster lease identified by the department from records provided and maintained by DWF as being located, in whole or in part, within a potential impact area of a project.

Project—any project, plan, act, or activity recognized by the department as relating to coastal protection, conservation, or restoration.

Secretary—the Secretary of the Department of Natural Resources or his designee, unless otherwise specifically stated in this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:421, et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§856. Retention

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998), repealed LR 32:

§857. Notification to Leaseholder of an Oyster Resource Survey; Procedures and Protocols for an Oyster Resource Survey

A. When appropriate, the secretary shall determine and delineate the potential impact area of a project and in making such decision may consult with the government agency or any public or private entity responsible for the project.

B. When the secretary determines that an existing oyster lease identified in records provided and maintained by DWF may, in whole or in part, be located within the direct impact area of a project, the secretary may conduct an oyster resource survey.

C. The secretary shall notify the leaseholder in writing at least 15 days prior to the oyster resource survey of the potentially affected acreage or potentially affected lease. The notification shall, at a minimum, include the following:

1. a brief description of the coastal protection, conservation, or restoration project, and a plat or map depicting the project and potentially affected lease or potentially affected acreage;

2. a copy of these regulations, R.S. 56:424, and R.S. 56:432.1;

3. the date and time of the oyster resource survey;

4. the name of and contact information for the person conducting the oyster resource survey;

5. a statement that the leaseholder or his designee may accompany the person conducting the oyster resource survey;

6. a statement that the state may acquire the potentially affected lease or potentially affected acreage to be surveyed or sampled, and if so, that the leaseholder will be compensated for any acquired lease or portion thereof in accordance with R.S. 56:432.1 and this Subchapter;

7. the name of and contact information for a person at the department to direct all inquiries regarding the project and the potentially affected lease or potentially affected acreage;

8. a statement that the leaseholder may provide to the department, through the contact person listed in the notice, any reasonably confirmable data or other information relevant to a determination of the compensation for any potentially affected lease or potentially affected acreage, within 60 days after the actual date of the oyster resource survey conducted pursuant to this Subchapter. Failure to provide such data or information within the specified time period may preclude consideration of such data by the secretary, the department, the person conducting the oyster resource survey, or the appraiser appointed thereby;

9. a statement that if the person conducting the oyster resource survey is unable to conduct the survey on the date provided in the notice, that such person will provide notice

to the leaseholder of the new survey date and time by appropriate and reasonable means;

10. a statement that the oyster resource survey is to be conducted in the manner set forth under §857.E of this Subchapter; and

11. a statement that the department, the state of Louisiana, political subdivisions of the state, the United States, or any agency, agent, contractor, or employee of any of these entities is not subject to any obligation, responsibility, or liability in relation to or resulting from any surveying or sampling of any oyster lease, information provided to any leaseholder in relation to any surveying or sampling of any oyster lease, the timing of any acquisition of any part of any lease by the state pursuant to R.S. 56:432.1, the lack of acquisition of any part of any lease except as provided by R.S. 56:432.1, or any report pursuant to R.S. 56:432.2 or otherwise.

D. Any written notification from the secretary or the department to the leaseholder of a potentially affected lease or potentially affected acreage in accordance with this section shall be deemed legally sufficient if sent by certified United States mail, postage pre-paid, return receipt requested, or hand delivered, to the last address furnished to DWF by the leaseholder on the date of issuance of notice.

E. Oyster Resource Survey Procedures and Protocol

1. The intent of the oyster resource survey is to obtain information that may include but is not limited to oyster density (via square meter samples), oyster condition, bottom condition, bottom type, oyster standing crop, oyster physiology, oyster mortality, water depth, water temperature, water salinity, and assessment of oyster reef community organisms.

2. Assessment Procedure

a. Should the secretary elect to obtain an oyster resource survey of a potentially affected lease or potentially affected acreage, he may select the person(s) to conduct the oyster resource survey considering all relevant criteria, including but not limited to prior experience, prior performance, demonstrated expert knowledge in the field of oyster biology, and the ability to perform concurrent task orders while maintaining high quality work. The person(s) so selected shall be contracted with by the department pursuant to R.S. 39:1481, et seq., or other applicable public contract law, and shall have the following minimum qualifications:

i. a college degree in biological science, or prior acceptance by a Louisiana federal or state court as an expert witness in the field of oyster biology or oyster ecology; and

ii. five years of professional experience conducting oyster lease surveys and standing oyster crop analyses.

b. Samples should be taken at a minimum within the area of a potentially affected lease delineated by the secretary as the potential impact area of the project for which the oyster resource survey is being conducted.

c. A written assessment of the results of the oyster resource survey shall be prepared.

d. Oyster resource survey methods and procedures used should be stated and identified in the written assessment.

e. Information and data from the oyster resource survey should be compiled, analyzed, and presented in

tables, charts, and in a written format along with scale maps indicating the location of the oyster leases in relation to the proposed project, location of sample sites, number and size of both live and dead oysters, oyster size frequency distribution, mortality rates per group, and photographs of oyster samples.

f. An original copy of the written assessment shall be provided to and retained by the department, which may use it in accordance with the appraisal and valuation procedures set forth in these regulations. A copy will be provided to the leaseholder upon written request by the leaseholder to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:424, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§858. Appeals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998), repealed LR 32:

§859. Appraisal

A. The secretary shall determine or delineate the direct impact area of a project, and in making such decision, may consult with any public or private entity responsible for the project.

B. Should the secretary determine that an existing oyster lease identified in records provided and maintained by DWF is, in whole or in part, located within the direct impact area of a project, the secretary shall obtain an appraisal of the affected lease or affected acreage.

C. When the secretary elects to obtain an appraisal of an affected lease or affected acreage, he shall select the appraiser considering all relevant criteria, including but not limited to the following:

1. prior performance; education; experience in valuation of oyster leases; experience in valuation of unique properties and unusual estates; experience in valuation of various land classes; demonstrated expert knowledge in the field of real property appraisal; and, the ability to perform concurrent tasks orders while maintaining high quality work;

2. the appraiser so selected shall be contracted with by the department pursuant to R.S. 39:1481, et seq., or other applicable public contract law, and shall have a current certification as a Louisiana certified general real estate appraiser; professional designation in the field of appraisal; and, five or more years professional experience conducting real property appraisals.

D. The appraiser shall estimate the fair market value of the affected lease or affected acreage to be acquired according to accepted appraisal methods, which may include analysis of comparable sales of other leases. The appraiser may also take into consideration any reasonably confirmable data or information supplied by any person or obtained through the appraisal process, and any data or information obtained through the oyster resource survey conducted in accordance with §857.

E. A written appraisal shall be prepared by the appraiser, estimating the fair market value of the affected lease or affected acreage, and explaining the valuation methodology. An original of the appraisal and a copy of all documents

used to develop the appraisal shall be provided to the department, which may use it pursuant to the procedures set forth in these regulations. A copy will be provided to the leaseholder upon written request by the leaseholder to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§861. Determination of Compensation

A. The secretary shall determine the compensation for any affected acreage to be acquired as follows.

1. If the department provides a time period of one year or more between issuance of a notice of acquisition pursuant to §863 and the effective date of acquisition, then compensation for the affected acreage to be acquired shall be equal to the fair market value of the affected acreage to be acquired as determined by the secretary in accordance with §859.

2. If the department provides a time period of less than one year between issuance of a notice of acquisition pursuant to §863 and the effective date of acquisition, the compensation for the affected acreage to be acquired shall be equal to the fair market value of the affected acreage to be acquired as determined by the secretary in accordance with §859 plus the value of such non-removable marketable oysters on the affected acreage, if any, as determined by the department, based upon reasonably confirmable data. The determination of value shall take into account the number of sacks of marketable oysters per acre, suitable acreage, natural mortality, current market price, and harvest cost.

3. Data for estimation of the value of non-removable marketable oysters shall be determined from the written assessment derived from the oyster resource survey conducted in accordance with §857. The department may also take into consideration any reasonably confirmable data or information supplied timely by any person in accordance with §857.

4. The appraiser and the department shall consider any reasonably confirmable data or other information supplied to the department by the leaseholder following the oyster resource survey conducted in accordance with §857. The department or the appraiser may disregard any information or data not submitted timely pursuant to §857.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§863. Notification to Leaseholder of Acquisition and Compensation

A. Should the secretary determine that an existing oyster lease issued by DWF is located within the direct impact area of a project and the project is necessary and proper for coastal protection, conservation, or restoration, the secretary may acquire the affected acreage on behalf of the state in accordance with this Section.

B. Acquisition shall be implemented by issuance of a notice of acquisition. Notice of acquisition may be mailed or delivered to the leaseholder no sooner than 60 days after the completion of the oyster resource survey conducted in accordance with §857. The notice shall be issued in writing to the leaseholder by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the

last address furnished to DWF by the leaseholder on the date of issuance of notice. A copy of such notice shall be recorded in the conveyance records of any parish in which the affected acreage to be acquired or the affected lease is located.

C. Such notice of acquisition shall, at a minimum, include:

1. a description specifying affected acreage, or portion thereof, being acquired;

2. the effective date of acquisition;

3. a brief description of the coastal protection, conservation, or restoration project for which the acreage is being acquired;

4. a plat or map depicting the project and the affected lease or affected acreage to be acquired;

5. a copy of these regulations and R.S. 56:432.1;

6. a statement that the department will acquire the acreage described in the notice of acquisition, and that such acquisition shall automatically occur on the date specified in the notice;

7. a statement that the leaseholder retains full use and possession of the affected acreage to be acquired until the effective date of acquisition, and may, at his sole risk and expense, harvest any oysters or take any other action permitted under the affected lease until the effective date of acquisition;

8. a statement that the acquisition will be effective regardless of whether the leaseholder actually received the notice of acquisition;

9. a statement that the affected lease shall continue in full force and effect as to all remaining acreage under the lease other than the acquired acreage (in cases where only part of the affected lease is being acquired);

10. a statement that lease payments as otherwise required by R.S. 56:428 or 429 shall no longer be payable as to the acquired oyster lease acreage for the calendar year after the date on which the notice of acquisition is issued; but that payment must still be paid as to any remaining acreage under the lease if the lease is acquired only in part;

11. a statement that the leaseholder will either be allowed a period of one year or more from the date of issuance of notice of acquisition herein in which to remove any and all marketable oysters from the affected lease, at his sole risk and expense, and that no compensation shall be allowed for oysters so removed or removable, or if the department states an effective date for the acquisition that is less than one year after the date of issuance, a statement that the compensation for the acreage to be acquired includes compensation for the non-removable marketable oysters as part of the attached acquisition payment;

12. a determination of compensation, stating the dollar amount that the department has determined in accordance with these regulations and R.S. 56:432.1 to be paid for the acquired acreage and the appraised value of the acquired acreage. If compensation is being paid for non-removable marketable oysters, a statement of the value thereof is also to be included;

13. a check, attached only to a notice of acquisition sent to the leaseholder's last address as furnished to DWF by the leaseholder on the date of issuance of notice, in the full amount of the determination of compensation, except for and less any amount due on recorded liens and encumbrances to

be paid out of said proceeds, in the name of the leaseholder of record in accordance with the records of DWF on the date of issuance of notice of acquisition herein;

14. a statement that acceptance or negotiation of the attached check (or draft) does not preclude a claim for additional compensation as provided in these regulations and R.S. 56:432.1;

15. if any amount due on a recorded lien or encumbrance has been withheld from the check for compensation, a statement indicating the name of the holder of the recorded lien or encumbrance, the amount withheld, and that payment of said amount has been made by the department to that holder;

16. a statement that the leaseholder may seek an administrative hearing in writing through the department within 60 days after issuance of the notice of acquisition, determination of compensation, or payment, pursuant to these regulations and R.S. 56:432.1, as to whether the acquisition due to the impact of dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration is proper or whether the compensation issued by the department satisfied the regulations under this Subchapter, and that administrative or judicial review may be permissible, but that the procedures stated by law and these regulations must be followed or such right of review may be lost or impaired; and

17. a statement that a request for administrative or judicial review shall have no effect upon the validity of the acquisition of the acquired acreage, but only the compensation payable to the leaseholder, unless review is sought timely and the leaseholder proves that the project or action for which the acreage was acquired does not further coastal protection, conservation, or restoration.

