

Rules

RULE

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, the Board of Elementary and Secondary Education adopted 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—Programs of Study

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 32:2237 (December 2006).

§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 32:2237 (December 2006).

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 32:2237 (December 2006).

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0612#001

RULE

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.505, 507, 703 and 1301)

The Louisiana Student Financial Assistance Commission (LASFAC) amended its Scholarship/Grant Rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1). (SG0672R)

Title 28 EDUCATION

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

Chapter 5. Application; Application Deadlines, and Proof of Compliance

§505. Application Deadlines for High School Graduates and Home Study Completers of 2004 and Later and Eligible Non-Graduates

A. - A.3. ...

B. Deadline to Facilitate Timely Payment

B.1. - C.1. ...

2. Returning Students

a. Beginning with the 2002-2003 through the 2004-2005 academic year (college), in order for a returning student to receive the full benefits of a TOPS award as provided in §701.E, the final deadline for receipt of a student's initial FAFSA or the on-line application is May 1 of the academic year (college) he first enrolls as a full-time student in an eligible college or university.

b. Beginning with the 2005-2006 academic year (college), in order for a returning student to receive the full benefits of a TOPS award as provided in §701.E, the final deadline for receipt of the student's initial FAFSA or the on-line application is the July 1 immediately preceding the academic year (college) he first enrolls as a full-time student in an eligible college or university.

3. - 3.c. ...

d. If a returning student graduates in the 2003-2004 academic year (high school) and will be a first-time student in the fall semester of 2006, the student must submit the initial FAFSA or the on-line application no later than July 1, 2007.

C.4. - E. ...

F. Renewal FAFSA

1.a. Through the 2004-2005 academic year (college), in order to remain eligible for TOPS awards, a student who is eligible for federal grant aid must file a renewal FAFSA so that it is received by May 1 of each academic year (college) after initial eligibility is established.

b. Beginning with the 2005-2006 academic year (college), in order to remain eligible for TOPS awards, a student who is eligible for federal grant aid must file a renewal FAFSA so that it is received by the July 1 immediately preceding each academic year (college) after initial eligibility is established.

2. Students who can demonstrate that they do not qualify for federal grant aid because of their family's financial condition are not required to submit a renewal FAFSA.

3.a. In the event of a budgetary shortfall, applicants who do not file a renewal FAFSA or who do not complete all sections of the FAFSA will be the first denied a TOPS award.

b. Students who can demonstrate that they do not qualify for federal grant aid because of their family's financial condition and do not want to be the first denied a TOPS award must file a renewal FAFSA so that it is received by the July 1 immediately preceding each academic year (college) after initial eligibility is established.

F.4. - G. ...

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:635 (April 1998), amended LR 24:1901 (October 1998), repromulgated LR 27:1847 (November 2001), amended LR 30:2017 (September 2004), LR 31:37 (January 2005), LR 32:2238 (December 2006).

§507. Final Deadline for Submitting Documentation of Eligibility

A. LASFAC will continue to process eligibility for both new and renewal applicants during each award year until July 1 after the spring term of that award year.

B.1. Through the 2004-2005 academic year (college), all documentation and certifications necessary to establish student eligibility including, but not limited to, high school and/or college transcripts and certifications, copies of student aid reports, applicant confirmation forms, promissory notes, ACT and/or SAT scores, residency affidavits, proof of citizenship or permanent residency status and other documents that may be utilized in determining eligibility, must be received by LASFAC no later than May 1 of the award year. For example, to receive an award for the 2004-2005 award year, LASFAC must have in its possession all documents relevant to establishing eligibility by May 1, 2005.

2. Beginning with the 2005-2006 academic year (college), all documentation and certifications necessary to establish student initial eligibility including, but not limited to, high school and/or college transcripts and certifications, copies of student aid reports, applicant confirmation forms, promissory notes, ACT and/or SAT scores, residency affidavits, proof of citizenship or permanent residency status and other documents that may be utilized in determining eligibility, must be received by LASFAC no later the July 1 immediately following the academic year (college) the student enrolls as a first-time, full-time student in an eligible college or university. For example, to receive an award for the 2006-2007 academic year (college), LASFAC must have in its possession all documents relevant to establishing eligibility by July 1, 2007.

C.1. Returning students, who graduated high school during the 2001-2002 academic years (high school) and who enroll in an eligible college or university in the spring semester 2003, must submit documentation that establishes TOPS eligibility no later than May 1, 2004.

2. Returning students, who enroll in an eligible college or university in the fall semester of 2003 through the spring semester of 2005, must submit documentation that establishes TOPS eligibility no later than May 1 of the academic year (college) the student enrolls in an eligible

college or university. For example, a student who seeks to enroll in an eligible college or university in the fall semester of 2003 must submit documentation that establishes TOPS eligibility no later than May 1, 2004.

3. Returning students, who enroll in an eligible college or university in the fall semester of 2005 or later, must submit documentation that establishes TOPS eligibility no later than July 1 immediately following the academic year (college) the student enrolls as a full-time student in an eligible college or university. For example, a student who seeks to enroll in an eligible college or university in the fall semester of 2006 must submit documentation that establishes TOPS eligibility no later than July 1, 2007.

D.1. A student who successfully completed an undergraduate degree prior to or during the 2001-2002 academic year (college) and wishes to receive his remaining award eligibility to attend a postgraduate school must provide the documentation and certifications required to establish student eligibility no later than May 1, 2004.

2. A student who successfully completes an undergraduate degree during the 2002-2003 through the 2004-2005 academic year (college) and wishes to receive his remaining award eligibility to attend a postgraduate school must provide the documentation and certifications required to establish student eligibility no later than May 1 of the academic year (college) the student seeks to receive his remaining award eligibility. For example, to receive the remaining award for the 2003-2004 academic year (college), the student must submit the required documents no later than May 1, 2004.

3. A student who successfully completes an undergraduate degree during the 2005-2006 academic year (college) or later and wishes to receive his remaining award eligibility to attend a postgraduate school must provide the documentation and certifications required to establish student eligibility no later than July 1 immediately following the academic year (college) the student seeks to receive his remaining award eligibility. For example, to receive the remaining award for the 2006-2007 academic year (college), the student must submit the required documents no later than July 1, 2007.

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

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

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

§703. Establishing Eligibility

A. - A.5.a.i.(d). ...

5.a.ii. for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	General Science, Integrated Science
Algebra I	Algebra I, Parts 1 and 2, Integrated Mathematics I
Applied Algebra IA and IB	Applied Mathematics I and II
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II and III
Algebra II	Integrated Mathematics II
Geometry	Integrated Mathematics III
Geometry, Trigonometry, Calculus, or Comparable Advanced Mathematics	Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III*, Advanced Mathematics I, Advanced Mathematics II
Chemistry	Chemistry Com
Fine Arts Survey	Speech Debate (2 units)
Western Civilization	European History
Civics	AP American Government
	*Applied Mathematics III was formerly referred to as Applied Geometry

A.5.a.iii. - I.8. ...

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

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

Chapter 13. Leveraging Educational Assistance Partnership (LEAP)

§1301. General Provisions

A. - E. ...

F. Reallocation of Funds. Uncommitted institutional allotted funds are reallocated if not committed by the deadline of November 1 for colleges and universities and campuses of Louisiana Technical College and January 1 for proprietary schools. The method of reallocation is dependent upon the amount of funds available for reallocation. If the reallocation amount is less than \$50,000, then only two- and four-year colleges and universities, which have fully committed their original allotment by the appropriate deadline, receive a reallocation. If \$50,000 or more is available for reallocation, it is reallocated to eligible schools of all types, which have fully committed their original allotment by the appropriate deadline.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:641 (April 1998), amended LR 24:1910 (October 1998), LR 25:1458 (August 1999),

repromulgated LR 27:1860 (November 2001), amended LR 28:2332 (November 2002), LR 32:2239 (December 2006).

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RULE

Tuition Trust Authority Office of Student Financial Assistance

START Savings Program
(LAC 28:VI.107, 305, 311 and 315)

The Louisiana Tuition Trust Authority has amended its START Savings Program (R.S. 17:3091 et seq.) Rules. (ST0674R)

Title 28 EDUCATION

Part VI. Student Financial Assistance—Higher Education Savings

Chapter 1. General Provisions

§107. Applicable Definitions

Variable Earnings—refers to that portion of funds in an ESA, invested in equities, bonds, short-term fixed income investments or a combination of any of the three.

Variable Earnings Transaction Fund—the subaccount established within the Louisiana Education Tuition and Savings Fund to receive funds as directed by rule.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November 2002), LR 29:556 (April 2003), LR 30:786 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 31:639 (March 2005), LR 32:1433 (August 2006), LR 32:2240 (December 2006).

Chapter 3. Education Savings Account

§305. Deposits to Education Savings Accounts

A. - E.1. ...

2. Deposits for investment options that include variable earnings will be assigned a trade date based on the method of deposit and the date of receipt.

a. Deposits by check will be assigned a trade date three business days after the business day during which they were received.

b. Deposits made by electronic funds transfer through the Automated Clearing House (ACH) Network, or its successor, will be assigned a trade date of three business days after the business day during which they were received.

c. Deposits made by all other means of electronic funds transfer will be assigned a trade date of one business day after the business day during which they were received.

3. Deposits for investment options that include variable earnings, which are received via check or electronic funds transfer through the Automated Clearing House Network, will be deposited into the fixed earnings option until the trade date. Earnings accrued on these deposits prior

to the trade date shall be deposited in the Variable Earnings Transaction Fund.

4. Deposits received on weekends and holidays will be considered received on the next business day.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1270 (July 1998), LR 26:2263 (October 2000), LR 27:1880 (November 2001), LR 30:788 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 32:1433 (August 2006), LR 32:2240 (December 2006).

§311. Termination and Refund of an Education Savings Account

A. - C.2.b. ...

c. the deposits to or the current value of an account invested in a variable earnings option, whichever is less, less earning enhancements allocated to the account and earnings thereon if the account has been open for less than 12 months. Any increase in the value of an account invested in a variable earnings option over the amount deposited shall be forfeited by the account owner and deposited in the Variable Earnings Transaction Fund, if the account was invested in a variable earnings option and terminated within 12 months of the date the account was opened;

C.2.d. - H. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR 26:2265 (October 2000), amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002), LR 30:790 (April 2004), LR 31:639 (March 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006).

§315. Miscellaneous Provisions

A. - M.2. ...

3. Earnings reported by the state treasurer on deposits made by check or an ACH transfer, which is not honored by the financial institution on which it was drawn subsequent to the trade date, shall be forfeited by the account owner and deposited into the Variable Earnings Transaction Fund.

N. - R. ...

S. Variable Earnings Transaction Fund

1. Monies in the Variable Earnings Transaction Fund shall be used to pay any charges assessed to the START Saving Program by a financial institution and any loss of value between the purchase and redemption of units in a variable earnings option that are incurred when a check or ACH transfer is dishonored after the trade date by the financial institution on which it was drawn.

2. After the payment of expenses as provided in Paragraph 1, above, LATA may declare monies remaining in the Variable Earnings Transaction Fund as surplus. Such surplus shall be appropriated to the Saving Enhancement Fund to be used as earnings enhancements.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003),

amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006).

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RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Construction and Demolition Debris Tonnage Fee (LAC 33:VII.529)(SW041)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Solid Waste regulations, LAC 33:VII.529 (Log #SW041).

This Rule will promulgate the provisions of Act 718 of the 2006 Regular Session of the Louisiana Legislature regarding the imposition of a \$0.20 per ton disposal fee assessed on construction or demolition debris not otherwise exempted by the statute. Currently, the department incurs an annual cost of approximately \$755,000 for monitoring and maintaining construction and demolition debris solid waste facilities, but does not collect any fees to fund this cost. This rule authorizes the department to collect from each facility permitted as a construction or demolition debris landfill, as part of the annual monitoring and maintenance fee, a fee not exceeding \$0.20 per ton of construction or demolition debris deposited in the facility. This fee will only apply to construction or demolition debris that is subject to a fee imposed by the facility. Submittal of this fee is not due to the department until the invoicing for fiscal year 2007-2008. Recordkeeping of data on which invoicing will be based begins on July 1, 2006. An Emergency Rule to implement these provisions was effective on July 10, 2006, and published in the *Louisiana Register* on July 20, 2006. The basis and rationale for this rule are to promulgate the provisions of Act 718 of the 2006 Regular Session of the Louisiana Legislature and to ensure continued oversight and surveillance activities to prevent improper disposal of solid waste in order to protect public health and the environment.