D. Before issuing any notice of acquisition, the department shall make a reasonable attempt to determine whether any amount is due on a recorded lien or encumbrance in relation to any oyster lease covering the acreage to be acquired. The holder of the lien or encumbrance and the leaseholder may negotiate to allocate the compensation to be paid under the notice of acquisition by written agreement among them. Any such written agreement must fully release and indemnify the department from any claim in relation to the acreage to be acquired or the compensation for such acreage.

1. If no such written agreement is provided on or before the date when the department issues the notice of acquisition, the department shall withhold the full amount of all liens or encumbrances covering any of the acreage to be acquired, up to the full amount of the compensation determined by the department. If the department timely receives such a written agreement, the department shall withhold the amount agreed by the lienholder or encumbrance holder. A statement of the name of the holder and the amount withheld in relation to each lien or encumbrance shall be issued to the leaseholder as part of the notice of acquisition.

2. Should the amount of compensation to be paid for the acquired acreage be insufficient to pay the entirety of the lien or encumbrance, any lien or encumbrance shall be paid in order of legal preference and all holders of any remaining

or unpaid lien or encumbrance shall be notified of the reason for non-payment or partial payment and issued a copy of the notice of acquisition.

3. The department shall forward payment in the full amount of any withholding to the holder of the lien or encumbrance by certified United States mail, return receipt requested, postage pre-paid, or by pre-paid receipted courier or delivery service, or hand delivery, to the last address on file with the secretary of state, if any, or to any address provided to the department or DWF by the lien or encumbrance holder. A copy of the notice of acquisition and determination of compensation, showing the lien or encumbrance and the withholding in relation thereto, shall be attached to the payment.

4. If the department is unable to make delivery of the payment by these means, the department shall transfer funds in the full amount of the withholding to a trust account from which it may be drawn for the benefit of the holder of the lien or encumbrance by joint agreement of the holder and the department, upon request of the lienholder of record on the date the notice of acquisition is initially issued.

5. If funds deposited into a trust account pursuant to this Subsection remain unclaimed after a period of five years, the funds shall be declared to be abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act, R.S. 9:151, et seq., at the sole discretion of the secretary.

E. If the department attempts issuance of notice of acquisition, determination of compensation, and the check pursuant to §863.C, at least once, and is unable to make delivery of the notice to the leaseholder thereby, the department shall re-issue the notice and the determination of compensation by certified United States mail, return receipt requested, to the leaseholder at his address on file with DWF on the date of the re-issuance. In such event, the department shall also publish a summary of such notice identifying the affected lease and acreage to be acquired, stating the effective date of the acquisition and providing a contact person at the department for all inquiries regarding the acquisition, in the official journal for all parishes in which any part of the acreage to be acquired is located. In addition, the following procedures shall apply.

1. If a Notice of Acquisition is re-issued under this Subsection, no check shall be attached to the re-issued notice. Instead, payment in the full amount of the determination of compensation, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, shall be transferred into a trust account from which it may be drawn for the benefit of the leaseholder by joint agreement of the leaseholder and the department, upon request of the leaseholder listed with DWF on the date the notice of acquisition is initially issued. If said funds deposited into a trust account pursuant to this Subsection remain unclaimed after a period of five years, the funds shall be declared to be abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act as set forth in R.S. 9:151, et seq., at the sole discretion of the secretary.

2. A re-issued notice shall include a statement that compensation for the acquisition has been deposited into a trust account, and that a contact person at the department designated in the re-issued notice can assist the leaseholder

in withdrawing said funds from the trust account. The re-issued notice shall also include a statement that any funds in the trust account remaining unclaimed after five years shall be declared abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act, R.S. 9:151, et seq.

F. Upon the effective date of acquisition of affected acreage as stated in the notice of acquisition, possession of the affected acreage acquired pursuant to the notice of acquisition, issued in accordance with this section shall revert back to the state of Louisiana, free and clear of any lease or other obligation or encumbrance, and regardless of whether the leaseholder actually receives the notice of acquisition.

G. No lease shall be granted for any water bottom for which any lease was previously acquired by the state for coastal protection, conservation, or restoration, unless the secretary of DWF determines that leasing would otherwise be appropriate under the provisions of Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950 and the secretary of DNR affirms that the water bottom is not necessary for coastal protection, conservation, or restoration, as provided by and in accordance with the provisions of R.S. 56:425(E). Unless this determination has been made prior to issuance of the lease, a lease of water bottom for which a lease was previously acquired shall be null and void for such water bottom and shall be of no force or effect. No person shall have any claim against either secretary, either department, the state of Louisiana, its political subdivisions, the United States, or any agency, agent, contractor, or employee thereof or any other person in relation to the nullity of such lease. The determination of whether the water bottom sought to be leased is not necessary for coastal protection, conservation, or restoration shall be at the sole discretion of the secretary of DNR, upon consideration of existing, planned, projected, or reasonably foreseeable projects or other actions needed for coastal protection, conservation, or restoration.

H. Nothing in these regulations shall be construed to require the secretary to engage in or perform any project or other action for coastal protection, conservation, or restoration or any oyster resource survey, appraisal, or valuation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:425, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§865. Administrative Review

A. A leaseholder of an oyster lease acquired, in whole or in part, in accordance with these regulations and R.S. 56:432.1 may seek an administrative hearing through the department.

1. Any such adjudication shall be limited to whether the acquisition due to the impact of dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration is proper, or whether the compensation issued by the department satisfies the rules and regulations under this Subchapter.

2. Any leaseholder whose lease is not acquired, but upon which dredging, direct placement of dredged or other materials, or other work or activities necessary for the

construction or maintenance of a project for coastal protection, conservation, or restoration has occurred, may also seek an administrative hearing through the department under this section to determine if acquisition of such oyster lease acreage would be proper.

B. A leaseholder's request for an administrative hearing under this section shall be requested in writing and sent to the department at the following address: Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Assistant Secretary, P.O. Box 44487, Baton Rouge, LA 70804-4487.

1. A written request for adjudication under this Section must be received by the department within 60 days after issuance of the notice of acquisition, determination of compensation, or payment to which the request pertains. However, a request for adjudication may be submitted to the department within two years after completion of the project for which acreage was acquired, if and only if, the leaseholder establishes that notice of the acquisition, determination of compensation, or payment was not issued as required by R.S. 56:432.1 or §863, or the request for adjudication seeks review of the lack of acquisition of leased acreage upon which dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration has occurred.

a. A request for adjudication received after the aforementioned deadlines, as applicable, is not timely and shall be denied.

b. A request for adjudication is deemed timely "received" when the request is mailed on or before the due date. If the papers are received by mail on the first legal day following the expiration of the delay, there shall be a rebuttable presumption that they are timely filed. In all cases where the presumption does not apply, the timeliness of the mailing shall be shown by an official United States postmark or by official receipt or certificate from the United States Postal Service or a bona-fide commercial mail service such as Federal Express or United States Parcel Service, made at the time of mailing which indicates the date thereof.

2. A request for an administrative hearing shall, at a minimum, include the following:

a. identification of the notice of acquisition to which the request pertains, or if no notice has been issued, identification of the affected lease and affected acreage to which the request pertains;

b. a statement of the relief requested, identifying the specific issue or point as to which adjudication is sought;

c. a statement of the reasons such relief is requested, and the facts upon which the request for relief is based;

d. the name and address to which the department and the Division of Administrative Law will send all communications regarding the request for administrative review. Neither the department nor the Division of Administrative Law have any obligation to deliver any communications or other notices regarding the request to any person or address other than the address listed in the request or any amendment thereto. If no person is listed, the department and the Division of Administrative Law shall

deliver all communications or notices to the last address on file for the leaseholder with DWF, and shall have no obligation to deliver communications or notices to any other person or address.

3. The department shall promptly submit a request for adjudication to the Division of Administrative Law.

C. Any adjudication hereunder shall be governed by and conducted in accordance with the Administrative Procedure Act (APA), R.S. 49:950, et seq., and the Division of Administrative Law Act (DALA), R.S. 49:991, et seq., unless such procedures are inconsistent or in conflict with the provisions of this Subchapter or R.S. 56:432.1.

D. The leaseholder may provide to the Division of Administrative Law, the department, and any other parties, including any holder of any lien or encumbrance or any other leaseholder claiming an interest in the acreage at issue, on or before the date of the adjudication, any reasonably confirmable data or other information that the leaseholder believes should be considered by the Division of Administrative Law in conducting the administrative review of the determination of the department. The Division of Administrative Law shall consider any reasonably confirmable data or information timely provided to the department by the leaseholder or any other person pursuant to §863 and R.S. 56:432.1. The Division of Administrative Law may disregard any information or data that is not submitted timely pursuant to this Subchapter.

E. The final decision of the Division of Administrative Law shall be issued to the leaseholder, in writing by certified mail, at his address on file with DWF on the date of issuance thereof, or at such other address as may be specified in the request for adjudication; and the Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Assistant Secretary, P.O. Box 44487, Baton Rouge, LA 70804-4487.

F. A request for adjudication shall have no effect upon the validity of the acquisition of the acreage acquired pursuant to a notice of acquisition, but only the compensation payable to the leaseholder. However, the acquisition may be found invalid if adjudication is sought timely and the project or action for which acquisition is sought does not further coastal protection, conservation, or restoration. If the acquisition is invalidated, the full possession of the oyster lease acreage sought to be acquired shall remain with the leaseholder, as if the notice of acquisition had never been issued.

G. If the Division of Administrative Law declares in a final decision that the leaseholder is entitled to additional compensation for the acquisition of the leasehold acreage at issue or that the department should have acquired a lease or acreage which it had not previously acquired, and states the amount of such compensation that is due, the department, subject to Constitution Article 12, Section 10, shall issue a check or draft to the leaseholder for such additional amount, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address on file with DWF on the date of issuance, or at such other address as may be specified in the request for adjudication, within 60 days after issuance of the final decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§867. Judicial Review

A. A leaseholder may seek judicial review of the final decision of the Division of Administrative Law under §865 in accordance with R.S. 56:432.1(D), based solely on the administrative record and, except as otherwise provided in these rules or by R.S. 56:432.1, governed by and conducted in accordance with the Administrative Procedure Act (APA), R.S. 49:950, et seq. and the Division of Administrative Law Act (DALA), R.S. 49:991, et seq.

B. Proceedings for judicial review may be instituted in accordance with R.S. 56:432.1(D) by filing a petition in the Nineteenth Judicial District Court for the Parish of East Baton Rouge within 60 days after issuance of the final decision of the Division of Administrative Law. No petition for judicial review may be filed, and any such petition is premature, unless adjudication has been timely sought and all administrative remedies have been exhausted. Copies of the petition shall be served upon the secretary and on all parties of record.

C. A request for judicial review shall have no effect upon the validity of the acquisition of any oyster lease acreage acquired pursuant to a notice of acquisition, but only the compensation payable to the leaseholder. However, the acquisition may be found invalid if review is sought timely and the project or action for which acquisition is sought does not further coastal protection, conservation, or restoration. If the acquisition is invalidated, the full possession of the acreage sought to be acquired shall remain with the leaseholder, as if the notice of acquisition had never been issued.