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

Title 33

ENVIRONMENTAL QUALITY

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 5. Solid Waste Management System

Subchapter D. Solid Waste Fees

§529. Annual Monitoring and Maintenance Fee

A. - B.2.b. ...

c. for construction or demolition debris deposited at permitted construction or demolition debris facilities (Type

III facilities), \$0.20/ton; and the fee is only applicable to construction or demolition debris that is subject to a fee imposed by the facility;

d. for surface impoundments, no tonnage fee;

e. for publicly operated facilities that treat domestic sewage sludge, no tonnage fee; and

f. for Type I-A, II-A, III (except construction or demolition debris disposal facilities), and beneficial-use facilities, no tonnage fee.

B.3. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and specifically 2014(D)(5).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:689 (May 2003), LR 29:2051 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 32:2241 (December 2006).

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RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Expedited Penalty Agreement (LAC 33:I.801, 803, 805, and 807)(OS054)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted the Office of the Secretary regulations, LAC 33:I.801, 803, 805, and 807 (Log #OS054).

Delays in enforcement actions reduce the effectiveness of the department, unnecessarily utilize resources, and slow down the enforcement process. In the past three years, the department has received 8,139 referrals and has issued 4,259 actions. Current budget and resource issues pose a danger of imminent impairment to the department's ability to address minor and moderate violations. This rule will provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases. The department issued an emergency rule to set up a pilot program for the process on March 10, 2004. The department has determined, through data gathered during the pilot program, that the trial period should end and a permanent program for assessing expedited penalties (XPs) should be established. The report to the Governor by the Advisory Task Force on Funding and Efficiency of the Louisiana Department of Environmental Quality recommended this action as a pilot program. The legislature approved the report and passed Act 1196 in the 2003 Regular Session of the Louisiana Legislature allowing the department to promulgate rules for the program. This rule formalizes the directive set forth in Act 1196. The basis and rationale for this rule are to abate the delay in correcting minor and moderate violations of the Environmental Quality

Act to achieve expeditious protection of public health and the environment.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This 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 1. Departmental Administrative Procedures Chapter 8. Expedited Penalty Agreement

§801. Definitions

Agency Interest Number—a site-specific number assigned to a facility by the department that identifies the facility in a distinct geographical location.

Expedited Penalty Agreement—a predetermined penalty assessment issued by the department and agreed to by the respondent, which identifies violations of minor or moderate gravity as determined by LAC 33:I.705, caused or allowed by the respondent and occurring on specified dates, in accordance with R.S. 30:2025(D).

LPDES General Permit—for the purposes of this Chapter, any Louisiana Pollutant Discharge Elimination System Permit in the LAG530000, LAG540000, LAG750000, LAR050000, or LAR100000 series.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2242 (December 2006).

§803. Purpose

A. The purpose of this Chapter is to provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty assessments in appropriate cases. This Chapter:

1. addresses common violations of minor or moderate gravity;
2. quantifies and assesses penalty amounts for common violations in a consistent, fair, and equitable manner;
3. ensures that the penalty amounts are appropriate, in consideration of the nine factors listed in R.S. 30:2025(E)(3)(a);
4. eliminates economic incentives for noncompliance for common minor and/or moderate violations; and
5. ensures expeditious compliance with environmental regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2242 (December 2006).

§805. Applicability

A. **Limit of Penalty Amount.** The total penalty assessed for the expedited penalty agreement shall not exceed \$1,500 for one violation or \$3,000 for two or more violations.

B. **Departmental Discretion.** The secretary of the department or his designee, at his sole discretion, may propose an expedited penalty agreement for any violation described in LAC 33:I.807.A and considered in accordance with Subsection E of this Section. The expedited penalty

agreement shall specify that the respondent waives any right to an adjudicatory hearing or judicial review regarding violations identified in the signed expedited penalty agreement. The respondent must concur with and sign the expedited penalty agreement in order to be governed by this Chapter and R.S. 30:2025(D).

C. **Notification to the Respondent.** The expedited penalty agreement shall serve as notification to the respondent of the assessed penalty amount for the violations identified on the specified dates.

D. **Certification by the Respondent.** By signing the expedited penalty agreement, the respondent certifies that all cited violations in the expedited penalty agreement have been or will be corrected, and that the assessed penalty amount has been or will be paid, within 30 days of receipt of the expedited penalty agreement.

E. **Nine Factors for Consideration.** An expedited penalty agreement may be used only when the following criteria for the nine factors for consideration listed in R.S. 30:2025(E)(3)(a) are satisfied.

1. **The History of Previous Violations or Repeated Noncompliance.** The violation identified in the expedited penalty agreement is not the same as or similar to a violation that occurred within the previous two years at the facility under the same agency interest number, and that was identified in any compliance order, penalty assessment, settlement agreement, or expedited penalty agreement issued to the respondent by the department. Site-specific enforcement history considerations will only apply to expedited penalty agreements.

2. **The Nature and Gravity of the Violation.** The violation identified is considered to be minor or moderate with regard to its nature and gravity.

a. The violation identified in the expedited penalty agreement deviates somewhat from the requirements of statutes, regulations, or permit; however, the violation exhibits at least substantial implementation of the requirements.

b. The violation identified is isolated in occurrence and limited in duration.

c. The violation is easily identifiable and corrected.

d. The respondent concurs with the violation identified and agrees to correct the violation identified and any damages caused or allowed by the identified violation within 30 days of receipt of the expedited penalty agreement.

3. **The Gross Revenues Generated by the Respondent.** By signing the expedited penalty agreement, the respondent agrees that sufficient gross revenues exist to pay the assessed penalty and correct the violation identified in the expedited penalty agreement within 30 days of receipt of the expedited penalty agreement.

4. **The Degree of Culpability, Recalcitrance, Defiance, or Indifference to Regulations or Orders.** The respondent is culpable for the violation identified, but has not shown recalcitrance, defiance, or extreme indifference to regulations or orders. Willingness to sign an expedited penalty agreement and correct the identified violation within the specified time frame demonstrates respect for the regulations and a willingness to comply.

5. **The Monetary Benefits Realized Through Noncompliance.** The respondent's monetary benefit from

noncompliance for the violation identified shall be considered. The intent of these regulations is to eliminate economic incentives for noncompliance.

6. The Degree of Risk to Human Health or Property Caused by the Violation. The violation identified does not present actual harm or substantial risk of harm to the environment or public health. The violation identified is isolated in occurrence or administrative in nature, and the violation identified has no measurable detrimental effect on the environment or public health.

7. Whether the Noncompliance or Violation and the Surrounding Circumstances Were Immediately Reported to the Department and Whether the Violation or Noncompliance Was Concealed or There Was an Attempt to Conceal by the Person Charged. Depending upon the type of violation, failure to report may or may not be applicable to this factor. If the respondent concealed or attempted to conceal any violation, the violation shall not qualify for consideration under these regulations.

8. Whether the Person Charged Has Failed to Mitigate or to Make a Reasonable Attempt to Mitigate the Damages Caused by the Noncompliance or Violation. By signing the expedited penalty agreement, the respondent states that the violation identified and the resulting damages, if any, have been or will be corrected. Violations considered for expedited penalty agreements are, by nature, easily identified and corrected. Damages caused by any violation identified are expected to be nonexistent or minimal.

9. The Costs of Bringing and Prosecuting an Enforcement Action, Such as Staff Time, Equipment Use, Hearing Records, and Expert Assistance. Enforcement costs for the expedited penalty agreement are considered minimal. Enforcement costs for individual violations are covered with the penalty amount set forth for each violation in LAC 33:I.807.

F. Schedule. The respondent must return the signed expedited penalty agreement and payment for the assessed amount to the department within 30 days of the respondent's receipt of the expedited penalty agreement. If the department has not received the signed expedited penalty agreement and payment for the assessed amount by the close of business on the thirtieth day after the respondent's receipt of the expedited penalty agreement, the expedited penalty agreement may be withdrawn at the department's discretion.

G. Extensions. If the department determines that compliance with the cited violation is technically infeasible or impracticable within the initial 30-day period for compliance, the department, at its discretion, may grant additional time in order for the respondent to correct the violation cited in the expedited penalty agreement.

H. Additional Rights of the Department

1. If the respondent signs the expedited penalty agreement, but fails to correct the violation identified, pay the assessed amount, or correct any damages caused or allowed by the cited violation within the specified time frame, the department may issue additional enforcement actions, including but not limited to, a civil penalty assessment, and may take any other action authorized by law to enforce the terms of the expedited penalty agreement.

2. If the respondent does not agree to and sign the expedited penalty agreement, the department shall consider the respondent notified that a formal civil penalty is under consideration. The department may then pursue formal enforcement action against the respondent in accordance with R.S. 30:2025(C), 2025(E), 2050.2, and 2050.3.

I. Required Documentation. The department shall not propose any expedited penalty agreement without an affidavit, inspection report, or other documentation to establish that the respondent has caused or allowed the violation to occur on the specified dates.

J. Evidentiary Requirements. Any expedited penalty agreement issued by the department shall notify the respondent of the evidence used to establish that the respondent has caused or allowed the violation to occur on the specified dates.

K. Public Enforcement List. The signed expedited penalty agreement is a final enforcement action of the department and shall be included on the public list of enforcement actions referenced in R.S. 30:2050.1(B)(1).

L. Date of Issuance. When an expedited penalty agreement is issued in conjunction with a Notice of Potential Penalty, the issuance date shall be the date on the document of initial signature by the administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2242 (December 2006).

§807. Types of Violations and Expedited Penalty Amounts

A. The types of violations listed in the following table may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

Expedited Penalties			
Violation	Citation	Amount	Frequency
ALL MEDIA			
Failure to provide timely notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition.	LAC 33:I.3917.A	\$500	Per occurrence
Failure to provide prompt notification of any unauthorized discharge that results in the contamination of the groundwaters of the state or that otherwise moves in, into, within, or on any saturated subsurface strata in accordance with LAC 33:I.3923.	LAC 33:I.3919.A	\$500	Per occurrence
Failure to provide timely written notification of the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition.	LAC 33:I.3925.A	\$500	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
AIR QUALITY			
40 CFR Part 70 General Permit conditions (Part K, L, M, or R): Failure to timely submit any applicable annual, semiannual, or quarterly reports.	LAC 33:III.501.C.4	\$500	Per occurrence
Failure to submit an Annual Criteria Pollutant Emissions Inventory in a timely and complete manner when applicable.	LAC 33:III.919	\$500	Per occurrence
Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable.	LAC 33:III.5107	\$500	Per occurrence
Control of Fugitive Emissions, sandblasting facilities: Failure to take all reasonable precautions to prevent particulate matter from becoming airborne.	LAC 33:III.1305.A	\$250	Per occurrence
Failure to provide notice of change of ownership within 45 days after the change.	LAC 33:III.517.G	\$200	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report as specified in a minor source permit.	LAC 33:III.501.C.4	\$250	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report (other than those specified elsewhere in this Section) as specified in a Part 70 (Title V) air permit.	LAC 33:III.501.C.4	\$350	Per occurrence
Failure to submit an updated Emission Point List, Emissions Inventory Questionnaire (EIQ), emissions calculations, and certification statement as described in LAC 33:III.517.B.1 within seven calendar days after effecting any modification to a facility authorized to operate under a standard oil and gas permit.	LAC 33:III.501.C.4	\$750	Per occurrence/ emission point
Failure to submit the Title V permit renewal application at least six months prior to the date of expiration, applicable only when the renewal application is submitted prior to permit expiration and a renewal permit is issued on or before the expiration date.	LAC 33:III.507.E.4	\$1,000	Per occurrence
Failure to maintain records for glycol dehydrators subject to LAC 33:III.2116.	LAC 33:III.2116.F	\$250	Per occurrence
Failure to submit an initial perchloroethylene inventory report.	LAC 33:III.5307.A	\$250	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to submit a perchloroethylene usage report by July 1 for the preceding calendar year.	LAC 33:III.5307.B	\$250	Per occurrence
Stage II Vapor Recovery			
Note: LAC 33:III.2132 is only applicable to subject gasoline dispensing facilities in the parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee.			
Failure to submit an application to the administrative authority prior to installation of the Stage II vapor recovery system.	LAC 33:III.2132.B.6	\$500	Per occurrence
Failure to have at least one person trained as required by the regulations.	LAC 33:III.2132.C	\$300	Per occurrence
Failure to test the vapor recovery system prior to start-up of the facility and annually thereafter.	LAC 33:III.2132.D	\$750	Per occurrence
Failure to post operating instructions on each pump.	LAC 33:III.2132.E	\$100	Per occurrence
Failure to maintain equipment and tag defective equipment "out of order."	LAC 33:III.2132.F.1 and 3-4	\$500	Per inspection
Failure to perform daily inspections and accurately record results.	LAC 33:III.2132.F.2	\$300	Per inspection
Failure to maintain records on-site for at least two years and present them to an authorized representative upon request.	LAC 33:III.2132.G.1-7	\$300	Per compliance inspection
Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site.	LAC 33:III.905	\$100	Per occurrence
HAZARDOUS WASTE			
Used Oil			
Failure of a used oil generator to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4013.E	\$500	Per occurrence
Failure of a used oil transfer facility to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4035.H	\$500	Per occurrence
Failure of a used oil processor or re-refiner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4049.G	\$500	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure of a used oil burner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4069.G	\$500	Per occurrence
SOLID WASTE			
Failure to report any discharge, deposit, injection, spill, dumping, leaking, or placing of solid waste into or on the water, air, or land.	LAC 33:VII.315.K	\$500	Per occurrence
Waste Tires			
Storage of more than 20 whole tires without authorization from the administrative authority.	LAC 33:VII.10509.B	\$200	Per occurrence
Transporting more than 20 tires without first obtaining a transporter authorization certificate.	LAC 33:VII.10509.C	\$200	Per occurrence
Storing tires for greater than 365 days.	LAC 33:VII.10509.E	\$200	Per occurrence
Failure to maintain all required records for three years on-site or at an alternative site approved in writing by the administrative authority.	LAC 33:VII.10509.G	\$200	Per occurrence
Failure to obtain a waste tire generator identification number within 30 days of commencing business operations.	LAC 33:VII.10519.A	\$300	Per occurrence
Failure to accept one waste tire for every new tire sold unless the purchaser chooses to keep the waste tire.	LAC 33:VII.10519.B	\$100	Per occurrence
Failure to remit waste tire fees to the state on a monthly basis as specified.	LAC 33:VII.10519.D	\$100	Per occurrence
Failure to post required notifications to the public.	LAC 33:VII.10519.E	\$100	Per occurrence
Failure to list the waste tire fee on a separate line on the invoice so that no tax will be charged on the fee.	LAC 33:VII.10519.F	\$100	Per occurrence
Failure to keep waste tires or waste tire material covered as specified.	LAC 33:VII.10519.H	\$200	Per occurrence
Failure to segregate waste tires from new or used tires offered for sale.	LAC 33:VII.10519.M	\$200	Per occurrence
Failure to provide a manifest for all waste tire shipments containing more than 20 tires.	LAC 33:VII.10533.A	\$200	Per occurrence
Failure to maintain completed manifests for three years and have them available for inspection.	LAC 33:VII.10533.D	\$200	Per occurrence
Failure to collect appropriate waste tire fee for each new tire sold.	LAC 33:VII.10519.C, 10535.B	\$200	Per occurrence
Failure to submit application and fees for transporter authorization.	LAC 33:VII.10523.A	\$300	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to use a manifest when transporting greater than 20 waste tires.	LAC 33:VII.10523.C	\$200	Per occurrence
Failure of transporter to transport all waste tires to an authorized collection center or a permitted processing facility.	LAC 33:VII.10523.D	\$300	Per occurrence
Failure of out-of-state or out-of-country transporter to comply with state waste tire regulations.	LAC 33:VII.10523.E	\$200	Per occurrence
Failure to provide notification in writing within 10 days when any information on the authorization certificate form changes, or if the business closes and ceases transporting waste tires.	LAC 33:VII.10523.G	\$100	Per occurrence
Failure by a collector or collection center to follow the requirements for receipt of tires.	LAC 33:VII.10527.A	\$200	Per occurrence
Failure of collection center operator to meet the standards in LAC 33:VII.10525.D.1-10 and 12-24.	LAC 33:VII.10527.B	\$300	Per occurrence
Failure of recycler to provide notification of its existence and obtain an identification number.	LAC 33:VII.10531.A	\$300	Per occurrence
Failure of waste tire or waste tire material recycler to meet the requirements of LAC 33:VII.10525.D.	LAC 33:VII.10531.B	\$300	Per occurrence
Failure to follow the requirements for manifest discrepancies.	LAC 33:VII.10533.C	\$300	Per occurrence
WATER QUALITY			
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit.	LAC 33:IX.2701.A	\$200 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit.	LAC 33:IX.2701.A	\$300 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit.	LAC 33:IX.2701.A	\$500 and completion of a department-sponsored compliance class	More than 10 violations

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to comply with any portion(s) of an LPDES LAG540000 permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG540000 permit.	LAC 33:IX.2701.A	\$600 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG750000 permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG750000 permit.	LAC 33:IX.2701.A	\$600 and completion of a department-sponsored compliance class	More than 10 violations
Failure to develop and/or implement a Spill Prevention and Control Plan (SPC):			
1. Failing to develop an SPC plan for any applicable facility.	LAC 33:IX.905	\$500	Per occurrence
2. Failing to implement any component of an SPC plan.	LAC 33:IX.905	\$100	Per occurrence
Failure to submit certain reports as required by any LPDES permit not previously defined as an LPDES General Permit in LAC 33:1.801, including noncompliance reports, storm water reports, pretreatment reports, biomonitoring reports, overflow reports, construction schedule progress reports, environmental audit reports as required by a municipal pollution prevention plan, and toxicity reduction evaluation reports.	LAC 33:IX.2701.A	\$300	Per required submittal
Failure to prepare and/or implement any portion or portions of a Storm Water Pollution Prevention Plan (SWPPP), Pollution Prevention Plan (PPP), or Best Management Practices/Plan (BMP) as required by any LPDES permit not previously defined as an LPDES General Permit in LAC 33:1.801.	LAC 33:IX.2701.A	\$500	Per occurrence
Failure to submit a Notice of Intent for coverage under the LAR050000 or LAR100000 LPDES Storm Water General Permit.	LAC 33:IX.2511.C.1	\$1,000	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Unauthorized discharge of oil field wastes, including produced water.	LAC 33:IX.1901.A	\$1,000	Per occurrence
Unauthorized discharge of oily fluids.	LAC 33:IX.1701.B	\$1,000	Per occurrence
UNDERGROUND STORAGE TANKS			
Failure to register an existing or new UST containing a regulated substance.	LAC 33:XI.301.A-B	\$300	Per inspection
Failure to certify and provide required information on the department's approved registration form.	LAC 33:XI.301.B.1-2	\$300	Per inspection
Failure to provide notification within 30 days after selling a UST system or acquiring a UST system; failure to keep a current copy of the registration form on-site or at the nearest staffed facility.	LAC 33:XI.301.C.1-3	\$300	Per inspection
Failure to provide corrosion protection to tanks that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.1	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to provide corrosion protection to piping that routinely contains regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$250 and completion of a department-sponsored compliance class	Per inspection
Failure to provide corrosion protection to flex hoses and/or sub-pumps that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$100 and completion of a department-sponsored compliance class	Per inspection
Failure to provide spill and/or overflow prevention equipment as specified.	LAC 33:XI.303.B.3	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to upgrade an existing UST system to new system standards as specified.	LAC 33:XI.303.C	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to pay fees by the required date.	LAC 33:XI.307.D	\$200	Per inspection
Failure to report, investigate, and/or clean up any spill and overflow.	LAC 33:XI.501.C	\$1,500	Per inspection
Failure to continuously operate and maintain corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground or water.	LAC 33:XI.503.A.1	\$300 and completion of a department-sponsored compliance class	Per inspection

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to have a UST system equipped with a cathodic protection system inspected for proper operation as specified.	LAC 33:XI.503.A.2	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to inspect a UST system with an impressed current cathodic protection system every 60 days to ensure that the equipment is running properly.	LAC 33:XI.503.A.3	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to comply with recordkeeping requirements.	LAC 33:XI.503.B	\$200 and completion of a department-sponsored compliance class	Per inspection
Failure to meet requirements for repairs to UST systems.	LAC 33:XI.507	\$300	Per inspection
Failure to follow reporting requirements, maintain required information, and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them after a request.	LAC 33:XI.509	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to meet the performance requirements when performing release detection required in LAC 33:XI.703.	LAC 33:XI.701	\$750 and completion of a department-sponsored compliance class	Per inspection
Failure to use a method or combination of methods of release detection described in LAC 33:XI.701 for all new or existing tank systems.	LAC 33:XI.703.A.1	\$1,500 and completion of a department-sponsored compliance class	Per inspection
Failure to satisfy the additional requirements for petroleum UST systems as specified.	LAC 33:XI.703.B	\$350 and completion of a department-sponsored compliance class	Per inspection
Failure to maintain release detection records.	LAC 33:XI.705	\$200 and completion of a department-sponsored compliance class	Per inspection
Failure to report any suspected release within 24 hours after becoming aware of the occurrence or when a leak detection method indicates that a release may have occurred.	LAC 33:XI.703.A.2 or 707	\$500 and completion of a department-sponsored compliance class	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to investigate and confirm any suspected release of a regulated substance that requires reporting under LAC 33:XI.707 within seven days.	LAC 33:XI.711	\$1,500	Per occurrence
Failure to maintain corrosion protection and/or release detection on a UST system that is temporarily closed and contains more than 2.5 cm (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system.	LAC 33:XI.903.A	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to comply with permanent closure and/or changes in service procedures.	LAC 33:XI.905	\$500	Per inspection

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:2243 (December 2006).

Herman Robinson, CPM
Executive Counsel

0612#024

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

IBR of Administrative Reporting Exemption for Certain Air Releases of NO_x (NO and NO₂) (LAC 33:I.3931)(OS076ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Office of the Secretary regulations, LAC 33:I.3931 (Log #OS076ft).

This rule is identical to federal regulations found in 71 FR 58525-58533, No. 192, October 4, 2006, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule incorporates by reference EPA administrative reporting exemptions for releases that are a result of combustion of less than 1000 pounds of nitrogen oxide (NO) and less than 1000 pounds of nitrogen dioxide (NO₂) to the air in 24 hours. The noncombustion-related releases of NO and NO₂ reportable quantities remain at 10 pounds. This rule

is required to make the state regulations equivalent to federal regulations. The basis and rationale for this rule are to mirror the federal regulations.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This 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 E. Reportable Quantities for Notification of Unauthorized Discharges

§3931. Reportable Quantity List for Pollutants

A. Incorporation by Reference of Federal Regulations

1. Except as provided in Subsection B of this Section, the following federal reportable quantity lists are incorporated by reference:

a. 40 CFR 117.3, July 1, 2005, Table 117.3—Reportable Quantities of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act; and

b. 40 CFR 302.4, July 1, 2005, Table 302.4—List of Hazardous Substances and Reportable Quantities.

2. Amendments as promulgated on October 4, 2006, in the *Federal Register*, 71 FR 58525-58533, to 40 CFR Part 302, Designation, Reportable Quantities, and Notification, and 40 CFR Part 355, Emergency Planning and Notification, are hereby incorporated by reference.

B. - Note #. ...

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 32:2248 (December 2006).

Herman Robinson, CPM
Executive Counsel

0612#025

RULE

Office of the Governor Board of Certified Public Accountants

Transfer of Grades, Reinstatements, Internet Practice,
CPE and Rules of Professional Conduct
(LAC 46:XIX.505, 1105, 1301, 1501,
1700, 1701, 1703, 1705 and 1707)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and of the Louisiana Accountancy Act, R.S. 37:74, the Board of Certified Public Accountants of Louisiana has amended LAC 46:XIX.505, 1105, 1301, 1501, 1700, 1701, 1703, 1705 and 1707. The objective of these revisions is to facilitate recognition of CPA exam passing grades of candidates of other states who seek to be licensed in Louisiana; to allow another method of reinstating an expired CPA license by completing board-approved continuing professional education (CPE); to allow CPE required of new licensees to be completed at any time in their first three-year CPE compliance period; to require that certain information appear on CPA firm websites; and, to update rules of professional conduct in accordance with regulatory trends. The action is necessary in order to update these rules or to align them with corresponding requirements or standards of other state and national regulatory authorities and organizations that also impose requirements upon certified public accountants. No preamble has been prepared with respect to the revised rules which appear below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XIX. Certified Public Accountants

Chapter 5. Qualifications; Education and Examination

§505. Examination

A. - F.5. ...

6. Transfer of Grades. Grades shall be accepted from other states when a candidate for transfer of grades has met all the requirements of Louisiana candidates except that he sat for the examination as a candidate for another state.

a. - b. ...

c. A bona fide examination candidate of another state who applies for transfer of grades to Louisiana who has conditioned in another state need not have satisfied this board's conditional credit rules to retain conditional credit.