D. If the court declares in its judgment that the leaseholder is entitled to additional compensation for the acquisition of the leasehold acreage at issue or that the department should have acquired a lease or acreage which it had not previously acquired, and states the amount of such compensation that is due, the department may appeal the judgment in accord with R.S. 49:965 of the Administrative Procedure Act (APA). If the judgment is affirmed on appeal or no appeal is taken and subject to Constitution Article 12, Section 10, the department shall issue a check or draft to the leaseholder for such additional compensation as set forth in the original judgment or as may be modified or amended on appeal by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address on file with DWF on the date of issuance, or at such other address as may be specified in the request for adjudication no more than 60 days after the judgment becomes final and definitive under the provisions of Articles 2166 and 2167 of the Code of Civil Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§869. Reimbursement of Costs of Acquisition

A. The department may acquire any acreage under this Subchapter in relation to a project or action for coastal protection, conservation, or restoration performed or to be

performed by or for the United States, any department, agency, board, commission, or political subdivision of the state, or any other public or private entity responsible for a project.

B. If the department acquires acreage under this Subchapter in relation to any project or action performed by any person or entity other than the department, such entity shall compensate the department for all costs incurred by the department, which are associated with the acquisition.

C. The costs for which reimbursement is due under this Subchapter includes but is not limited to costs of oyster resource surveys, appraisal, administrative, or other uses of department personnel or resources, payment for acquisition, and awards on administrative adjudications or judicial review.

D. The secretary may choose, at his sole discretion, to waive any part or all of the compensation that would otherwise be required under this Section. No person or entity shall have any right to such waiver, and the secretary shall have no obligation to make such a waiver. Waiver of any part of the compensation that would otherwise be required shall not affect any obligation to pay the remainder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

Subchapter C. Rules Governing Davis Pond Oyster Relocation Program

§875. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1483 (July 2000), repealed LR 32:

§877. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1483 (July 2000), repealed LR 32:

§879. Notification of Leaseholders

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1484 (July 2000), repealed LR 32:

§881. Leaseholder Options

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1484 (July 2000), repealed LR 32:

§883. Exchange Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1484 (July 2000), repealed LR 32:

§885. Relocation Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1485 (July 2000), repealed LR 32:

§887. Retention Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1486 (July 2000), repealed LR 32:

§889. Purchase Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1486 (July 2000), repealed LR 32:

§891. Payment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1486 (July 2000), repealed LR 32:

§893. Release

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1487 (July 2000), repealed LR 32:

§895. Appeals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1487 (July 2000), repealed LR 32:

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by "Oyster Lease Acquisition and Compensation Program." Such comments must be received no later than Friday, October 6, 2006 at 4:30 p.m., and should be sent to William K. Rhinehart, Administrator, Coastal Restoration Division, Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, P.O. Box 44487, Baton Rouge, LA 70804-4487 or to FAX (225) 342-9417 or by email to Kirk.Rhinehart@la.gov. This proposed regulation is available for inspection and copying between the hours of 8:30 a.m. and 4:30 p.m. at Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Assistant Secretary, 617 North Third Street, 10th Floor, Baton Rouge, LA 70804.

Scott A. Angelle
Secretary

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

**RULE TITLE: Oyster Lease Acquisition and
Compensation Program**

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

While the administrative burden to both the Department of Wildlife and Fisheries and the Department of Natural Resources may initially be heavy, both agencies will absorb the additional workload with existing staff. All costs associated with the Oyster Lease Acquisition and Compensation Program (OLACP) are built into existing project costs. The OLACP implementation cost is estimated to be, on average, less than 1% of the overall project cost. Furthermore, most projects are cost shared with the federal government. Therefore, no anticipated increase in costs to State or local governmental entities should result from this action.

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

The Department of Wildlife and Fisheries may experience a slight decrease in revenue as approximately 550 acres that could be leased for oyster production will be acquired by the Department of Natural Resources. However, the lease rate is only \$2 per-acre per-year so this decrease is negligible.

While the direct economic benefits are difficult to determine, promulgation of these regulations will assist in the acquisition of additional federal funds for coastal protection, conservation, and restoration projects by guaranteeing the timely acquisition of oyster leases directly impacted by projects and removing uncertainty and possible delays in project implementation.

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

All oyster lessees affected by this program will receive compensation equal to the fair market value of the oyster lease acquired. Therefore, there are no economic costs or benefits to persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition or employment is anticipated in either the public or private sector.

Robert D. Harper
Undersecretary
0608#041

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Gaming Control Board**

Operation of Video Draw Poker Devices and
Penalty Schedule (LAC 42:XI.2407 and 2430)

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42:XI.2407 and adopt LAC 42:XI.2430 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42
LOUISIANA GAMING
Part XI. Video Poker

Chapter 24. Video Draw Poker

§2407. Operation of Video Draw Poker Devices

A. Responsibilities of Licensees

1. The licensee or a designated representative of the licensed establishment shall be required to be physically present and available within the licensed establishment at all times during all hours of operation; shall ensure that the devices are not tampered with, abused, or altered in any way; and shall prevent the play of video draw poker devices by persons under the age of 21 and prevent access to the gaming area by persons under the age of 18.

2. - 7. ...

8. Repealed.

9. - 13. ...

14. All licensees shall post one or more signs at points of entry to the gaming area to inform customers of the toll-free telephone number available to provide information and referral services regarding compulsive or problem gambling. The toll-free numbers shall be provided by the division.

B. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control

Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 30:267 (February 2004), repromulgated LR 30:441 (March 2004), LR 32:

§2430. Penalty Schedule

A. The division may assess a civil penalty as provided for in the penalty schedule. The penalty schedule lists a base penalty which shall apply to the first violation of the statutory provision or rule.

B. A second or subsequent violation is a violation of the same statutory provision or rule occurring within a one year period regardless of when the violation was admitted, adjudicated, or when the violation report was issued. If one or more violations occur within a one year period, the base penalty shall be multiplied by a factor based on the total number of violations within the one year period.

C. The violation of any statutory provision or rule may result in the assessment of a civil penalty, suspension, revocation, or other administrative action. If the total dollar amount of penalties per violation report exceeds \$50,000, the division shall recommend administrative action.

D. The board and division shall not assess a civil penalty unless and until the licensee or permittee meets all of the requirements for the issuance of a license or permit as provided for in Chapter 2 and 6 of Title 27 of the Louisiana Revised Statutes, or in any rules adopted by the board and promulgated in Chapter III or XI of Title 42 of the Louisiana Administrative Code, governing the operation of video draw poker devices, which provide for licensing criteria.

E. Penalty Schedule

Regulation Number	Violation Description	Licensed Establishments with up to Three Machines	All Other Licensees
Application and License			
2405.B.1.b	Failure to File Tax Returns/Pay Taxes Owed	\$ 500	\$1,000
2405.B.2	Failure to Conspicuously Display License	\$ 100	\$ 200
2405.B.3.c	Failure to File Complete Renewal Application 45 Days Prior to Expiration	\$ 250	\$ 500
2405.B.6	Failure to Disclose Full Ownership Of Licensee	Administrative Action	Administrative Action
2405.B.7	Failure to Attend Required Hearings/Meetings	\$ 500	\$1,000
2405.B.8	Failure to Comply with All Federal Gambling Laws	Administrative Action	Administrative Action
2405.B.9	Operation of Business	Administrative Action	Administrative Action
2405.C	Parish or Municipal Licenses	Administrative Action	Administrative Action
2405.D.1	Failure to Notify Division of Change of Ownership	Administrative Action	Administrative Action
Operation Of Video Draw Poker Devices			
2407.A.1	No Des Rep/Failure to Monitor VGD/Gaming Area	\$ 500	\$1,000
2407.A.2	Loaning Money, Extending Credit or Finance Asst Prohibited	\$1,000	\$2,000
2407.A.3	Allowing Intoxicated Persons to Play Video Devices	\$1,000	\$2,000
2407.A.4	Failure of Licensee to Supervise Employees to Ensure Compliance with Regulations	\$ 250	\$ 500
2407.A.5	Failure to Pay Valid Ticket Voucher on Demand	\$1,000	\$2,000
2407.A.6	Proper Placement of Devices	\$ 250	\$ 500
2407.A.7	Failure to Notify Division of Device Malfunction	\$ 250	\$ 500
2407.A.9	Keys Shall Be Secure and Available to the Division	\$ 100	\$ 200
2407.A.10	Loss of Access of Device Telephone Line	\$ 250	\$ 500
2407.A.11	Allowing Play of a Disconnected Device	\$1,000	\$2,000
2407.A.12	Licensees Shall Post Signs Play of Devices by Patrons under Age 21	\$ 500	\$1,000
2407.A.13	Current Copy of Rules and Regulations Not Available	\$ 100	\$ 200
2407.A.14	Failure to Post Compulsive Gambling Toll Free Number	\$ 500	\$1,000
2407.B.2	Video Poker Employees Must Possess Permit	Not applicable	\$ 25
2407.B.8	Permittees Shall Have Ability to Locate Records/Documents and Possess Knowledge of Operations	\$ 100	\$ 200
2407.C.1	Payment of Prizes	\$ 500	\$1,000
2407.D.1	Advertising	\$ 500	\$1,000