F.6.d. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71, et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:6 (January 1980), amended LR 9:208 (April 1983), LR 12:88 (February 1986), amended by the Department of

Economic Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:1119 (September 1997), LR 26:1970 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 29:1475 (August 2003), LR 32:2248 (December 2006).

Chapter 11. Issuance and Renewal of Certificate

§1105. Certificate Application, Annual Renewals, Inactive Registration, Reinstatement, Notification under Substantial Equivalency

A. - C.6. ...

D. Reinstatement of Certificate of Certified Public Accountant

1. An individual whose certificate has expired by virtue of nonrenewal, or who was registered in inactive status because an exemption from CPE had been granted in a preceding year, shall present proof in a form satisfactory to the board that he has:

a. satisfied the experience requirements prescribed in R.S. 37:75.G within the four years immediately preceding the date of the application for reinstatement; and

b. satisfied the requirements for continuing professional education for the preceding reporting period as specified in §1301.A; or

2. if the experience obtained within the four years immediately preceding the date of application for licensing does not satisfy the requirements of R.S. 37:75.G, the applicant may obtain reinstatement of a license by completion of the following continuing education:

a. two hours of Ethics, including the board's Rules of Professional Conduct (LAC 46:XIX.Chapter 17) or other Ethics program that is approved by the board; and

b. 120 hours of accounting and auditing, including financial reporting and disclosures, or as an alternative, 120 hours in subject areas specific to applicant's intended areas of practice or employment provided that such courses have been submitted to and pre-approved by the board;

3. continuing education courses used to reinstate a certificate under Subparagraph D.1.b or Paragraph D.2 above may be used to satisfy the requirements of either the preceding or current CPE reporting period but not both periods;

4. applications for reinstatement of certificates pursuant to R.S. 37:76.F shall:

a. be made on a form provided by the board;

b. be submitted on or before the last day of the month preceding the month in which a regularly schedule meeting of the board is held in order for such application to be considered by the board at that meeting; and

c. contain all of the information required by the board including but not limited to information regarding the satisfaction and verification of the experience and/or continuing education requirements referred to in Subparagraph D.1.b.or Paragraph D.2.

E. - E.4.h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended LR 9:209 (April 1983), LR 11:758 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:1124 (September 1997), LR 26:1974 (September 2000), amended by the Office of the Governor,

Board of Certified Public Accountants, LR 32:2249 (December 2006).

Chapter 13. Maintenance of Competency; Continuing Professional Education (CPE)

§1301. Basic Requirements

A. - D. ...

E. Effective Date

1. As to any certificate holder who was licensed as of January 1, 1998, the effective date of these requirements was January 1, 1998; except for §1301.A.1, which will be effective January 1, 2001.

2. As to any individual who obtains an initial certificate, the effective date of these requirements shall be January 1, of the first calendar year of the then current three-year CPE compliance period. The hours required are reduced pro rata for the first CPE compliance period, as follows:

a. an individual initially licensed during the first calendar year of his first three-year CPE compliance period shall have an 80 hour requirement;

b. an individual initially licensed during the second calendar year of his first three-year CPE compliance period shall have a 40 hour requirement;

c. an individual initially licensed during the third calendar year of his first three-year CPE compliance period shall not have any hours required.

F. - F.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:4 (January 1980), amended LR 9:208 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 15:614 (August 1989), LR 23:1116 (September 1997), LR 26:1976 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2249 (December 2006).

Chapter 15. Firm Permits to Practice; Attest Experience; Peer Review

§1501. CPA Firm Permits; Attest Experience; Application, Renewal, Reinstatement; Internet Practice

A. - E.5. ...

F. Internet Practice. A CPA firm offering or performing services via a web site shall provide on the web site the firm's name, address, and the states in which the CPA firm holds a license or permit to practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 3:308 (July 1977), amended LR 6:9 (January 1980), amended LR 9:209 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:1124 (September 1997), LR 26:1980 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2249 (December 2006).

Chapter 17. Rules of Professional Conduct

§1700. General

A. - A.4. ...

B. Definitions. The following terms have meanings which are specific to §1700-1703.

Attest Engagement Team—firm owners, employees, and contractors participating in an attest engagement, including

those who perform concurring and second reviews, irrespective of classification (e.g., audit, tax, advisory, consulting), but excluding specialists referenced in SAS No. 73 and those performing only routine clerical functions.

Audit Sensitive Activities—those activities normally an element of or subject to significant internal accounting controls. For example, the following positions, which are not intended to be all-inclusive, would normally be considered audit sensitive, even though not positions of significant influence: a cashier, internal auditor, accounting supervisor, purchasing agent, or inventory warehouse supervisor.

Close Relatives—parent, sibling, or nondependent child.

Covered Licensee—

a. individual on the attest engagement team;
b. individual in a position to influence the attest engagement;
c. firm owner or manager who provides nonattest services to the attest client beginning once he or she provides 10 hours of such services within any fiscal year and ending on the later of the date:

i. the firm signs the report on the financial statements for the fiscal year during which those services were provided; or

ii. he or she no longer expects to provide 10 or more hours of nonattest services to the attest client on a recurring basis;

d. firm owner in the office in which the lead attest engagement practitioner primarily practices in connection with the attest engagement;

e. the firm, including its employee benefit plans; or
f. an entity whose operating, financial, or accounting policies can be controlled by any of the individuals or entities described in Subparagraphs a through e or by two or more such individuals or entities if they act together;

g. an individual is not included solely because he was formerly associated with the client in any capacity described in §1701.A.1.b, if such individual has disassociated from the client and does not participate in the engagement for the client covering any period of his association with the client.

Immediate Family—spouse, spousal equivalent, or dependent (whether or not related).

Grandfathered Loans—those loans which were made under normal lending procedures, terms, and requirements by a financial institution before January 1, 1992, or prior to its becoming a client for which independence was required. Such loans must not be renegotiated after independence became required and must be kept current as to all terms. Such loans shall be limited to:

a. loans obtained by the licensee which are not material in relation to the net worth of the borrower; or
b. home mortgages; or
c. any other fully secured loan, except one secured solely by a guarantee of the licensee.

Office—a reasonably distinct subgroup within a firm, whether constituted by formal organization or informal practice, where personnel who make up the subgroup generally serve the same group of clients or work on the same categories of matters. Substance should govern the office classification. For example, the expected regular personnel interactions and assigned reporting channels of an

individual may well be more important than an individual's physical location.

Period of Professional Engagement—the period during which professional services are provided, with such period starting when the licensee is engaged or begins to perform professional services requiring independence and ending with the notification of the termination of that professional relationship by the licensee or by the client.

Permitted Personal Loans—

a. automobile loans and leases collateralized by the automobile;

b. loans of the surrender value of an insurance policy;

c. borrowing fully collateralized by cash deposits at the same institution;

d. credit cards, overdraft reserve accounts, and cash advances on checking accounts with an aggregate unpaid balance of \$10,000 or less, provided that these are obtained from a financial institution under its normal lending procedures, terms, and requirements and are at all times kept current as to all terms.

Professional Services—services arising out of or related to the specialized knowledge or skills associated with certified public accountants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1113 (September 1997), LR 26:1982 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2249 (December 2006).

§1701. Independence, Integrity and Objectivity

A. Independence

1. A covered licensee shall not issue a report on the financial statements of a client or in connection with any attest engagement for a client in such a manner as to imply that he is acting as an independent public accountant with respect thereto, nor shall he perform any other service in which independence is required under professional standards, unless he is independent. Independence shall be considered to be impaired if, for example:

a. during the period of professional engagement or at the time of issuing a report, the covered licensee:

i. had or was committed to acquire any direct or material indirect financial interest in the client; or

ii. was a trustee of any trust or executor or administrator of any estate if such trust or estate had, or was committed to acquire, any direct or material indirect financial interest in the client and the covered licensee (individually or with others) had the authority to make investment decisions for the trust or estate; or the trust or estate owned or was committed to acquire more than 10 percent of the client's outstanding equity securities or other ownership interests; or the value of the trust's or estate's holdings in the client exceeded 10 percent of the total assets of the trust or estate; or

iii. had any joint, closely-held business investment with the client or any officer, director, or principal stockholder thereof which was material in relation to the net worth of either the covered licensee or the client; or

iv. had any loan to or from the client or any officer, director, principal stockholder or individual having 10 percent or more of ownership interests thereof, other than permitted personal loans and grandfathered loans;

b. during the period covered by the financial statements, during the period of the professional engagement, or at the time of issuing a report, the firm, or owner or professional employee of the firm:

i. was connected with the client as a promoter, underwriter, or voting trustee, a director or officer, or in any capacity equivalent to that of an owner, a member of management, or of an employee; or

ii. was a trustee for any pension or profit sharing trust of the client; or

iii. receives a commission or had a commitment to receive a commission from the client or a third party with respect to services or products procured for the client, including any related pension or profit-sharing trust, in violation of R.S. 37:83.K; or

iv. receives a contingent fee or had a commitment to receive a contingent fee from the client or a third party with respect to professional services performed for the client, including any related pension or profit-sharing trust, in violation of R.S. 37:83.L;

c. during the period of the professional engagement, an owner or professional employee of the firm, his or her immediate family, or any group of such persons acting together owned more than 5 percent of a client's outstanding equity securities or other ownership interests.

2. With respect to a covered licensee's relatives, independence may be impaired depending on the nature of the financial interest, relationships, the strength of the family bond which depends on the degree of closeness, the employment or audit sensitive activities of the individuals, or whether the individuals have significant influence over the engagement or the client, as applicable to the circumstances. Therefore, §1701.A.1 is applicable and independence would be impaired in the same manner as to the covered licensee, with respect to the following relatives:

a. immediate family of a covered licensee, except in cases solely in which the family member is or was a client employee or contractor in capacity that excludes all of the following: an audit sensitive activity; a key position with the client; or, one with significant influence;

b. close relatives of an individual on the attest engagement team, if such relative has or had any of the following: an audit sensitive activity; a key position with the client; significant influence; or a material financial interest in the client of which the individual has knowledge.

3. As in other matters involving professional judgment, the licensee is responsible for assessing his or her independence in appearance as well as in fact. Therefore, in making that determination, the licensee shall consider whether independence is affected by the circumstances of any relationships or transactions, including those listed in Paragraph 1701.A.1 above, between the licensee and the client, together with its affiliated entities, owners, principals, officers, directors, and management and audit committee members, who are in a position to control, engage, terminate or otherwise influence an attest engagement or whose representations are relied upon during the engagement.

4. The foregoing examples are not intended to be all inclusive. It is impossible to enumerate all circumstances in which the appearance of independence might be questioned. In the absence of an independence rule that addresses a particular circumstance, a licensee should evaluate whether that circumstance would lead a reasonable person aware of all the relevant facts to conclude that there is an unacceptable threat to independence.

B. - B.2. ...

3. A licensee in the performance of professional services shall be free of conflicts of interest that would impair objectivity. A conflict of interest may occur if a licensee performs a professional service for a client or employer and the licensee or his firm has a relationship with another person, entity, product, or service that could be viewed by the client, employer, or other appropriate parties as impairing the licensee's objectivity. If the licensee believes that the professional service can be performed with objectivity this rule shall not operate to prohibit the performance of the professional service provided that the relationship is disclosed to and consent is obtained from such client, employer, or other appropriate parties, and the licensee documents such consent in the working papers of the engagement or by other appropriate written means. (Certain professional services, such as attest engagements, require independence. Independence impairments cannot be eliminated by such disclosure and consent.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1114 (September 1997), LR 26:1983 (September 2000), repromulgated LR 26:2240 (October 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2250 (December 2006).

§1703. Competence and Professional Standards

A. Definition

Professional Standards—include but are not limited to those standards defined by Statements on Auditing Standards (SAS); Statements on Standards for Accounting and Review Services (SSARS); Statements on Standards for Consulting Services (SSCS); Statements on Standards for Attestation Engagements (SSAE); and Standards for Performing and Reporting on Peer Reviews or Quality Reviews issued by the American Institute of Certified Public Accountants; auditing standards issued by the Comptroller General of the United States for governmental audits and those issued by the PCAOB for public company audits.

B. Competence. A licensee shall not undertake any engagement for performance of professional services which he cannot reasonably expect to complete with due professional competence.

C. Professional Standards. A licensee shall not act or imply that he is acting as a CPA by permitting association of his name or firm's name, issuing a report, or expressing an opinion, in connection with financial statements, elements thereof, or the written assertions and representations of a client, or by the performance of professional services, unless he has complied with applicable professional standards. This rule does not apply in any instance in which such

compliance would otherwise be prohibited by the act or by rule of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1115 (September 1997), LR 26:1984 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2251 (December 2006).

§1705. Responsibilities to Clients

A. - A.2. ...

B. Records

1. A licensee shall furnish to his client or former client upon request:

a. a copy of a tax return issued by the licensee to or for such client; and

b. a copy of any report, or other document, issued by the licensee to or for such client; and

c. any accounting or other records belonging to, or obtained from, or on behalf of, the client which the licensee removed from the client's premises or received for the client's account, but the licensee may make and retain copies of such documents when they form the basis for work done by him; and

d. a copy of the licensee's working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client;

e. examples of records described in this Section include but are not limited to computer generated books of original entry, general ledgers, subsidiary ledgers, adjusting, closing and reclassification entries, journal entries and depreciation schedules, or their equivalents.

C. Fee for issuing and reproducing records, format, timely response, and record retention period.

1. A licensee shall be permitted to collect in advance of issuance a reasonable fee for time and expenses of issuing or copying records referred to in §1705.B.1.a, b, d and e.

2. The information should be provided in the medium in which it is requested if it exists in that format (for example electronic or hard copy). The licensee is not required to convert information to another format.

3. The requested information shall be furnished by the licensee to the client in a timely manner.

4. A licensee is not required to retain any documents beyond the period prescribed by professional standards.

D. The intent of §1705.B and C is not to require that a licensee provide copies of a work product or record for which the client has not paid. A licensee may require that the fees due for the work product or record in question be paid before records are provided. However, a licensee must be able to substantiate which work products or services have and have not been paid for.

E. In all cases, the client's records, described in §1705.B.1.c, must be returned upon request by the client. If an engagement is terminated prior to its completion, unless the licensee and client otherwise agree to modify the engagement, the licensee is required to return only client records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:3 (January 1980), amended LR 11:757 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1067 (November 1991), LR 23:1115 (September 1997), LR 26:1984 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2252 (December 2006).

§1707. Other Responsibilities and Practices

A. - A.11. ...

B. Acting through Others

1. A CPA or CPA firm shall not permit others to carry out on his behalf or on the firm's behalf, either with or without compensation, acts which, if carried out by the CPA or CPA firm, would place him or the CPA firm in violation of the rules of professional conduct, professional standards, or any provisions of the Act.

2. Acting through an affiliated entity (an entity that is related to or affiliated by ownership to the CPA firm and/or its owners) that has a similar name. On and after January 1, 2008, a CPA firm shall not affiliate with an entity that has a similar name unless:

a. the affiliated entity is owned in accordance with §1707.B.2.e.i, or has been issued a firm permit by the board pursuant to §1707.B.2.e.ii; or

b. the CPA firm has entered into a written agreement with the board pursuant to §1707.B.2.e.ii;

c. a CPA firm seeking issuance, renewal, or reinstatement of a firm permit, to be effective on and after January 1, 2008 shall, as a condition thereof, satisfy the requirements of this Paragraph §1707.B.2;

d. affiliated entities for purpose of this rule refers to entities which offer to clients or the public professional services or products related to the skills associated with CPAs. Conversely, entities that offer services or products that do not relate to matters of accounting and financial reporting, tax, finance, investment advice or financial planning, management, or consultation are excluded;

e. depending on the ownership structure, an affiliated entity may be required to obtain a firm permit in order to use a similar name which indicates that the CPA or CPA firm is providing services through the affiliated entity. A similar name is one that contains one or more names, or initials of the names, or reference to that/those names that are included in a CPA firm applying for or currently holding a firm permit, or one tending to indicate that such firm is a CPA firm:

i. affiliated entities wholly owned either by the owners of the CPA firm, on the same basis as the CPA firm is owned, or directly by the CPA firm may use a similar name and would not be required to obtain a firm permit;

ii. affiliated entities that are majority-owned (not wholly owned) by the owners of the CPA firm or by the CPA firm, or that are wholly owned but in different percentages are required to obtain a firm permit if the affiliated entity uses a similar name. If the affiliated entity does not qualify for a firm permit under R.S. 37:77, the CPA firm (i.e., one that does hold a firm permit) must enter into a written agreement with and acceptable to the board that sets forth that the CPA firm is responsible to the board for the actions of the affiliated entity and its owners;

iii. if the CPA firm and/or its owners (whether individually CPA licensed or not) own 50 percent or less of the other affiliated entity, a similar name may not be used for the affiliated entity;

f. under R.S. 37:77(C), a majority of the ownership of a CPA firm (in terms of financial interests and voting rights of all partners, officers, shareholder, members, or managers) must belong to holders of valid licenses. Thus an unlicensed "holding company" cannot own a majority or 100 percent of a CPA firm. Therefore, such a "holding company" would have to apply for a CPA firm permit and qualify as such. The holding company and the CPA firm must both be registered as firms with the board even though the holding company will not directly offer services to clients. If the holding company does not otherwise meet the requirements to be licensed (e.g., the requirements that a majority ownership interest is held by licensees; the owners must be active in the firm or affiliates; and, the name must not be misleading) then such a firm structure would not be permissible.

C. - I. ...

J. Cooperation with Board Inquiry or Investigation. A licensee or CPA inactive status registrant shall fully cooperate with the board in connection with any inquiry or investigation made by the board. Full cooperation includes, but is not limited to, fully responding in a timely manner to all inquiries of the board or representatives of the board and claiming board correspondence from the U.S. Postal Service and from other delivery services used by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 3:308 (July 1977), amended 4:358 (October 1978), LR 6:3 (January 1980), LR 9:207 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:1115 (September 1997), LR 26:1985 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2252 (December 2006).

Michael A. Henderson
Executive Director

0612#066

RULE

Office of the Governor Division of Administration Office of Group Benefits

PPO, EPO, and MCO Plans of Benefits
Hyperbaric Oxygen Therapy
(LAC 32:III.309, V.309, IX.309)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to

adopt and promulgate rules with respect thereto, OGB hereby amends the provisions of the PPO, EPO, and MCO plan documents to require prior authorization for hyperbaric oxygen therapy in order to identify unnecessary or inappropriate uses before the expenses are incurred, effective January 1, 2007.

The following Rule to become effective January 1, 2007.

Title 32

EMPLOYEE BENEFITS

Part III. Preferred Provider Organization (PPO)

Plan of Benefits

Chapter 3. Medical Benefits

§309. Outpatient Procedure Certification (OPC)

A. - B. ...

1. cataract; and
2. hyperbaric oxygen therapy.
3. - 7. repealed.

C. ...

D. repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Board of Trustees, State Employees Group Benefits Program, LR 25:1832 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1890 (October 2006), LR 32:2253 (December 2006).

Part V. Exclusive Provider Organization (EPO)

Plan of Benefits

Chapter 3. Medical Benefits

§309. Outpatient Procedure Certification (OPC)

A. - B. ...

1. cataract; and
2. hyperbaric oxygen therapy.
3. - 7. repealed.

C. ...

D. repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Board of Trustees, State Employees Group Benefits Program, LR 25:1812 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1862 (October 2006), LR 32:2253 (December 2006).

Part IX. Managed Care Option (MCO) Plan of Benefits

Chapter 3. Medical Benefits

§309. Outpatient Procedure Certification (OPC)

A. - B.7 ...

8. hyperbaric oxygen therapy.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:891 (June 2003), amended LR 32:1877 (October 2006), LR 32:2253 (December 2006).

Tommy D. Teague
Chief Executive Officer

0612#049

RULE

**Office of the Governor
Division of Administration
Office of Group Benefits**

PPO, EPO, and MCO Plans of Benefits
Prescription Drug Benefits Dispensing Limits
(LAC 32:III.323, V.325, IX.323)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB hereby amends the provisions of the PPO, EPO, and MCO Plan Documents to change current dispensing limits for outpatient prescription drugs from 34, 68, and 102 days supplies to 30, 60, and 90 days supplies, which are the standards in the pharmacy benefits industry effective January 1, 2007.

**Title 32
EMPLOYEE BENEFITS**

**Part III. Preferred Provider Organization (PPO)
Plan of Benefits**

Chapter 3. Medical Benefits

§323. Prescription Drug Benefits

A. - C.4. ...

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the prescription benefits manager, including the following limitations.

a. Up to a 30-day supply of drugs may be dispensed upon initial presentation of a prescription or for refills dispensed more than 120 days after the most recent fill.

b. For refills dispensed within 120 days of the most recent fill, up to a 90-day supply of drugs may be dispensed at one time, provided that co-payments shall be due and payable as follows.

i. For a supply of 1-30 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$50 per prescription dispensed, and 100 percent of excess cost.

ii. For a supply of 31-60 days the *plan member* will be responsible for payment of fifty percent of the *eligible expense* for the drug, up to a maximum of \$100 per prescription dispensed, and 100 percent of excess cost.

iii. For a supply of 61-90 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$150 per prescription dispensed, and 100 percent of excess cost.

NOTE: There is no per prescription maximum on the *plan member's* responsibility for payment of excess cost. *Plan member* payments for excess costs are not applied toward satisfaction of the annual out-of-pocket threshold (above).

iv. Once the out-of-pocket threshold for *eligible expenses* for prescription drug is reached, the *plan member's* co-payment responsibility for brand drugs on the Pharmacy

Benefits Manager's list of preferred drugs will be \$15 for a 1-30 days supply, \$30 for a 31-60 days supply, and \$45 for a 61-90 days supply, with no co-pay for up to a 90-days supply of generic drugs.

6. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Board of Trustees, State Employees Group Benefits Program, LR 25:1835 (October 1999), amended LR 27:720,721 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1887 (November 2001), LR 28:2344 (November 2002), LR 29:342 (March 2003), LR 32:2254 (December 2006).

**Part V. Exclusive Provider Organization (EPO)
Plan of Benefits**

Chapter 3. Medical Benefits

§325. Prescription Drug Benefits

A. - C.4. ...

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the prescription benefits manager, including the following limitations.

a. Up to a 30-day supply of drugs may be dispensed upon initial presentation of a prescription or for refills dispensed more than 120 days after the most recent fill.

b. For refills dispensed within 120 days of the most recent fill, up to a 90-day supply of drugs may be dispensed at one time, provided that co-payments shall be due and payable as follows.

i. For a supply of 1-30 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$50 per prescription dispensed, and 100 percent of excess cost.

ii. For a supply of 31-60 days the *plan member* will be responsible for payment of fifty percent of the *eligible expense* for the drug, up to a maximum of \$100 per prescription dispensed, and 100 percent of excess cost.

iii. For a supply of 61-90 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$150 per prescription dispensed, and 100 percent of excess cost.

NOTE: There is no per prescription maximum on the *plan member's* responsibility for payment of excess cost. *Plan member* payments for excess costs are not applied toward satisfaction of the annual out-of-pocket threshold (above).

iv. Once the out-of-pocket threshold for *eligible expenses* for prescription drug is reached, the *plan member's* co-payment responsibility for brand drugs on the Pharmacy Benefits Manager's list of preferred drugs will be \$15 for a 1-30 days supply, \$30 for a 31-60 days supply, and \$45 for a 61-90 days supply, with no co-pay for up to a 90-days supply of generic drugs.

6. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Board of Trustees, State Employees Group Benefits Program, LR 25:1815 (October 1999), amended LR 27:717,718 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1886 (November 2001), LR 28:2340 (November 2002), LR 29:337 (March 2003), LR 32:2254 (December 2006).