Regulation Number	Violation Description	Licensed Establishments with up to Three Machines	All Other Licensees
Revenues			
2409.C.2 b	Insufficient Funds Available for Electronic Transfer	Not applicable	\$1,000
2409.C.3	Minimum Balance Requirements	Not applicable	\$1,000
2409.E.2	Failure to Have Records Readily Available for Audit	\$1,000	\$2,000
Regulatory, Communication, And Reporting Responsibilities			
2411.A.3-6	Failure to Provide Semi-Annual, Quarterly or Monthly Report Requested by Date Required	\$ 500	\$1,000
2411.A.7	Failure to Retain All Records for a Period of Three Years (Manufacturers Five Years)	\$1,000	\$2,000
2411.A.8	Failure to Surrender License and Records to Division after Ceasing to Participate in Video Gaming	Administrative Action	Administrative Action
2411.A.9	Failure to Maintain Required Records, Submit All Reports, and Keep Division Informed in Writing of All Changes	\$1,000	\$2,000
2411.A.10	Failure to Keep and Maintain Bank Account Documents	\$1,000	\$2,000
2411.A.11	Except as Otherwise Provided, upon Selling of Licensed Entity, the Licensee Shall Surrender Its License within 10 Business Days of the Change of Ownership	Administrative Action	Administrative Action
2411.A.12	All Licensed Manufacturers and Distributors Shall Maintain a Current Record of Devices Received, Sold and in Inventory	Not applicable	\$1,000
2411.A.13	Failure to Provide a Division Approved Program to Train and Certify Technicians	Not applicable	\$1,000
2411.A.14	Failure to Provide a Current List of Authorized Service Personnel	Not applicable	\$1,000
2411.B.1	Failure to Provide a Semi-Annual Report Requested by Division	Not applicable	\$1,000
2411.B.3	Failure of Manufacturer to Request Authorization for Device Modifications	Not applicable	Administrative Action
2411.B.4	All Licensed Manufacturers Shall Sell or Lease Video Gaming Devices to Licensed Distributors	Not applicable	Administrative Action
2411.C.1	Failure of Distributor to Provide Quarterly Report Requested by Division	Not applicable	\$1,000
2411.C.2	Quarterly Report Information	Not applicable	\$1,000
2411.C.3	Failure of Distributor to Provide Quarterly Inventory Report Requested by Division	Not applicable	\$1,000
2411.C.5	Licensed Distributor Shall Only Purchase or Lease, Sell, etc.. to a Licensed Manufacturer, Device Owner, or Another Distributor	Not applicable	Administrative Action
2411.D.1	Failure of Device Owner to Provide a Monthly Report	Not applicable	\$1,000
2411.D.3	Failure of Device Owner to Maintain All Audit Tapes for a Period of 3 Years	Not applicable	\$1,000
2411.D.4	All Licensed Device Owners Shall Only Purchase or Lease Devices from a Licensed Distributor or Owner	Not applicable	Administrative Action
2411.D.5	Possessing Ram Clear Chips by Device Owner	Not applicable	Administrative Action
2411.D.6	Failure to Notify Division Technical Staff Prior to Removal of Devices from Service for Less Than 72 Hours	Not applicable	\$1,000
2411.D.7	Devices Disabled from the Central Computer for More Than 72 Hours Shall Be Transferred to the Device Owner's Warehouse Proper Paperwork Sent to Division within Five Business Days	Not applicable	\$1,000
2411.E.1	Failure to Provide Quarterly Report Requested by Division	\$ 500	\$1,000
2411.E.3	Failure to Provide Monthly Fuel Sales Reports	Not applicable	\$2,000
2411.E.4	Failure of Licensed Truck Stops to Maintain Sufficient Fuel Sales Records	Not applicable	Administrative Action
2411.F.1.a	Failure of Licensed Service Entity to Maintain Invoices	Not applicable	\$1,000
2411.F.1.b	Failure of Licensed Service Entity to Maintain a List of All Certified Technicians	Not applicable	\$1,000
2411.F.2	Failure of Licensed Service Entity to Have a Certified Technician and Adequate Facilities Approved by Division	Not applicable	\$1,000
2411.F.4	Possessing Ram Clear Chips by Licensed Service Entities	Not applicable	Administrative Action
2411.G.3	Failure to Submit Device Forms Required by the Division in a Timely Manner	\$ 500	\$1,000
2411.H.1	Misrepresentation of Contracts	Administrative Action	Administrative Action
2411.H.2	Failure to Provide Copies of Written Contracts, or Summaries of Oral Contracts, Pertaining to the Operation of Devices within 10 Business Days of Making Such Contracts	\$1,000	\$2,000
2411.H.3	Party to Video Gaming Contract	Administrative Action	Administrative Action
2411.H.4	No Licensee Shall Enter into a Contract with an Individual Deemed Unsuitable	Administrative Action	Administrative Action
Devices			
2413.A.1.a-d	Device Specifications	Administrative Action	Administrative Action
2413.A.1.e	Unapproved Information on Device Screen/Housing	\$ 100	\$ 200
2413.A.1.e.ii	The Phrase "No Person under the Age of 21 Allowed to Play" Shall Be Conspicuously Displayed on the Face of All Devices	\$ 250	\$ 500
2413.A.1.f-s	Device Specifications	\$1,000	\$2,000
2413.A.2-4	Devices Shall Not Have Any Switches, Jumpers, Wire Posts, or Any Other Means of Manipulation That Could Be Used to Affect the Outcome of a Game	Administrative Action	Administrative Action
2413.A.5-6	Devices Shipped to and Transported through Louisiana Shall at All Times Remain in the Demonstration Mode and Shall Not Accept Coin or Currency and Hidden Icons	Administrative Action	Administrative Action
2413.B.2-6	Licensed Manufacturers Shall Supply the Division with Timetables and Guidelines for Accomplishing Tasks Involved in Testing of Devices, Provide Assistance in Troubleshooting, Submit Operational Manuals, Equipment and Parts	Not applicable	\$1,000
2413.B.6.d	No Device Shall Contain Software with Any Transparent Codes or Security Features That Could Evoke Functions Such as Pay Tables, Payout Percentages or Counters	Not applicable	Administrative Action
2413.C.1	No Device Shall Be Altered or Modified without Written Permission from the Division	Administrative Action	Administrative Action

Regulation Number	Violation Description	Licensed Establishments with up to Three Machines	All Other Licensees
2413.C.2	No Unauthorized Modifications to Devices	Administrative Action	Administrative Action
2413.E.1	Only Certified Technicians May Access the Interior of an Enrolled and Enabled Device	\$ 500	\$1,000
2413.E.2	All Device Owners Shall Maintain a Current, Written Maintenance Log for Each Device Operating within a Licensed Establishment on a Division Approved Form	Not applicable	\$1,000
2413.E.3	A Division Approved Ram Clear Chip and Procedure Shall Be Used When a Device's Memory Is To Be Cleared	\$ 500	\$1,000
2411.E.4	Failure of Licensed Truck Stops to Maintain Sufficient Fuel Sales Records	Not applicable	Administrative Action
2413.E.5	Only Licensed Manufacturers, Distributors and Division Personnel Are Allowed to Possess Ram Clear Chips	Administrative Action	Administrative Action
2413.E.6	Use of Any Other Method to Clear the Memory of a Device Is Prohibited, Unless Specifically Authorized	\$ 500	\$1,000
2413.E.7	The Division Shall Be Notified before a Device Is Disconnected from the Central Computer	\$ 500	\$1,000
2413.E.8	No Substitutions or Replacement of Devices unless Approved by the Division and Appropriate Decal Is Affixed	\$ 500	\$1,000
2413.F.1	Failure to Provide Information of Shipment of Devices and Obtaining Division Approval	\$ 500	\$1,000
2413.F.2	Failure to Provide Division with the Make, Model, Serial Number and an Inventory of the Devices Being Shipped	\$ 500	\$1,000
2413.F.3	The Division Shall Be Notified at Least Three Business Day Prior to Shipment of Any Devices	Deny Shipment	Deny Shipment
2413.F.4	Devices Shall Be Shipped within 10 Business Days of the Notification and Approval	\$ 500	\$1,000
2413.F.5	All Devices Shall Be Shipped to an Approved Location	Not applicable	Administrative Action
2413.G.1	Failure to Request Local Law Enforcement to Investigate Damage or Theft of Any Device	\$ 500	\$1,000
2413.G.2	Failure to Obtain and Forward Requested Reports to the Division after Investigation	Not applicable	\$1,000
2413.G.3	The Device Owner or Licensed Establishment Shall Notify the Division, in Writing, of Any Damage to or Theft from a Device	\$ 500	\$1,000
2413.H.1	When a Device Is Permanently Removed from Service by a Licensed Device Owner, the Validation Decal Shall Be Removed by That Device Owner and Shall Be Returned to the Division with the Completed Device Transfer Report	Not applicable	\$1,000
2413.H.2	The Completed Device Transfer Report Shall Be Submitted to the Division within 5 Business Days	\$ 500	\$1,000
2413.H.3	No Devices Which Are Permanently Removed from Service Shall Have a Validation Decal Displayed on It	\$ 500	\$1,000
2413.I.1	No Licensee Shall Place or Allow Placement of Devices unless the Device Is Placed Pursuant to the Provisions	Administrative Action	Administrative Action
2413.I.2	No Licensee May Possess or Offer for Play an Unlicensed Device or Any Other Gambling Device	Administrative Action	Administrative Action
2413.K.1	Failure to Store Devices in a Warehouse in a Manner Which Easily Displays Serial Number Plate and/or Permit Sticker	Not applicable	\$ 500
2413.K.2	Device Owners Who Wish to Share Warehouse Space Must Meet Certain Criteria	Not applicable	\$ 500
Gaming Establishments			
2415.B.1	Security Officers or Off Duty Officers are Required in All Establishments with More Than 20 Devices	Not applicable	\$2,000
2415.B.2	Continuous Video Surveillance on Premises with 20 or More Devices	Not applicable	\$2,000
2415.C.1	Device Groupings Shall Be Physically Located within the Licensed Establishment	\$ 250	\$ 500
2415.C.2	No Device Shall Be Placed Closer Than 12 Inches to Any Other Device (May Be Placed Back to Back)	\$ 250	\$ 500
2415.C.3	Devices at a Qualified Truck Stop Facility Shall Not Be Placed in Certain Areas on the Premises	Not applicable	\$1,000
2415.D.1	No Licensed Establishment Shall Be Altered or Renovated Dealing with Devices w/o Division Approval	\$ 500	\$1,000
2415.D.2	Any Licensed Establishment That Allows Mixed Patronage Shall Have Devices in Designated Areas with a Partition	\$ 500	\$1,000
2415.D.3.a-d	A Licensed Establishment That Is Connected to Another Business Shall Have a Door between Them That Automatically Closes, Have a Separate Outside Entrance, Keep Records Separate and Have Personnel That Are Solely Employed by the Licensed Establishment	\$1,000	\$2,000
2415.D.4.a-d	A Truck Stop Facility Licensed after Having Filed a New Application on or after July 1, 2000, Shall Comply with Certain Parking Area Requirements	Not applicable	Administrative Action
2415.D.5	Failure to Maintain Compliance with Parking Area Requirements	Not applicable	Administrative Action
Code of Conduct of Licensees and Permittees			
2417.A.1	All Licensees and Permittees Shall Comply with All Applicable Federal, State and Local Laws and Regulations	Administrative Action	Administrative Action
2417.A.2	All Licensees and Permittees Shall Conduct Themselves in a Professional Manner When Communicating with the Public and Division	\$ 500	\$1,000
2417.B.1-5	Unsuitable Conduct	Administrative Action	Administrative Action
2417.C.1.a-j	Additional Causes for Disciplinary Action	Administrative Action	Administrative Action

Regulation Number	Violation Description	Licensed Establishments with up to Three Machines	All Other Licensees
Investigations			
2419.B.1.b	Any Licensed Premises Shall Be Subject to Inspection, The Licensee Shall Render Full Courtesy and Cooperation to Agents	\$ 500	\$1,000
2419.B.2	All Licensees Shall Make Available to the Division Records Requested	Administrative Action	Administrative Action
2419.B.3.b	All Devices Shall Have, at All Times, the Proper Validation Decal Affixed to the Device and Maintenance Log Books Properly Secured and Available for Inspection	\$ 500	\$1,000
Louisiana Gaming Control Law			
R.S. 27:27.3	Failure to Post Toll Free Telephone Number on Advertisements	\$ 500	\$1,000
R.S. 27:306(A)(2)(e)(i)-(v)	A Lounge Located in a Licensed Hotel/Motel Must Meet Certain Criteria	Not applicable	Administrative Action
R.S. 27:306(A)(4)(c)(ii)(aa)-(ee)	A Restaurant Located at a Licensed Truck Stop Must Meet Certain Criteria	Not applicable	Administrative Action
R.S. 27:306(A)(4)(c)(iii)(aa)-(cc)	Parking Area at a Licensed Truck Stop Must Meet Certain Criteria	Not applicable	Administrative Action
R.S. 27:306(A)(4)(c)(vi)(aa)-(gg)	Licensed Truck Stop Must Maintain Certain Amenities	Not applicable	Administrative Action

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 32:

Family Impact Statement

Pursuant to the provisions of R.S. 49:953.A., the Louisiana Gaming Control Board, through its chairman, has considered the potential family impact of amending LAC 42:XI.2407 and adopting LAC 42:XI.2430.

It is accordingly concluded that amending LAC 42:XI.2407 and adopting LAC 42:XI.2430 would appear to have a positive yet inestimable impact on the following:

1. the effect on the stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the 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.

All interested persons may contact Tom Warner, Attorney General's Gaming Division, telephone (225) 326-6500, and may submit comments relative to these proposed Rules, through September 11, 2006, to 1885 North Third Street, Suite 500, Baton Rouge, LA 70802.

H. Charles Gaudin
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Operation of Video Draw Poker
Devices and Penalty Schedule**

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

No implementation costs are anticipated.

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

The proposed rule change adopting a penalty schedule to be published as a rule in the Louisiana Administrative Code is a modification from a penalty schedule previously approved by the Board in 1998. While some penalties increase and others stay at the same amount it is impossible to determine what the net effect on revenue collections will be since the Board is unable to estimate the number of violations that will occur in

the future and higher penalties may or may not result in greater compliance and fewer violations.

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

The proposed rule change adopting a penalty schedule to be published as a rule in the Louisiana Administrative Code is a modification from a penalty schedule previously approved by the Board in 1998. While some penalties increase and others stay at the same amount it is impossible to determine what the net costs or economic benefits to directly affected persons (video Poker licensees) will be since the Board is unable to estimate the number of violations that will occur in the future and higher penalties may or may not result in greater compliance and fewer violations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment is estimated.

H. Charles Gaudin
Chairman
0608#042

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Office of Charitable Gaming**

Electronic Video Bingo
(LAC 42:I.1811, 1817, 1911 and 1933)

Under authority of R.S. 4:705(10), 707, 724 and 729 and R.S. 47:1511 and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Charitable Gaming, proposes to amend LAC 42:I.1817, 1911, and 1933 and to repeal §1811 all relative to electronic video bingo.

The amendments to LAC 42:I.1911.A.1 will be effective 90 days after adoption to allow manufacturers time to modify machines to comply with the Rule's requirements.

Title 42

LOUISIANA GAMING

Part I. Charitable Bingo, Keno, Raffle

Subpart 2. Electronic Video Bingo

Chapter 18. Electronic Video Bingo Rules

§1811. Operation of Machines

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:705(10), 707 and 724 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Justice, Corrections, Criminal Justice and Law Enforcement Division, LR 11:796 (November 1988), repealed by the Department of Revenue, Office of Charitable Gaming, LR 32:

§1817. Enforcement and Regulation

A. - E. ...

F. Civil Violations

1. When the department determines a permittee has violated the act or these rules, the department may issue a civil violation to the permittee in an amount not less than \$250 nor more than \$1,000. Violations may be issued for each act not in accord with these regulations. Each day of operation in violation constitutes a separate violation.

2. A violation may be issued for, but is not limited to the following acts:

- a. the operation of an unpermitted machine;
- b. the use of more than 35 electronic video bingo machines on a premises;
- c. the unauthorized breaking of Seal A or Seal B in a machine;
- d. the failure to report and pay timely the fees assessed;
- e. the failure to prohibit persons under the age of 21 years old from playing the machine;
- f. the falsification of application or reporting documents;
- g. the refusal to allow inspection of the machines;
- h. the unauthorized destruction of printed ticket vouchers and accounting ticket copies.

G. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:705(10), 707 and 724 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Justice, Corrections, Criminal Justice and Law Enforcement Division, LR 11:798 (November 1988), amended by the Department of Revenue, Office of Charitable Gaming, LR 32:

Chapter 19. Electronic Video Bingo

§1911. Machine Specifications

A. Prior to approval for use in the state, each machine must meet the following specifications with respect to its operation.

1. It shall offer and display only the game of bingo. No game, symbols or activity other than bingo may be displayed on an electronic video bingo machine, unless approved by the department in writing.

A.2. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:705(10), 707 and 724 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 17:482 (May 1991), amended by the Department of Revenue, Office of Charitable Gaming, LR 32:

§1933. Operation of Machines

A. Machines may be available for play at commercial and noncommercial locations only during a licensed session during which no less than 10 games of call bingo or keno are played.

B. Machines may be available for play at a noncommercial location which does not lease its facility to other licensed organizations only during a licensed session at times other than when call bingo or keno games are being conducted.

C. No person under the age of 21 years old shall be permitted to play any electronic video bingo machine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:705(10), 707 and 724 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 17:482 (May 1991), amended by the Department of Revenue, Office of Charitable Gaming, LR 32:

Family Impact Statement

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature.

1. Implementation of this proposed Rule will have no effect on the stability of the family.

2. 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. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. Implementation of this proposed Rule will have no effect on family earnings and family budget.

5. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. 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 Michael Legendre, Director, Office of Charitable Gaming, Department of Revenue, P.O. Box 98502, Baton Rouge, LA 70884-9502 or by fax to (225) 925-7069. All comments must be submitted by 4:30 p.m., Monday, September 25, 2006. A public hearing will be held on Tuesday, September 26, 2006, at 10 a.m. in the Calcasieu Room on the Second Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Electronic Video Bingo**

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

These proposed amendments clarify that electronic video bingo machines may only offer and display the game of bingo and address the age limit of persons allowed to play such electronic video machines. These amendments are necessary since approval of hybrid electronic bingo/slot machines, which have replaced traditional electronic video bingo machines. Use of these hybrid machines has created a concern that gamers believe them to be bona fide slot machines and not charitable gaming electronic video bingo machines. This is particularly a problem in locations that have prohibited video poker and other slot machine gaming. Implementation of this proposed rule will have negligible impact on the agency's costs.

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

These proposed amendments will have negligible effect on the Office of Charitable Gaming's revenue collections and no effect on the revenue collections of local governmental units.

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

The two manufacturers of the hybrid electronic video bingo/slot machines that operate in the state will be affected by these proposed amendments because the hybrid machines will have to be reprogrammed to display only the bingo game. The manufacturers will have to make the program modifications and then submit the revised programs to the gaming testing lab at an approximate cost of \$4,000 to each manufacturer. Once the programs have been approved, they will have to distributed and installed on the hybrid machines. The manufacturers' reprogramming and distribution costs are not known, but should be minimal. The amendments to Section 1817 prohibiting play of EVB machines by persons under 21 may result in some reduction of revenue to organizations and machine operators; however, the amount of any reduction cannot be estimated with any degree of certainty.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These proposed amendments should have no effect on competition or employment.

Cynthia Bridges
Secretary
6008#048

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Food Stamp Program—Implementation of the Louisiana
Combined Application Project (LaCAP)
(LAC 67:III.1999 and Chapter 21)**

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 3, Food Stamps at Chapter 19, Certification of Eligible Households and to adopt Chapter 21, Louisiana Combined Application Project (LaCAP).

Pursuant to the Food Stamp Act of 1977 and in accordance with requirements to operate demonstration projects under Section 17(b) of said Act, the agency will implement the Louisiana Combined Application Project (LaCAP). The purpose of LaCAP is to strengthen access to nutrition benefits for disadvantaged individuals while improving the administration of the Food Stamp Program.

The agency is amending §1999 to address when a concurrent notice shall be sent to a household and situations in which a concurrent notice is not necessary.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter M. Notice of Adverse Action

§1999. Reduction or Termination of Benefits

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the household at the time of action in the following situations:

1. the agency disqualifies a household member because of an intentional program violation and the benefits of the remaining household members are reduced or ended because of the disqualification;
2. benefits are reduced or terminated at the end of the certification period when the client timely reapplies;
3. the client's whereabouts are unknown and agency mail directed to him has been returned by the Post Office indicating no known forwarding address;
4. the client has been certified in another state and that fact has been established;
5. the client signs a statement requesting closure or reduction in benefits and waives the right to advance notice;
6. benefits are reduced or terminated effective the month following the semi-annual report month as a result of changes reported through the semi-annual reporting process;
7. the agency receives a written report signed by the head of the household or other responsible household member which provides sufficient information for the agency to determine the household's benefit amount or ineligibility;
8. mass changes;
9. based on reliable information, the agency determines that the household has moved or will be moving out of the state prior to the next monthly issuance;
10. the household applied for cash assistance and food stamps at the same time and has been getting food stamps while waiting for approval of the cash assistance grant;
11. the client was a certified resident in a drug or alcohol treatment center or a group living arrangement which loses its state certification or FNS disqualifies it as a retailer;
12. a household certified under expedited processing rules provides postponed verification which reduces or terminates benefits.

B. A concurrent notice shall not be sent to the household at the time of action in the following situations:

1. all members of the household have died;
2. the household's allotment changes from month to month during the certification period because of changes expected at the time of certification;
3. the agency recoups benefits from a client who previously received a repayment demand letter; and
4. the Fraud and Recovery Section converts a cash payment to allotment reduction because the household failed to make agreed payments on a claim.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55903 et seq., 7 CFR 273.13, 7 CFR 273.12(f)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:324 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998), LR 32:

Chapter 21. Louisiana Combined Application Project (LaCAP)

§2101. General Authority

A. The Louisiana Combined Application Project (LaCAP) is established in accordance with applicable state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Subchapter A. Household Concept

§2103. Household Definition

A. The definition of a household is an individual who is receiving Supplemental Security Income (SSI) and:

1. is at least 60 years old;
2. has a federal living arrangement of Code "A" as determined by the Social Security Administration (SSA);
3. is not institutionalized, or otherwise ineligible for food stamps due to immigration status, an Intentional Program Violation, or drug conviction; and
4. lives alone or declares to purchase and prepare food separately from others in a shared living situation.

B. SSI individuals whose payments are in a "suspense" or "terminated" status as coded by SSA may not participate in LaCAP.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2105. Application Process

A. The Office of Family Support shall make an eligibility determination and issue food stamp benefits within 30 days following the date of application for LaCAP.

B. LaCAP applications will be processed without a face-to-face or telephone interview.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.2(g), 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2107. Benefits

A. Participants will receive one of four standard amounts of food stamp benefits based on the household's total combined shelter (housing and utilities) costs.

B. Benefit levels and shelter thresholds used to determine benefits will be adjusted each year to reflect changes in the thrifty food plan and prevailing shelter expenses. Benefit levels will also be adjusted annually based on the cost-of-living adjustments for SSI.

C. Eligibility begins the first day of the month the LaCAP application is received. Benefits will not be prorated.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2109. Certification Period

A. A certification period of 36 months will be assigned to each eligible LaCAP case.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7CFR Part 282, and section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2111. Change Reporting

A. Households participating in LaCAP are not required, but must be allowed, to report changes in circumstances affecting their eligibility or benefit level.

B. The agency must act on changes when it becomes aware of the change from the household or another source if the change affects the household's eligibility or benefit level.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2113. Household Options

A. Households may choose to opt out of LaCAP at any time and participate in the regular Food Stamp Program, if otherwise eligible.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2115. Notices of Adverse Action

A. LaCAP households shall be notified of action to reduce or terminate benefits in accordance with procedures outlined in Chapter 19, Subchapter M, Notice of Adverse Action.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.13.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2117. Recovery of Overissued Benefits

A. Establishment of claims, penalties, and collection methods for LaCAP households shall be handled in accordance with procedures outlined in Chapter 19, Subchapter P, Recovery of Over-Issued Food Stamp Benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.B., 7 CFR 273.18.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? Implementation of this Rule will have a positive impact on the stability of the family by providing the elderly, disabled participants easier access to the Food Stamp Program and the possibility that they will receive an increased food stamp benefit level.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? Implementation of 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? Implementation of this Rule will have no impact on the functioning of the family.

4. What effect will this have on family earnings and family budget? Implementation of this Rule will have a positive impact on the family budget as the food stamp benefit level for elderly, disabled individuals will be slightly higher through LaCAP.

5. What effect will this have on the behavior and personal responsibility of children? Implementation of this Rule will have no impact 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 is strictly an agency function.