Part IX. Managed Care Option (MCO) Plan of Benefits

Chapter 3. Medical Benefits

§323. Prescription Drug Benefits

A. - C.4. ...

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the prescription benefits manager, including the following limitations.

a. Up to a 30-day supply of drugs may be dispensed upon initial presentation of a prescription or for refills dispensed more than 120 days after the most recent fill.

b. For refills dispensed within 120 days of the most recent fill, up to a 90-day supply of drugs may be dispensed at one time, provided that co-payments shall be due and payable as follows.

i. For a supply of 1-30 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$50 per prescription dispensed, and 100 percent of excess cost.

ii. For a supply of 31-60 days the *plan member* will be responsible for payment of fifty percent of the *eligible expense* for the drug, up to a maximum of \$100 per prescription dispensed, and 100 percent of excess cost.

iii. For a supply of 61-90 days the *plan member* will be responsible for payment of 50 percent of the *eligible expense* for the drug, up to a maximum of \$150 per prescription dispensed, and 100 percent of excess cost.

NOTE: There is no per prescription maximum on the *plan member's* responsibility for payment of excess cost. *Plan member* payments for excess costs are not applied toward satisfaction of the annual out-of-pocket threshold (above).

iv. Once the out-of-pocket threshold for *eligible expenses* for prescription drug is reached, the *plan member's* co-payment responsibility for brand drugs on the Pharmacy Benefits Manager's list of preferred drugs will be \$15 for a 1-30 days supply, \$30 for a 31-60 days supply, and \$45 for a 61-90 days supply, with no co-pay for up to a 90-days supply of generic drugs.

6. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:893 (June 2003), amended LR 32:1878 (October 2006), LR 32:2255 (December 2007).

Tommy D. Teague
Chief Executive Officer

0612#048

RULE

**Department of Health and Hospitals
Board of Nursing**

Domicile of Board and Verification of License
(LAC 46:XLVII.3305 and 3339)

The Louisiana State Board of Nursing amends LAC 46:XLVII.3305 and 3339 in accordance with R.S. 37:918, R.S. 37:919 and R.S 37:920 and in accordance with the

provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

This Rule, LAC 46:XLVII.3305, provides for the domicile of the board to be Baton Rouge, LA, but offices for the purpose of administering the provisions of the law governing the practice of nursing may be established by the board in any of the principal cities or metropolitan areas of such principal cities in Louisiana. The language in the Rule is amended to be consistent with R.S 37:919. Employees of the board and their families have been impacted by a change of duty station due to the necessity to establish administrative offices in Baton Rouge in the aftermath of Hurricane Katrina. Displaced employees have benefited from the change in duty station. Additional employment opportunities have become available to meet the needs of the Baton Rouge office.

Further, the Rule LAC 46:XLVII.3339 provides for on-line verification of the licensure status of registered nurses, which is consistent with current technology to provide a user friendly method for licensure verification.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLVII. Nurses

Subpart 2. Registered Nurses

Chapter 33. General

Subchapter A. Board of Nursing

§3305. Official Office of the Board

A. The domicile of the board is Baton Rouge, LA1q, but offices for the purpose of administering the provisions of this Part may be established by the board in any of the principal cities or metropolitan areas of such principal cities in Louisiana.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:919 and R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of nursing, LR 7:73 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 22:104 (February 1996), LR 24:1293 (July 1998), LR 26:1615 (August 2000), LR 32:2255 (December 2006).

**Subchapter C. Registration and Registered Nurse
Licensure**

§3339. Verification of Licensure

A. - B. ...

C. Before employing a person as a registered nurse, current licensure should be verified by inspection of the document and by on-line verification. Failure to do so may result in aiding and abetting an unlicensed person to practice nursing in violation of the law.

D. Annually, on or before January 31, current licensure of registered nurses should be verified by directors of nursing or supervisors. Documentation of visual inspection of license and/or on-line verification is necessary to ascertain that the year is current.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and R.S. 37:920.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:77 (March 1981), amended by the Department of Health and Hospitals, Board

of Nursing, LR 24:1293 (July 1998), LR 32:2255 (December 2006).

Barbara L. Morvant
Executive Director

0612#047

RULE

Department of Health and Hospitals Board of Pharmacy

Certified Pharmacist Preceptor Program
and Intern Practical Experience
(LAC 46:LIII.513 and 705)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Louisiana Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy hereby repeals LAC 46:LIII.513, and further, amends certain portions of LAC 46:LIII.705. The effect of these changes will be to repeal the board's Certified Pharmacist Preceptor Program, and further, to repeal the requirement that all hours of practical experience be earned under the supervision of certified pharmacist preceptors.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 5. Pharmacists

Subchapter A. Licensure Procedures

§513. Certified Pharmacist Preceptor Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1211.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2084 (October 2003), effective January 1, 2004, repealed LR 32:2256 (December 2006).

Chapter 7. Pharmacy Interns

§705. Practical Experience

A. - B. ...

1. The practical experience earned shall have been under the supervision of a pharmacist.

B.2 - C.1. ...

a. Prior to beginning his final academic year in a board-approved college of pharmacy, the intern shall earn a minimum of 500 hours under the supervision of a pharmacist at a permitted pharmacy site; and

b. ...

2. If credit is not received for the total required 1,500 hours upon certification of graduation pursuant to the provisions of §705.C.1, the intern shall earn 1,500 hours of practical experience under the supervision of a pharmacist at a permitted pharmacy site after certification of graduation from a board-approved college of pharmacy.

3. Practical experience hours earned either prior to the final academic year, or after certification of graduation from a board-approved college of pharmacy, that are submitted to the board for credit consideration shall be listed on an affidavit form supplied by the board office, and signed by the pharmacist and pharmacy intern.

3.a. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1211.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 29:2086 (October 2003), effective January 1, 2004, amended LR 32:636 (April 2006), LR 32:2256 (December 2006).

Malcolm J. Broussard
Executive Director

0612#019

RULE

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 amends 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 Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part 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 32:2256 (December 2006).

§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 32:2256 (December 2006).

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 32:2257 (December 2006).

§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 32:2257 (December 2006).

Chapter 29. Patient Rights

§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 32:2257 (December 2006).

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

0612#085

RULE

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

Intermediate Care Facilities for the Mentally Retarded—Community Homes Licensing—Emergency Preparedness (LAC 48:I.51188)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 48:I.51188 as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 51. Licensing Requirements for Community Homes

§51188. Emergency Preparedness

A. The community home, also known as an intermediate care facility for the mentally retarded (ICF/MR), shall have an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan and is designed to manage the consequences of declared disasters or other emergencies that disrupt the community home's ability to provide care and treatment or threatens the lives or safety of the community home residents. The community home shall follow and execute its approved emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

B. At a minimum, the community home shall have a written plan that describes:

1. the evacuation of residents to a safe place either within the community home or to another location;
2. the delivery of essential care and services to community home residents, whether the residents are housed off-site or when additional residents are housed in the community home during an emergency;
3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the community home or at another location;
4. a plan for coordinating transportation services required for evacuating residents to another location; and
5. the procedures to notify the resident's family, guardian or primary correspondent if the resident is evacuated to another location.

C. The community home's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The community home's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the community home's performance during the planned drill.

D. The community home's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

E. The plan shall be available to representatives of the Office of the State Fire Marshal.

F.1. In the event that a community home evacuates, temporarily relocates or temporarily ceases operation at its

licensed location as a result of an evacuation order issued by the parish OEP and sustains damages due to wind, flooding or power outages longer than 48 hours, the community home shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section.

a. The purpose of these surveys is to assure that the community home is in compliance with the licensing standards including, but not limited to, the areas of the structural soundness of the building, the sanitation code, and staffing requirements.

b. The Health Standards Section will determine the facility's access to the community service infrastructure, such as hospitals, transportation, physicians, professional services and necessary supplies.

2. If a community home evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and does not sustain damages due to wind, flooding or power outages longer than 48 hours, the community home may be reopened.

G.1. Before reopening at its licensed location, the community home must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must contain, at a minimum:

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;
- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

2. Before reopening, the community home must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for reopening, subject to the facility's compliance with any other applicable rules.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to reopen.

H. If it is necessary for a community home to temporarily relocate beds and/or increase the number of beds in the home as a result of a declared disaster, the community home may request a waiver from the licensing agency to

operate outside of its licensed location for a time period not to exceed 90 days in order to provide needed services to its clients. Extension requests will be considered on a case-by-case basis and must include a plan of action which specifies timelines in which the beds will either be moved back to the original licensed location or permanently relocated as specified in Paragraphs I.1-2.

I. The permanent relocation of community home beds as a result of a declared disaster or other emergency must be approved by the Office for Citizens with Developmental Disabilities and the Bureau of Health Services Financing, Health Standards Section in order to assure that:

1. the new location has either the same number or fewer of the previously licensed beds; and
2. the location of the residents' family members is taken into consideration in the selection of the new site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2258 (December 2006).

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

0612#086

RULE

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

Intermediate Care Facilities for the Mentally
Retarded—Group Homes Licensing—Emergency
Preparedness (LAC 48:I.63188)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 48:I.63188 as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 63. Licensing Requirements for Group Homes

§63188. Emergency Preparedness

A. The group home, also known as an intermediate care facility for the mentally retarded (ICF/MR), shall have an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan and is designed to manage the consequences of declared disasters or other emergencies that disrupt the group home's ability to provide care and treatment or threatens the lives or safety of the group home residents. The group home shall follow and execute its approved emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

B. At a minimum, the group home shall have a written plan that describes:

1. the evacuation of residents to a safe place either within the group home or to another location;
2. the delivery of essential care and services to residents, whether the residents are housed off-site or when additional residents are housed in the group home during an emergency;
3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the group home or at another location;
4. a plan for coordinating transportation services required for evacuating residents to another location; and
5. the procedures to notify the resident's family, guardian or primary correspondent if the resident is evacuated to another location.

C. The group home's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The group home's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the group home's performance during the planned drill.

D. The group home's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

E. The plan shall be available to representatives of the Office of the State Fire Marshal.

F.1. In the event that a group home evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and sustains damages due to wind, flooding or power outages longer than 48 hours, the group home shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section.

a. The purpose of these surveys is to assure that the group home is in compliance with the licensing standards in the areas of the structural soundness of the building, the sanitation code and staffing requirements.

b. The Health Standards Section will determine the facility's access to the community service infrastructure, such as hospitals, transportation, physicians, professional services, and necessary supplies.

2. If a group home evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and does not sustain damages due to wind, flooding or power outages longer than 48 hours, the group home may be reopened.

G.1. Before reopening at its licensed location, the group home must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's approved emergency preparedness plan must be attached to

the detailed summary. The detailed summary must contain, at a minimum:

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;
- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

2. Before reopening, the group home must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for reopening, subject to the facility's compliance with any other applicable rules.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to reopen.

H. If it is necessary for a group home to temporarily relocate beds and/or increase the number of beds in the home as a result of a declared disaster, the group home may request a waiver from the licensing agency to operate outside of its licensed location for a time period not to exceed 90 days in order to provide needed services to its clients. Extension requests will be considered on a case-by-case basis and must include a plan of action which specifies timelines in which the beds will either be moved back to the original licensed location or permanently relocated as specified in Paragraphs I.1. and 2.

I. The permanent relocation of group home beds as a result of a declared disaster or other emergency must be approved by the Office for Citizens with Developmental Disabilities and the Bureau of Health Services Financing, Health Standards Section in order to assure that:

1. the new location has either the same number or fewer of the previously licensed beds; and

2. the location of the residents' family members is taken into consideration in the selection of the new site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2259 (December 2006).

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

0612#087

RULE

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

Intermediate Care Facilities for the Mentally Retarded—Residential Homes Licensing—Emergency Preparedness (LAC 48:I.7927)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.7927 as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 79. Licensing Requirements for Residential Homes

§7927. Core Requirements

A. - G.6. ...

H. Emergency Preparedness

1. The residential home, also known as an intermediate care facility for the mentally retarded (ICF-MR), shall have an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan and is designed to manage the consequences of declared disasters or other emergencies that disrupt the residential home's ability to provide care and treatment or threatens the lives or safety of the residential home residents. The residential home shall follow and execute its approved emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

2. At a minimum, the residential home shall have a written plan that describes:

a. the evacuation of residents to a safe place either within the residential home or to another location;

b. the delivery of essential care and services to residential home residents, whether the residents are housed off-site or when additional residents are housed in the residential home during an emergency;

c. provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the residential home or at another location;

d. a plan for coordinating transportation services required for evacuating residents to another location; and

e. procedures to notify the resident's family, guardian or primary correspondent if the resident is evacuated to another location.