All interested persons may submit written comments through September 28, 2006, to Adren O Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton

Rouge, LA, 70804-9065. He is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on September 28, 2006, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, Louisiana, beginning at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Ann S. Williamson
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Food Stamp Program—Implementation
of the Louisiana Combined Application Project (LaCAP)**

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

Implementation costs associated with this rule change are the costs of publishing the rule, printing policy changes, and form revisions which are estimated to be approximately \$600 (\$300 State/\$300 Federal). These funds are routinely included in the agency's annual budget. In addition, the proposed rule change may result in a small increase in federal Food Stamp benefit expenditures since more eligible households may be certified, but this possible increase cannot be determined, should be minimal, and would be paid with 100% federal funds. There will be no increase in federal Food Stamp benefit expenditures for current Food Stamp recipients since LaCAP has been found by the U.S. Department of Agriculture, Food and Nutrition Service (USDA-FNS) to be cost neutral (no one can receive both regular Food Stamp benefits and LaCAP benefits simultaneously). If there are any increased expenditures, they will be paid with existing federal funds provided by USDA-FNS.

There will be no costs to local governmental units.

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

There will be no impact on revenue collections for state or local governmental units.

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

SSI recipients who are not currently receiving Food Stamp benefits and who are at least 60 years of age and living alone may become eligible for Food Stamps as a result of LaCAP. Current Food Stamp recipients who meet the LaCAP criteria and choose to receive LaCAP may receive either a higher or lower amount of Food Stamp benefits, depending on individual circumstances.

There are no costs to any persons or non-governmental groups.

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

The proposed rule will have no impact on competition and employment.

Adren O. Wilson
Assistant Secretary
0608#059

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

CCAP/STEP Mandatory Electronic Payments
(LAC 67:III.2901, 2902, 2905-2913, 5107, 5109, and 5729)

The Department of Social Services, Office of Family Support, proposes to amend LAC 67:III §§5107 and 5109 in the Child Care Assistance Program (CCAP) and §5729 in the Strategies to Empower People (STEP) Program, and to repeal Subpart 5. Family Independence Work Program (FIND Work).

As a result of delays and problems with the distribution of CCAP child care payments and STEP supportive services payments during and after Hurricanes Katrina and Rita and with the advent of 2006 hurricane season and the possibility of further delays in the distribution of such payments, the agency has chosen to disburse these payments electronically through direct deposit and stored value cards. This electronic disbursement process will be mandatory for all CCAP providers and STEP participants effective September 1, 2006. Electronic disbursement will allow the Agency to provide effective and efficient disbursement of CCAP and STEP payments while eliminating the need to print and mail checks. Authority for this action is ACF Guidance, ACYF-IM-CC-05-03, Flexibility in Spending CCDF Funds in Response to Federal or State Declared Emergency Situations.

Additionally, the agency is repealing the FIND Work Program as it was replaced by the Strategies to Empower People (STEP) Program in October 2003.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 5. Family Independence Work Program

Chapter 29. Organization

§2901. General Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:626 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 19:504 (April 1993), LR 24:1135 (June 1998), repealed LR 32:

§2902. State Plan

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474, R.S. 46:233 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:450 (April 1997), amended LR 28:1598 (July 2002), repealed LR 32:

§2905. Program Administration

Repealed.

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:42146 et seq., 45 CFR 250.30, 45 CFR 250.33, R.S. 460.3(A)(3), R.S. 46:453(B), 45 CFR 251.4 and 45 CFR 251.5, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:627 (July 1990), amended by the Department of Social Services, Office

of Family Support, LR 17:973 (October 1991), LR 19:505 (April 1993), LR 23:450 (April 1997), repealed LR 32:

Subchapter B. Participation Requirements

§2907. Individual Participation Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P. L. 104-193 and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:626 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 16:1064 (December 1990), LR 19:505 (April 1993), LR 19:1177 (September 1993), LR 23:450 (April 1997), LR 24:1781 (September 1998), LR 25:2455 (December 1999), LR 26:1343 (June 2000), repealed LR 32:

§2909. Failure to Participate

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193; R.S. 46:231, R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:627 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 18:870 (August 1992), LR 19:505 (April 1993), LR 23:451 (April 1997), LR 24:353 (February 1998), LR 25:2455 (December 1999), LR 26:1343 (June 2000), repealed LR 32:

Subchapter C. Activities and Services

§2911. Work Activities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:626 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 17:1227 (December 1991), LR 19:505 (April 1993), LR 20:1130 (October 1994), LR 22:1142 (November 1996), LR 23:451 (April 1997), LR 25:2456 (December 1999), repealed LR 32:

§2913. Support Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:388 (April 1991), amended LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 19:505 (April 1993), LR 20:794 (July 1994), LR 23:451 (April 1997), LR 24:356 (February 1998), LR 24:1135 (June 1998), LR 25:2456 (December 1999), LR 26:1343 (June 2000), LR 28:102 (January 2002), repealed LR 32:

Subpart 12. Child Care Assistance Program

Chapter 51. Child Care Assistance Program

Subchapter A. Administration, Conditions of Eligibility, and Funding

§5107. Child Care Providers

A. ...

B. A licensed Class A center or licensed Class A Head Start center must be active in the Child Care Assistance Program (CCAP) Provider Directory, complete and sign a Class A provider agreement, and provide complete and accurate documentation and information required for Direct Deposit before payments can be made to that facility.

C. - D.1.d ...

E. A public or non-public school program must be certified, must complete and sign a school program provider agreement and Form W-9, must be regulated by the Board of Elementary and Secondary Education (BESE) if a public school or *Brumfield vs. Dodd* approved if a non-public

school, and provide complete and accurate documentation and information required for Direct Deposit before payments can be made to that provider.

F. ...

G.1. A provider shall be denied or terminated as an eligible CCAP provider if:

a. - g ...

h. a Class A or School Child Care Provider fails to submit complete and accurate documentation and information required for Direct Deposit.

G.2. - I.2. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484, 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:

§5109. Payment

A. - E. ...

F. Electronic disbursement of child care payments shall be mandatory for all types of CCAP providers. Electronic disbursement of child care payments includes direct deposit to the CCAP provider's bank account (checking or savings) or payments to a stored value card account for the CCAP provider. It is mandatory for Class A and School Child Care providers to utilize direct deposit to receive their CCAP payments. The fees associated with the use of a stored value card are subject to the conditions of that financial institution.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), repromulgated LR 30:2078 (September 2004), LR 31:2265 (September 2005), LR 32:

Subpart 16. Strategies to Empower People (STEP) Program

Chapter 57. Strategies to Empower People (STEP) Program

Subchapter C. STEP Program Process

§5729. Support Services

A. - B.5....

C. Electronic disbursement of support services payments shall be mandatory for all payment types.

1. Electronic disbursement of support services payments other than child care payments includes direct deposit to the STEP participant's bank account (checking or savings) or payments to a stored value card account for the STEP participant.

2. Electronic disbursement of child care payments includes direct deposit to the CCAP provider's bank account (checking or savings) or payments to a stored value card account for the CCAP provider.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004), amended LR 32:

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 Rule have on the authority and rights 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 Rule have on the functioning of the family? This Rule will have no effect on the functioning of the family.
4. What effect will this Rule have on family earnings and family budget? This Rule will allow CCAP providers and STEP participants to accept CCAP and STEP payments more quickly.
5. What effect will this Rule 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 is strictly an agency function.

Interested persons may submit written comments by September 28, 2006, to Adren O. Wilson, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, LA, 70804-9065. He is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on September 28, 2006, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Ann Silverberg Williamson
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: CCAP/STEP
Mandatory Electronic Payments**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
Effective September 1, 2006, the Office of Family Support (OFS) will require all Child Care Assistance Program (CCAP) and Strategies to Empower People (STEP) Program payments to be made electronically by either direct deposit or stored value cards effective with September 2006 payments. The agency estimates a savings of \$40,440 for FY 06/07 and \$49,248 for FY 07/08 and 08/09. The estimated FY 06/07 cost includes \$600 for the cost of publishing rulemaking and program related materials.
OFS currently issues approximately 6,248 CCAP checks and 2,502 STEP checks each month, for a total of 8,750 checks

that will no longer be mailed each month. The total savings per month are calculated as follows:

- Postage savings: 8,750 (checks) x .293 (postage per check = \$2.564 (monthly)
- Envelope savings: 8,750 (checks) x .013 (per envelope) = \$114 (monthly)
- Check stock savings 8,750 (checks) x .008 (cost per check for stocking) = \$70 (monthly)
- Bank check processing fee savings: 8,750 (checks) x .155 (fee per check) = \$1,356 (monthly)

Total savings per month = \$4,104. Since this change will be effective September 2006, estimated savings for 06/07 will be \$4,104 x 10 months = \$41,040. Costs include \$600 in estimated rule publication fees. The total estimated savings for FY 06/07 is \$41,040 - \$600 = \$40,440. Total estimated savings for FY 07/08 and FY 08/09 will be \$4,104 x 12 months = \$49,248.

There are no implementation costs or savings associated with the repeal of the FIND Work Program.

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

There are no implementation costs or savings associated with the repeal of the FIND Work Program. 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)

There are no anticipated costs to any non-governmental groups. CCAP providers and STEP participants may or may not incur fees associated with the use of the stored value card (Chase Direct Payment Card) or direct deposit. The Chase Direct Payment Card offers free point-of-sale transactions, free monthly statements, and one free ATM withdrawal per deposit at Chase and All Point ATMS. Regarding direct deposit, most banks offer free checking accounts when a direct deposit is established so it is not anticipated that there will be fees involved with this service. Therefore, the agency is unable to project fee amounts that will be incurred by its customers as they may in fact not incur any fees. Additionally, Chase has been unable to project the amount of fees that the customers/clients might incur. There are no costs associated with the repeal of the FIND Work Program.

There is no anticipated economic benefit to any persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Adren O. Wilson
Assistant Secretary
0608#057

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

TANF Initiatives
(LAC 67:III.Chapter 55)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 15, Chapter 55, §§5549, 5555, 5581; to adopt §§5509, 5569, and 5583; and to repeal §5579.

Pursuant to Act 16 of the 2005 Regular Legislative Session, and HB 1 of the 2006 Regular Legislative Session, the agency proposes to provide funding through Memoranda of Understanding and contracts to several state agencies and other entities for implementation and administration of a number of TANF Initiatives which provide services to families with minor children in order to meet one of the four TANF goals. The initiatives being adopted include §5509, Domestic Violence Services, §5569, Alternatives to Abortion Services Program, and §5583, Children's Defense Fund Freedom Schools.

Additionally, the agency is proposing the following changes in order to clarify services and funding sources. §5549, OCS Child Welfare Program, is being amended to remove references to TANF Maintenance of Effort funds. §5555, Individual Development Account (IDA) Program, is being amended to show that IDA funds may be used for one or more qualified purposes as determined by the department and based on the needs of the community. §5581, Earned Income Tax Credit (EITC) Program, is being amended to include financial literacy as an additional service.

The agency also proposes to repeal §5579, Developmental and Socialization Activities Program for Foster Children, as funding is no longer available for this TANF Initiative.

A Declaration of Emergency signed June 1, 2006, adopting the Alternative to Abortion Services Program and the Children's Defense Fund Freedom Schools and amending the OCS Child Welfare Program was published in the June issue of the *Louisiana Register*.

A Declaration of Emergency signed July 1, 2006, amending the Individual Development Account (IDA) Program was published in the July issue of the *Louisiana Register*.

Title 67
SOCIAL SERVICES

Part III. Office of Family Support

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

Chapter 55. TANF Initiatives

§5509. Domestic Violence Services

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to provide for services pertaining to domestic violence including rural outreach, services to children in shelters, and training of law enforcement and DSS personnel.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is not limited to needy families. Eligibility for services is limited to children and/or their parents or caretaker relatives who are victims of domestic violence.

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

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§5549. OCS Child Welfare Programs (Effective April 12, 2002)

A. OFS shall enter into a Memorandum of Understanding with the Office of Community Services (OCS), the state child welfare agency, for collaboration in identifying and serving children in needy families who are at

risk of abuse or neglect. The methods of collaboration include:

A.1. - B. ...

C. Financial eligibility is limited to needy families which include a minor child living with a custodial parent or an adult caretaker relative. A needy family is a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), or Supplemental Security Income (SSI).

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:2374 (November 2002), amended LR 31:486 (February 2005), LR 32:

§5555. Individual Development Account Program (Effective July 1, 2002)

A. - B. ...

C. Effective July 1, 2006, IDA funds may be used for one or more of the following qualified purposes as determined by the secretary:

C.1 - D. ...

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

F. Eligibility is limited to low-income families at or below 200 percent of the federal poverty level.

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

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; Act 1098, 2001 Reg. Session; Act 84, 2002 First Extraordinary Session; Act 13, Reg. Session; HB 1, 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:45(January 2003), amended LR 32:

§5569. Alternatives to Abortion Services Program

A. Effective June 1, 2006, the Office of Family Support shall enter into contracts with public agencies, non-profit organizations, or for-profit organizations to provide intervention services including crisis intervention, counseling, mentoring, support services, and pre-natal care information, in addition to information and referrals regarding healthy childbirth, adoption, and parenting to help ensure healthy and full-term pregnancies as an alternative to abortion.

B. These services meet the TANF goals to provide assistance to needy families so children may be cared for in their own homes or in the homes of relatives and to encourage the formation and maintenance of two-parent families by providing pregnancy and parenting support to low-income women, their male partners, and families who are experiencing an unplanned pregnancy.

C. Eligibility for services is limited to pregnant women, their male partners, and/or pregnant minors whose family's income is at or below 200 percent of the federal poverty level.

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

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§5579. Developmental and Socialization Activities Program for Foster Children

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1, 2004 Reg. Session, Act 16 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 31:488 (February 2005), repealed LR 32:

§5581. Earned Income Tax Credit (EITC) Program

A. The agency has entered into contracts to provide public awareness, education and targeted outreach strategies regarding the benefits of claiming the Earned Income Tax Credit (EITC) Program, state tax credit programs, and free taxpayer assistance, and to provide financial literacy to families receiving services under this program. Strategies include collaboration with the Internal Revenue Service, various state departments and the targeted expansion of existing outreach activities to assure that free taxpayer assistance is available statewide.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 1, 2004 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 31:1610 (July 2005), amended LR 32:

§5583. Children's Defense Fund Freedom Schools

A. Effective June 1, 2006, the agency shall enter into contracts to create supportive, nurturing, literature-rich environments for children ages 5 to 18 years of age by focusing on literacy, cultural heritage, parental involvement, servant-leadership, and social action. The Freedom Schools program connects the needs of children and their families with the resources of the community.

B. These services meet the TANF goal to prevent and reduce out-of-wedlock pregnancies.

C. Eligibility for services is not limited to needy families.

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

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? Implementation of this Rule should have no impact on family stability.

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

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

4. What effect will this have on family earnings and family budget? Adding financial literacy as a component of the EITC Program may have a positive effect on a family's earnings and budget.

5. What effect will this have on the behavior and personal responsibility of children? The 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, these programs are strictly an agency function.

All interested persons may submit written comments through September 28, 2006, to Adren O Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA, 70804-9065.

A public hearing on the proposed Rule will be held on September 28, 2006, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, LA, beginning at 9:15 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Ann S. Williamson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: TANF Initiatives

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

The implementation costs for two new TANF Initiatives are \$1,500,000 for Domestic Violence Services and \$1,000,000 for Alternatives to Abortion Services Program. Act 17 of the 2006 Regular Session of the Louisiana Legislature allocated the funding for these two initiatives. The agency will enter into Memoranda of Understanding and contracts with state agencies and other entities to provide services for these programs. Future expenditures are subject to legislative appropriation. The programs will be discontinued if funding is not available.

Additionally, the Children's Defense Fund Freedom Schools Initiative is being adopted under the authority granted to the department by Louisiana's TANF Block Grant at a cost of \$730,000. The agency has entered into contracts with outside entities to create supportive, nurturing, literature-rich environments for children ages 5 to 18 years of age by focusing on literacy, cultural heritage, parental involvement, servant-leadership, and social action. The programs will serve approximately 550 children.

A Declaration of Emergency signed June 1, 2006, effected the Alternatives to Abortion Program and the Children's Defense Fund Freedom Schools.

The initiatives being amended (OCS Child Welfare Program, Individual Development Account Program, and Earned Income Tax Credit Program) or repealed (Developmental and Socialization Activities Program) by this rule will not result in any other costs or savings to state agencies other than the cost of publishing the rule, which is estimated to be \$400. These costs are routinely included in the agency's annual budget.

The total estimated implementation cost is approximately \$3,230,400. Funding for this increase in expenditures will be met with monies from Louisiana's TANF Block Grant.

There are no savings to state or local governmental units.

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

The proposed changes 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)

There are not anticipated costs to any persons or non-governmental groups as a result of this rule.

The TANF Initiatives provide assistance to eligible clients in the form of services, which has no immediate impact on the person's income. The services offered through the programs that are affected by this proposed rule will continue with a long-term goal of improving the economic situations of the targeted families.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Adren O. Wilson
Assistant Secretary
0608058

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

2007 Turkey Season (LAC 76:XIX.113-117)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend the turkey rules and regulations for the 2007 season.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Season

§113. Turkey Hunting Regulations

A. Daily limit is one gobbler, two gobblers per season. Taking of hen turkeys, including bearded hens, is illegal. Still hunting only. Use of dogs, baiting, electronic calling devices and live decoys is illegal. Turkeys may be hunted with shotguns, including muzzle loading shotguns, using shot not larger than #2 lead or BB steel shot, and bow and arrow but by no other means. Shooting turkeys from a moving or stationary vehicle is prohibited. Shotguns capable of holding more than three shells prohibited.

B. It is unlawful to take from the wild or possess in captivity any live wild turkeys or their eggs. No pen raised turkeys from within or without the state shall be liberated (released) within the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2263 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2375 (November

2002), LR 29:2512 (November 2003), LR 30:2874 (December 2004), LR 31:3167 (December 2005), LR 32:

§115. Statewide Turkey Hunting Areas-Resident Game Birds and Animals

A. Shooting hours: one-half hour before sunrise to one-half hour after sunset.

Species	Season Dates	Daily Bag Limit	Possession Limit
Turkey	See Schedule	1	2/Season

B. Turkey season will open in designated areas on the fourth Saturday in March. The Area A turkey season will be 30 consecutive days in length, the Area B turkey season will be 23 consecutive days in length, and the Area C turkey season will be 16 consecutive days in length. Wildlife Management Areas, National Forests, National Wildlife Refuges, and U.S. Army Corps of Engineers land may vary from this framework. Deviation from this framework may occur in those years when the fourth Saturday in March falls the day before Easter.

C. Statewide Youth Turkey and Physically Challenged Season on private lands shall be the weekend prior to the statewide turkey season. Only youths younger than 16 years of age or hunters possessing a Physically Challenged Hunter Permit with wheelchair classification may hunt. Youth must possess a hunter safety certification or proof of successful completion of a hunter safety course. Each youth must be accompanied by one adult 18 years of age or older. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for the youth. Adults accompanying youth may not possess a firearm or bow. Youths may possess only one firearm or bow while hunting. Legal weapons and shot are the same as described for the turkey season. The supervising adult shall maintain visual and voice contact with the youth at all times. An adult may supervise only one youth during this special hunt. Only one gobbler per day may be taken and any gobbler taken by the hunter during this special season counts towards their seasonal bag limit of 2. Contact regional offices for a Physically Challenged Hunter Permit application.

D. 2007 Turkey Hunting Schedule

Area	Season Dates
A	March 24 - April 22
B	March 24 - April 15
C	March 24 - April 8
Private Lands Youth and Physically Challenged Hunter (Wheelchair Confined) Hunt	March 17 - 18

E. 2007 Turkey Hunting Season—Open Only in the Following Areas

1. Area A—March 24-April 22

a. All of the following parishes are open:

- i. Beauregard;
- ii. Bienville;
- iii. Claiborne (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- iv. East Baton Rouge;
- v. East Feliciana;
- vi. Grant (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);

- vii. Jackson;
 - viii. LaSalle;
 - ix. Lincoln;
 - x. Livingston;
 - xi. Natchitoches (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - xii. Rapides (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - xiii. Sabine;
 - xiv. St. Helena;
 - xv. Tangipahoa;
 - xvi. Union;
 - xvii. Vernon (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - xviii. West Baton Rouge;
 - xix. West Feliciana (including Raccourci Island);
 - xx. Winn (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- b. Portions of the following parishes are also open:
- i. Allen—North of LA 104, west of LA 26 south of junction of LA 104 to US 190, north of US 190 east of Kinder, west of US 165 south of Kinder;
 - ii. Avoyelles—That portion bounded on the east by the Atchafalaya River, on the north by Red River to the Brouillette Community, on the west by LA 452 from Brouillette to LA 1, on the south by LA 1, eastward to Hamburg, thence by the West Atchafalaya Basin Protection levee southward;
 - iii. Calcasieu—North of I-10;
 - iv. Caldwell—West of Ouachita River southward to Catahoula Parish line;
 - v. Catahoula—South and west of the Ouachita River from the Caldwell Parish line southward to LA 8 at Harrisonburg, north and west of LA 8 from Harrisonburg to the LaSalle Parish line. ALSO that portion lying east of LA 15;
 - vi. Evangeline—North and west of LA 115, north of LA 106 from St. Landry to LA 13, west of LA 13 from Pine Prairie to Mamou and north of LA 104 west of Mamou;
 - vii. Franklin—That portion lying east of LA 17 and east of LA 15 from its juncture with LA 17 at Winnsboro;
 - viii. Iberville—West of LA 1. EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;
 - ix. Jefferson Davis—North of US 190 from junction with LA 26 to Kinder, west of US 165 and north of I-10 west from junction of US 165;
 - x. Madison—That portion lying east of US 65 from East Carroll Parish line to US 80 and south of US 80. Also, all lands east of the main channel of the Mississippi River;
 - xi. Morehouse—West of US 165 from the Arkansas line to the junction of LA 140 at Bonita, north and west of LA 140 to junction of LA 830-4 (Cooper Lake Road), west of LA 830-4 to US 165 at Bastrop, south of US 165 to junction of LA 3051 (Grabault Road) south of LA 3051 to junction of LA 138, west of LA 138 to junction of LA 134, north of LA 134 to the Ouachita Parish line;
 - xii. Ouachita—East of LA 143 from Union Parish line to US 80 in West Monroe, north of US 80 to LA 139, west of LA 139 to the Morehouse Parish line;