3. The residential home's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The residential home's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the residential home's performance during the planned drill.

4. The residential home's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

5. The plan shall be available to representatives of the Office of the State Fire Marshal.

6.a. In the event a residential home evacuates, temporarily relocates, or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and sustains damages due to wind, flooding, or power outages longer than 48 hours, the residential home shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section.

i. The purpose of these surveys is to assure that the residential home is in compliance with the licensing standards including, but not limited to, the areas of the structural soundness of the building, the sanitation code, and staffing requirements.

ii. The Health Standards Section will determine the facility's access to the community service infrastructure such as hospitals, transportation, physicians, professional services, and necessary supplies.

b. If a residential home evacuates, temporarily relocates, or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and does not sustain damages due to wind, flooding or power outages longer than 48 hours, the residential home may be reopened.

7. Before reopening at its licensed location, the residential home must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must contain, at a minimum:

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;
- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

8. Before reopening, the residential home must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for reopening subject to the facility's compliance with any other applicable rules.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to reopen.

9. If it is necessary for a residential home to temporarily relocate beds and/or increase the number of beds in the home as a result of a declared disaster, the residential home may request a waiver from the licensing agency to operate outside of its licensed location for a time period not to exceed 90 days in order to provide needed services to its clients. Extension requests will be considered on a case-by-case basis and must include a plan of action which specifies timelines in which the beds will either be moved back to the original licensed location or permanently relocated as specified in Subparagraphs 10.a-b.

10. The permanent relocation of residential home beds as a result of a declared disaster or other emergency must be approved by the Office for Citizens with Developmental Disabilities and the Bureau of Health Services Financing, Health Standards Section in order to assure that:

a. the new location has either the same number or fewer of the previously licensed beds; and

b. the location of the residents' family members is taken into consideration in the selection of the new site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2260 (December 2006).

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

0612#088

RULE

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

Nursing Facility Minimum Licensing Standards—Emergency Preparedness (LAC 48:I.9729)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.9729 as authorized by R.S. 36:254 and R.S. 40:2009.1-2116.4. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 97. Nursing Homes

Subchapter B. Organization and General Services

§9729. Emergency Preparedness

A. The nursing facility shall have an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan designed to manage the consequences of declared disasters or other emergencies that disrupt the facility's ability to provide care and treatment or threatens the lives or safety of the residents. The facility shall follow and execute its approved emergency

preparedness plan in the event of the occurrence of a declared disaster or other emergency.

B. At a minimum, the nursing facility shall have a written plan that describes:

1. the evacuation of residents to a safe place either within the nursing facility or to another location;

2. the delivery of essential care and services to residents, whether the residents are housed off-site or when additional residents are housed in the nursing facility during an emergency;

3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the nursing facility or at another location;

4. a plan for coordinating transportation services required for evacuating residents to another location; and

5. the procedures to notify the resident's family or responsible representative if the resident is evacuated to another location.

C. The nursing facility's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The nursing facility's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the nursing facility's performance during the planned drill.

D. The nursing facility's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

E. The plan shall be available to representatives of the Office of the State Fire Marshal.

F.1. In the event that a nursing facility evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and sustains damages due to wind, flooding or power outages longer than 48 hours, the nursing facility shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section.

a. The purpose of these surveys is to assure that the facility is in compliance with the licensing standards in the areas of the structural soundness of the building, the sanitation code and staffing requirements.

b. The Health Standards Section will determine the facility's access to the community service infrastructure, such as hospitals, transportation, physicians, professional services and necessary supplies.

2. If a nursing facility evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and does not sustain damages due to wind, flooding or power outages longer than 48 hours, the nursing facility may be reopened.

G.1. Before reopening at its licensed location, the nursing facility must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must contain, at a minimum:

a. pertinent plan provisions and how the plan was followed and executed;

b. plan provisions that were not followed;

c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;

d. contingency arrangements made for those plan provisions not followed; and

e. a list of injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

2. Before reopening, the nursing facility must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for reopening, subject to the facility's compliance with any other applicable rules.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to reopen.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:49 (January 1998), amended LR 32:2261 (December 2006).

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

0612#089

RULE

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

Nursing Facilities—Reimbursement Methodology
(LAC 50:VII.1301-1305, 1309, 1311 and 1317)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:VII.1301-1305, 1309, 1311, and adopts §1317 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1301. Definitions

* * *

Facility Cost Report Period Case-Mix Index—the average of quarterly facility-wide average case-mix indices, carried to four decimal places. The quarters used in this average will be the quarters that most closely coincide with the facility's cost reporting period that is used to determine the medians. This average includes any revisions made due to an on-site MDS review.

Example: A January 1, 2001-December 31, 2001 cost report period would use the facility-wide average case-mix indices calculated for April 1, 2001, July 1, 2001, October 1, 2001 and January 1, 2002.

1. When this system is implemented, if four quarters of acuity data are not available that coincide with the cost report period, a two-quarter average of acuity data that most closely matches the cost reporting period will be used.

Facility-Wide Average Case-Mix Index—the simple average, carried to four decimal places, of all resident case-mix indices based on the first day of each calendar quarter. If a facility does not have any residents as of the first day of a calendar quarter or the average resident case mix indices appear invalid due to temporary closure or other circumstances, as determined by the department, a statewide average case mix index using occupied and valid statewide facility case mix indices may be used.

* * *

Supervised Automatic Sprinkler System—a system that operates in accordance with the latest adopted edition of the National Fire Protection Association's Life Safety Code. It is referred to hereafter as a fire sprinkler system.

Two-Hour Rated Wall—a wall that meets American Society for Testing and Materials International (ASTM) E119 standards for installation and uses two-hour rated sheetrock.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1473 (June 2002), repromulgated LR 28:1790 (August 2002), amended LR 28:2537 (December 2002), LR 32:2262 (December 2006).

§1303. Cost Reports

A. ...

1. Providers of nursing facility level of care are required to report all reasonable and allowable cost on a regular nursing facility cost report. Effective for periods ending on or after June 30, 2002, the regular nursing facility cost report will be the skilled nursing facility cost report adopted by the Medicare program, hereafter referred to as the Medicare cost report. This cost report is frequently referred to as the Health Care Financing Administration (HCFA) 2540. The cost reporting period begin date shall be the later of the first day of the facility's fiscal period or the facility's certification date. The cost reporting end date shall be the earlier of the last day of the facility's fiscal period or the final day of operation as a nursing facility.

2. In addition to filing the Medicare cost report, nursing facility providers must also file supplemental schedules designated by the bureau. Facilities shall submit their Medicare cost report and their state Medicaid supplemental cost report in accordance with procedures established by the department.

3. Providers of skilled nursing-infectious disease (SN-ID), skilled nursing-technology dependent care (SN-TDC)

and skilled nursing neurological rehabilitation treatment program (SN-NRTP) services must file additional supplemental schedules designated by the bureau documenting the incremental cost of providing SN-ID, SN-TDC and SN-NRTP services to Medicaid recipients.

4. ...

B. Cost reports must be prepared in accordance with the cost reporting instructions adopted by the Medicare Program using the definition of allowable and nonallowable cost contained in the CMS Publication 15-1, Provider Reimbursement Manuals, with the following exceptions.

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1473 (June 2002), repromulgated LR 28:1790 (August 2002), amended LR 28:2537 (December 2002), LR 32:2263 (December 2006).

§1305. Rate Determination

A. ...

B. For dates of service on or after January 1, 2003, the Medicaid daily rates shall be based on a case-mix price-based reimbursement system. Rates shall be calculated from cost report and other statistical data. Effective January 1, 2003, the cost data used in rate setting will be from cost reporting periods ending July 1, 2000 through June 30, 2001. Effective July 1, 2004, and every second year thereafter, the base resident-day-weighted median costs and prices shall be rebased using the most recent four month or greater unqualified audited or desk reviewed cost reports that are available as of the April 1 prior to the July 1 rate setting. For rate periods between rebasing, an index factor shall be applied to the base resident-day weighted medians and prices.

C. - C.2. ...

3. each facility's capital rate component;
4. each facility's pass-through rate component;
5. adjustments to the rate; and
6. the statewide durable medical equipment price.

D. - D.1d. ...

e. The statewide direct care and care related floor is established at 94 percent of the direct care and care related resident-day-weighted median cost. For periods prior to January 1, 2007 the statewide direct care and care related floor shall be reduced to 90 percent of the direct care and care related resident-day-weighted median cost in the event that the nursing wage and staffing enhancement add-on is removed. Effective January 1, 2007 the statewide direct care and care related floor shall be reduced by one percentage point for each 30 cent reduction in the average Medicaid rate due to a budget reduction implemented by the department. The floor cannot be reduced below 90 percent of the direct care and care related resident-day-weighted median cost.

f. For each nursing facility, the statewide direct care and care related price shall be apportioned between the per diem direct care component and the per diem care related component using the facility-specific percentages determined in §1305.D.1.c. On a quarterly basis, each facility's specific direct care component of the statewide price shall be multiplied by each nursing facility's average case-mix index for the prior quarter. The direct care component of the statewide price will be adjusted quarterly

to account for changes in the facility-wide average case-mix index. Each facility's specific direct care and care related price is the sum of each facility's case mix adjusted direct care component of the statewide price plus each facility's specific care related component of the statewide price.

g. For each nursing facility, the statewide direct care and care related floor shall be apportioned between the per diem direct care component and the per diem care related component using the facility-specific percentages determined in §1305.D.1.c. On a quarterly basis, each facility's specific direct care component of the statewide floor shall be multiplied by each facility's average case-mix index for the prior quarter. The direct care component of the statewide floor will be adjusted quarterly to account for changes in the facility-wide average case-mix index. Each facility's specific direct care and care related floor is the sum of each facility's case mix adjusted direct care component of the statewide floor plus each facility's specific care related component of the statewide floor.

h. Effective with cost reporting periods beginning on or after January 1, 2003, a comparison will be made between each facility's direct care and care related per diem cost and the direct care and care related cost report period per diem floor. If the total direct care and care related per diem cost the facility incurred is less than the cost report period per diem floor, the facility shall remit to the bureau the difference between these two amounts times the number of Medicaid days paid during the cost reporting period. The cost report period per diem floor shall be calculated using the calendar day-weighted average of the quarterly per diem floor calculations for the facility's cost reporting period.

Example: A May 1, 2003–April 30, 2004 cost report period would use the average of the per diem floor calculations for April 1, 2003 (weighted using 61 days), July 1, 2003 (weighted using 92 days), October 1, 2003 (weighted using 92 days), January 1, 2004 (weighted using 91 days) and April 1, 2004 (weighted using 30 days).

2. - 3. ...

a. The capital cost component rate shall be based on a fair rental value (FRV) reimbursement system. Under a FRV system, a facility is reimbursed on the basis of the estimated current value, also referred to as the current construction costs, of its capital assets in lieu of direct reimbursement for depreciation, amortization, interest and rent/lease expenses. The FRV system shall establish a nursing facility's bed value based on the age of the facility and its total square footage.

b. Effective January 1, 2003, the new value per square foot shall be \$97.47. This value per square foot shall be increased by \$9.75 for land plus an additional \$4,000 per licensed bed for equipment. This amount shall be trended forward annually to the midpoint of the rate year using the change in the unit cost listed in the three-fourths column of the R.S. Means Building Construction Data Publication or a comparable publication if this publication ceases to be published, adjusted by the weighted average total city cost index for New Orleans, Louisiana. The cost index for the midpoint of the rate year shall be estimated using a two-year moving average of the two most recent indices as provided in this Subparagraph. A nursing facility's fair rental value per diem is calculated as follows.

i. - ii. ...

iii. The nursing facility's annual fair rental value shall be divided by the greater of the facility's annualized actual resident days during the cost reporting period or 70 percent of the annualized licensed capacity of the facility to determine the FRV per diem or capital component of the rate. Annualized total patient days will be adjusted to reflect any increase or decrease in the number of licensed beds as of the date of rebase by applying to the increase or decrease the greater of the facility's actual occupancy rate during the base year cost report period or 70 percent of the annualized licensed capacity of the facility.

iv. The initial age of each nursing facility used in the FRV calculation shall be determined as of January 1, 2003, using each facility's year of construction. This age will be reduced for replacements, renovations and/or additions that have occurred since the facility was built provided there is sufficient documentation to support the historical changes. The age of each facility will be further adjusted each July 1 to make the facility one year older, up to the maximum age of 30 years. Beginning January 1, 2007 and the first day of every calendar quarter thereafter, the age of each facility will be reduced for those facilities that have completed and placed into service major renovation or bed additions. This age of a facility will be reduced to reflect the completion of major renovations and/or additions of new beds. If a facility adds new beds, these new beds will be averaged in with the age of the original beds and the weighted average age for all beds will be used as the facility's age. Changes in licensed beds are only recognized, for rate purposes, at July 1 of a rebase year unless the change in licensed beds is related to a change in square footage. The occupancy rate applied to a facility's licensed beds will be based on the base year occupancy.

v. If a facility performed a major renovation/improvement project (defined as a project with capitalized cost equal to or greater than \$500 per bed), the cost of the renovation project will be used to determine the equivalent number of new beds that the project represents. The equivalent number of new beds from a renovation/improvement project will be determined by dividing the cost of the renovation/improvement project by the accumulated depreciation per bed of the facility's existing beds immediately before the renovation/improvement project. The equivalent number of new beds will be used to determine the weighted average age of all beds for this facility.