- xiii. Pointe Coupee—All of the parish except that portion bounded on the north by LA Hwy. 1, from Innis to the junction of LA Hwy 417, on the west by LA Hwy. 417 southward toward McCrea, on the south by LA Hwy. 417 from McCrea to its junction with Delhi Lane, then by Delhi Lane to LA Hwy. 418, then LA Hwy. 418 northward to LA Hwy. 1 at Innis. EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;
 - xiv. Richland—That portion south of US 80 and east of LA 17;
 - xv. St. Landry—That portion bounded on the west by the West Atchafalaya Basin Protection Levee and on the east by the Atchafalaya River. EXCEPTION: the Indian Bayou Area, see Federal Lands Hunting Schedule for Indian Bayou Area dates;
 - xvi. Upper St. Martin—All within the Atchafalaya Basin. EXCEPTIONS: Sherburne WMA and Indian Bayou Area, see WMA Turkey Hunting Schedule for special season dates on all state, federal and private lands within Sherburne WMA boundaries and see Federal Lands Hunting Schedule for Indian Bayou dates;
 - xvii. Tensas—That portion west of US 65 from the Concordia Parish line to its juncture with LA 128, north of LA 128 to St. Joseph; west and north of LA 605, 604 and 3078 northward to Port Gibson Ferry. Also all lands east of the main channel of the Mississippi River;
2. Area B—March 24-April 15
- a. All of the following parishes are open:
 - i. Caddo;
 - ii. DeSoto;
 - iii. Red River;
 - iv. St. Tammany;
 - v. Washington.
 - b. Portions of the following parishes are open:
 - i. Ascension—All east of the Mississippi River;
 - ii. Bossier—All open except that portion bounded on the north by I-20, on the west by LA 164, on the south by LA 164, and on the east by the Webster Parish Line;
 - iii. East Carroll—East of US 65 from Arkansas state line to Madison Parish line;
 - iv. Iberville—All east of the Mississippi River;
 - v. Webster—All open except that portion bounded on the north by I-20, on the east by U.S. 371, on the south by LA 164, and on the west by the Bossier Parish line (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
3. Area C—March 24-April 8
- a. All of the following parishes are open:
 - i. Concordia;
 - b. Portions of the following parishes are open:
 - i. Caldwell—All east of the Ouachita River;
 - ii. Catahoula—All of the parish EXCEPT for that portion located in Area A;
 - iii. Franklin—West of LA 17 from the Richland Parish line southward to Winnsboro, west of LA 15 southward to the Catahoula Parish line;
 - iv. Richland—West of LA 17 from Franklin Parish line to Ringle Road, south of Ringle Road to Ferguson Road, south of Ferguson Road to Little Road, south of Little Road to Big Creek, east of Big Creek to Franklin Parish line;

v. Tensas—East and south of US 65 from Concordia Parish line to LA 128, south of LA 128 to St. Joseph, east and south of LA 605, 604 and 3078 northward to Port Gibson Ferry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2264 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2376 (November 2002), LR 29:2512 (November 2003), LR 30:2875 (December 2004), LR 31:3167 (December 2005), LR 32:

§117. 2007 Wildlife Management Area Turkey—Hunting Regulations

A. General

1. The following rules and regulations concerning management, protection and harvest of wildlife have been officially approved and adopted by the Wildlife and Fisheries Commission in accordance with the authority provided in Louisiana Revised Statutes of 1950, Section 109 of Title 56. Failure to comply with these regulations will subject the individual to citation and/or expulsion from the management area.

2. Only those Wildlife Management Areas listed are open to turkey hunting.

3. ATVs, ATCs and motorcycles cannot be left overnight on WMAs EXCEPT in designated camping areas. ATVs are prohibited from two hours after sunset to 3 a.m. All roads including trails and roads designated as ATV only trails shall be closed to ATVs from March 1 through August 31 unless otherwise specified. ATV off-road or off-trail travel is prohibited. Certain trails may be open during this time period to provide access for fishing or other purposes. These trails will be marked by signs at the entrance of the trail. Otherwise, only walk-in hunting is permitted (bicycles permitted). All ATV trails on Jackson-Bienville WMA will be open for use by holders of Physically Challenged Hunter Permits (wheelchair bound classification only) during the special Physically Challenged Hunter (wheelchair bound classification) turkey season.

4. Bag limits on WMAs are part of the season bag limit. Only one turkey is allowed to be taken during special lottery hunts.

5. WMAs with youth turkey hunts are closed to all activities except turkey hunting by authorized youth hunt participants and fishing on the day(s) of the youth hunt.

B. Permits

1. Self-Clearing Permits. All turkey hunts, including lottery hunts, are self-clearing. Hunters must check in daily by obtaining a permit from a self-clearing station prior to hunting. The self-clearing permit must be in the hunter's possession while hunting. Upon completion of each days hunt, the hunter must check out by completing and depositing the hunter report portion of the permit in the check-out box at a self-clearing station before exiting the WMA.

2. Lottery Hunts. All or a portion of the turkey season on Bayou Macon, Clear Creek, Loggy Bayou, Sabine, Sherburne, Sicily Island, Tunica Hills, Union and West Bay WMAs are restricted to those persons selected as a result of the pre-application lottery. Special youth only lottery hunts will be held on Big Lake, Bens Creek, Fort Polk/Peason Ridge/KNF Calcasieu Ranger District, Jackson-Bienville,

Loggy Bayou, Sherburne, Sicily Island, Spring Bayou, Thistlethwaite, Union and West Bay WMAs. Deadline for receiving complete applications in the Baton Rouge office for all lottery hunts is 4:30 p.m. February 16, 2007. An application fee of \$5 must be sent with each application. Applicants for WMA youth hunts must be at least 8 years old on the day of the hunt. Applicants may submit only one application and will be selected for one WMA Turkey Lottery Hunt annually. Submitting more than one application will result in disqualification. Contact any district office for applications. Hunters must abide by self-clearing permit requirements. Youths chosen for special youth only hunts will be guided by members of the Louisiana Chapter of the National Wild Turkey Federation. One family member may accompany the youth and guide, but may not hunt.

C. Wildlife Management Area Turkey Hunting Schedule*

WMA	Non-Lottery Season Dates	Lottery Dates**	Permit Requirements
Bayou Macon	None	April 7-8	Self-Clearing
Bens Creek ¹	March 24-April 8	None	Self-Clearing
Big Lake	March 24-April 8	None	Self-Clearing
Bodcau	March 24-April 8	None	Self-Clearing
Boeuf	March 24-April 1	None	Self-Clearing
Clear Creek	April 2-22	March 24-25 March 31-April 1	Self-Clearing
Camp Beauregard	March 24-April 1	None	Self-Clearing
Fort Polk	March 24-April 22	None	Self-Clearing
Grassy Lake	March 24-April 8	None	Self-Clearing
Hutchinson Creek	March 24-April 22	None	Self-Clearing
Jackson-Bienville	March 24-April 8	None	Self-Clearing
Lake Ramsey	March 24-April 8	None	Self-Clearing
Little River	March 24-April 8	None	Self-Clearing
Loggy Bayou	None	April 14-15	Self-Clearing
Peason Ridge	March 24-April 22	None	Self-Clearing
Red River	March 24-April 8	None	Self-Clearing
Sabine	None	March 24-25 March 31-April 1	Self-Clearing
Sandy Hollow ¹	March 24-April 8	None	Self-Clearing
Sherburne ²	March 29-April 1	March 24-25 March 26-28	Self-Clearing
Sicily Island	None	March 24-26 March 27-29 March 30-April 1 April 2-4 April 5-8	Self-Clearing
Tangipahoa Parish School Board	March 24-April 22	None	Self-Clearing
Three Rivers	March 24-April 8	None	Self-Clearing
Tunica Hills South Tract	April 9-15	March 24-25 March 31-April 1 April 7-8	Self-Clearing
Tunica Hills Angola Tract ³	April 9-15	March 24-25 March 31-April 1 April 7-8	Self-Clearing
Union	None	April 7-8	Self-Clearing
Walnut Hills	March 24-April 22	None	Self-Clearing
West Bay	None	March 24-25 March 31-April 1	Self-Clearing

*Only those Wildlife Management Areas listed have a turkey hunting season. All other areas are closed.

**The deadline for receiving applications for all turkey Lottery Hunts on WMAs is February 16, 2007.

¹No turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

²All turkeys harvested on Sherburne WMA must be weighed and checked at WMA headquarters.

³Area closed to all users April 16 – August 31.

D. Wildlife Management Area Youth Hunts

WMA	Lottery Youth Hunt Date
Bens Creek	March 17
Big Lake	March 17
Fort Polk/Peason Ridge/ Calcasieu Ranger Dist.	March 17
Jackson-Bienville	March 17
Loggy Bayou	April 7
Sherburne	March 17-18
Sicily Island	March 17
Spring Bayou	March 17
Thistlethwaite	April 7
Union	March 31
West Bay	March 17

E. Wildlife Management Area Physically Challenged (Wheelchair Confined) Hunt. Jackson-Bienville WMA will be open April 14-20 to physically challenged hunters. Hunters must possess a Physically Challenged Hunter Permit with wheelchair classification. During this special hunt, ATVs may be used by physically challenged hunters on all designated ATV trails in accordance with the Physically Challenged Hunter Permit. Hunters must abide by self-clearing permit requirements. Contact regional offices for a Physically Challenged Hunter Permit application.

F. Federal Lands Turkey Hunting Schedule

1. Kisatchie National Forest (KNF) Turkey Hunting Schedule. Caney Ranger District, March 24-April 8; all remaining KNF lands, March 24-April 15 (including Catahoula and Red Dirt National Wildlife Management Preserves).

2. U.S. Army Corps of Engineers Turkey Hunting Schedule. Indian Bayou Area, March 17-18 physically challenged lottery only hunt, lottery hunt only on March 24-25 and March 26-28, non-lottery hunt March 29-April 1. Contact USCOE at 337-585-0853 for further information. Old River Control and Lock Areas, March 24-April 8. Contact USCOE (225) 492-2690 for further information.

3. National Wildlife Refuges. Bogue Chitto NWR, March 24-April 15; Lake Ophelia NWR, March 24-April 6 hunt ends at 12 p.m. each day; Tensas NWR, March 17-18 (youth lottery only), March 24-April 8; Upper Ouachita NWR, March 17 (youth lottery only). Contact the U.S. Fish and Wildlife Service for information regarding NWR hunts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 25:2265 (November 1999), amended LR 26:2636 (November 2000), LR 27:2272 (December 2001), LR 28:2377 (November 2002), LR 29:2514 (November 2003), LR 30:2876 (December 2004), LR 31:3169 (December 2005), LR 32:

Family Impact Statement

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Interested persons may submit written comments on the proposed Rule to David Moreland, Administrator, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than October 16, 2006.

Terry D. Denmon
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: 2007 Turkey Season**

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

Establishment of turkey hunting regulations is an annual process that is carried out using existing staff and funding levels. No increase or decrease in costs to state or local governmental units associated with implementing the proposed rule is anticipated.

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

License revenue from the sale of various wild turkey licenses is estimated to be \$55,497. Failure to adopt this rule would result in no turkey hunting seasons and loss of state revenue collections from the sale of turkey stamps. In addition, loss of tax revenues of an undeterminable amount may occur to both state and local governmental units from the sale of supplies and equipment used in the pursuit of turkeys.

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

An estimated 27,000 resident and nonresident sportsmen and an undeterminable number of sporting good distributors, retail outlets and landowners may be directly affected by this proposal. Turkey hunters in Louisiana generate income to retail outlets, landowners and commercial businesses that cater to the hunting public through hunting leases and the sale of related outdoor equipment and associated items (food, fuel, clothing, shotgun shells, etc.). These land and business owners will be negatively impacted if turkey hunting seasons, rules and regulations are not established and promulgated. The actual amount of this impact is not estimable at this time. Resident and nonresident turkey hunters will be required to purchase a Louisiana wild turkey license in addition to their basic and big game hunting licenses, provided they are not exempt from purchasing a turkey license or do not already possess a license that includes wild turkey hunting privileges. The additional costs incurred by turkey hunters for the purchase of wild turkey licenses will be \$5.50 for residents, non-resident active military, non-resident students and non-resident Louisiana natives, and \$20.50 for other non-residents.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Hunting supports approximately 17,000 full and part-time jobs in Louisiana of which a proportion is directly related to turkey hunting. Failure to establish turkey hunting seasons may have a negative impact on some of these jobs. It is anticipated that there will be little or no effect on competition in both the public and private sectors resulting from the proposed action.

Dwight Landreneau
Secretary
0608#029

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office