(a). Major renovation/improvement costs must be documented through cost reports, depreciation schedules, construction receipts or other auditable records. Costs must be capitalized in compliance with the Medicare provider reimbursement manual in order to be considered in a major renovation/improvement project. The cost of the project shall only include the cost of items placed into service during a time period not to exceed the previous 24 months prior to a re-aging. Entities that also provide non-nursing facility services or conduct other non-nursing facility business activities must allocate their renovation cost between the nursing facility and non-nursing facility business activities. Documentation must be provided to the department or its designee to substantiate the accuracy of the

allocation of cost. If sufficient documentation is not provided, the renovation/improvement project will not be used to re-age the nursing facility.

(b). Weighted average age changes as a result of replacements/improvements and/or new bed additions must be requested by written notification to the department prior to the rate effective date of the change and separate from the annual cost report. The written notification must include sufficient documentation as determined by the department. All valid requests will become part of the quarterly case-mix FRV rate calculation beginning January 1, 2007.

4. - 4.a. ...

b. Effective August 1, 2005, the pass-through rate will include a flat statewide fee for the cost of durable medical equipment and supplies required to comply with the plan or care for Medicaid recipients residing in nursing facilities. The flat statewide fee shall remain in place until the cost of the durable medical equipment is included in rebase cost reports, as determined under §1305.B, at which time the department may develop a methodology to incorporate the durable medical equipment cost in to the case-mix rate.

5. Adjustment to the Rate. Adjustments to the Medicaid daily rate may be made when changes occur, that will eventually be recognized in updated cost report data (such as a change in the minimum wage, a change in FICA or a utility rate change). These adjustments would be effective until the next rebasing of cost report data or until such time as the cost reports fully reflect the change. In the event the department is required to implement reductions in the nursing facility program as a result of a budget shortfall, a budget reduction category shall be created. This category shall reduce the statewide average Medicaid rate, without changing the parameters established in this rule, by reducing the reimbursement rate paid to each nursing facility using an equal amount per patient day.

E. All capitalized costs related to the installation or extension of supervised automatic fire sprinkler systems or two-hour walls placed in service on or after July 1, 2006 will be excluded from the renovation/improvement costs used to calculate the FRV to the extent the nursing home is reimbursed for said costs in accordance with §1317.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1474 (June 2002), repromulgated LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006).

§1309. State-Owned or Operated and Non-State Government-Owned or Operated Facilities

A. Services Provided on or Before June 30, 2005

1. Non-state government-owned or operated nursing facilities will be paid a prospective reimbursement rate. Each facility will receive a Medicaid base rate calculated in accordance with other sections of this rule. Nonstate government-owned or operated nursing facilities may also receive a supplemental Medicaid payment on a quarterly basis. The aggregate supplemental payments for these facilities, calculated on a quarterly basis, will be the state's best estimate of what nonstate government-owned or operated facilities would be paid under Medicare's prospective payment system for skilled nursing facilities less

the aggregate Medicaid base payments for these facilities. The acuity measurements used in the supplemental Medicaid payment calculations will be the acuity of each facility's Medicaid residents, as determined under Medicare's 44 RUG classification methodology. Adjustments to the aggregate supplemental Medicaid payments will be made to account for differences in coverage between the Medicare and Medicaid programs.

B. Services after June 30, 2005

1. Non-state government-owned or operated nursing facilities will be paid a case-mix reimbursement rate in accordance with §1305.C.

2. State-owned or operated nursing facilities will be paid a prospective per diem reimbursement rate. The per diem payment rate for each of these facilities will be calculated annually on July 1, using the nursing facility's allowable cost from the most recently filed Medicaid cost report trended forward from the midpoint of the cost report year to the midpoint of the rate year using the index factor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1476 (June 2002), repromulgated LR 28:1793 (August 2002), amended LR 30:53 (January 2004), LR 31:1596 (July 2005), LR 32:2265 (December 2006).

§1311. New Facilities, Changes of Ownership of Existing Facilities and Existing Facilities with Disclaimer or Non-Filer Status

A. New facilities are those entities whose beds have not previously been certified to participate, or otherwise participated, in the Medicaid program. New facilities will be reimbursed in accordance with this rule using the statewide average case mix index to adjust the statewide direct care component of the statewide price and the statewide direct care component of the floor. The statewide direct care and care related price shall be apportioned between the per diem direct care component and the per diem care related component using the statewide average of the facility-specific percentages determined in §1305.D.1c. After the second full calendar quarter of operation, the statewide direct care and care related price and the statewide direct care and care related floor shall be adjusted by the facility's case mix index calculated in accordance with §1305.D.1.f-g and §1307 of this rule. The capital rate paid to a new facility will be based upon the age and square footage of the new facility. An interim capital rate shall be paid to a new facility at the statewide average capital rate for all facilities until the start of a calendar quarter two months or more after the facility has submitted sufficient age and square footage documentation to the department. Following receipt of the age and square footage documentation, the new facility's capital rate will be calculated using the facility's actual age and square footage and the statewide occupancy from the most recent base year and will be effective at the start of the first calendar quarter two months or more after receipt. New facilities will receive the statewide average property tax and property insurance rate until the facility has a cost report included in a base year rate setting. New facilities will also receive a provider fee that has been determined by the department.

B. A change of ownership exists if the beds of the new owner have previously been certified to participate, or

otherwise participated, in the Medicaid program under the previous owner's provider agreement. Rates paid to facilities that have undergone a change in ownership will be based upon the acuity, costs, capital data and pass-through of the prior owner. Thereafter, the new owner's data will be used to determine the facility's rate following the procedures specified in this rule.

C. Existing facilities with disclaimer status includes any facility that receives a qualified audit opinion or disclaimer on the cost report used for rebase under §1305.B. Facilities with a disclaimed cost report status may have adjustments made to their rates based on an evaluation by the secretary of the department.

D. Existing facilities with non-filer status includes any facility that fails to file a complete cost report in accordance with §1303. These facilities will have their case-mix rates adjusted as follows.

1. The statewide direct care and care related price shall be apportioned between the per diem direct care component and the per diem care related component using percentages that result in the lowest overall rate.

2. No property tax and insurance pass-through reimbursement shall be included in the case-mix rate.

3. The fair rental value rate calculated shall be based on 100 percent occupancy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1793 (August 2002), amended LR 32:2265 (December 2006).

§1317. Reimbursement for Fire Sprinkler Systems and Two-Hour Rated Wall Installations

A. All nursing facilities are required to be protected throughout by a fire sprinkler system by January 1, 2008. Where means of egress passes through building areas outside of a nursing facility, those areas shall be separated from the nursing facility by a two-hour rated wall or shall be protected by a fire sprinkler system.

B. Nursing Facility Procedure and Documentation Requirements

1. A completed fire sprinkler system plan or two-hour rated wall plan, or both, must be submitted to the department for review and approval by December 31, 2006.

2. Upon approval of the plans and after installation is completed, nursing facilities must submit auditable depreciation schedules and invoices to support the installation cost of all fire sprinkler systems and two-hour rated walls. The documentation must be submitted to the department or its designee.

a. All supporting documentation, including depreciation schedules and invoices, must indicate if the cost was previously included in a fair rental value re-age request.

C. Medicaid participating nursing facilities that install or extend fire sprinkler systems or two-hour rated walls, or both, after August 1, 2001, and in accordance with this section, may receive Medicaid reimbursement for the cost of installation over a five year period beginning the later of July 1, 2007 or the date of installation. The Medicaid reimbursement shall be determined as follows.

1. The annual total reimbursable cost is equal to a nursing facility's total installation cost of all qualified fire sprinkler systems and two-hour rated walls divided by five.

2. The per diem cost is calculated as the annual total reimbursable cost divided by total nursing facility resident days as determined by the nursing facility's most recently audited or desk reviewed Medicaid cost report as of April 30, 2007. If a cost report is not available, current nursing facility resident day census records may be used at the department's approval.

3. The per diem cost is reduced by any fair rental value per diem increase previously recognized as a result of the costs being reimbursed under this section. This adjusted per diem cost shall be paid to each qualifying nursing facility as and additional component of their Medicaid daily rate for five years.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2266 (December 2006).

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

0612#077

RULE

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

Rural Health Clinics (LAC 50:XI.Chapters 161-167)

Editor's Note: This Rule is being repromulgated due to an error upon submission. The original Rule may be viewed on pages 1904-1905 in the October 2006 edition of the *Louisiana Register*.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XI.Chapters 161-167 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 15. Rural Health Clinics

Chapter 161. General Provisions

§16101. Purpose

A. The Rural Health Clinic (RHC) Act of 1977 authorized the development of rural health clinics to encourage and stabilize the provision of outpatient primary care in rural areas through cost-based reimbursement.

B. Rural health clinic regulations distinguish between two types of rural health clinics.

1. The independent RHC is a free-standing practice that is not part of a hospital, skilled nursing facility, or home health agency.

2. The provider-based RHC is an integral and subordinate part of a hospital, skilled nursing facility, or home health agency.

C. Rural health clinics improve the health status of Louisiana residents in rural and underserved areas by

working proactively to build community health systems' capacity to provide integrated, efficient and effective health 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 32:1904 (October 2006), repromulgated LR 32:2266 (December 2006).

Chapter 163. Provider Participation

§16301. Provider Enrollment

A. In order to enroll and participate in the Medicaid Program, a RHC must submit a completed provider enrollment packet.

B. The effective date of enrollment to participate in the Medicaid Program shall not be prior to the date of receipt of the completed enrollment packet.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1904 (October 2006), repromulgated LR 32:2267 (December 2006).

§16303. Standards for Participation

A. Rural Health Clinics must comply with the applicable licensure, accreditation and program participation standards for all services rendered. If a RHC wishes to initiate participation, it shall be responsible for meeting all of the enrollment criteria of the program. The RHC provider shall:

1. maintain an acceptable fiscal record keeping system that readily distinguishes one type of service from another type of service that may be provided;

2. retain all records necessary to fully disclose the extent of services provided to recipients for five years from the date of service and furnish such records, and any payments claimed for providing such services, to the Medicaid Program upon request; and

3. abide by and adhere to all federal and state regulations and policy manuals.

B. Medicaid enrollment can be no sooner than Medicaid's receipt of the complete enrollment packet. A complete enrollment packet for RHCs must include a copy of the CMS provider certification letter approving rural health clinic status.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006).

Chapter 165. Services

§16501. Scope of Services

A. Medicaid reimbursement is limited to medically necessary services that are covered by the Medicaid State Plan and would be covered if furnished by a physician. The following services shall be covered:

1. services furnished by a physician, within the scope of practice of his profession under Louisiana law;

2. services furnished by a:

a. physician assistant;

b. nurse practitioner;

c. nurse midwife;

d. clinical social worker;

e. clinical psychologist; or

f. dentist;

3. services and supplies that are furnished as an incident to professional services furnished by all eligible professionals; and

4. other ambulatory 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 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006).

§16503. Service Limits

A. Rural health clinic visits (encounters) are limited to 12 visits per year for medically necessary services rendered to Medicaid recipients who are 21 years of age or older. Visits for Medicaid recipients who are under 21 years of age and for prenatal and postpartum care are excluded from the service limitation.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006).

Chapter 167. Reimbursement Methodology

§16701. Prospective Payment System

A. Payments for Medicaid covered services will be made under a Prospective Payment System (PPS) and paid on a per visit basis.

B. A visit is defined as a face-to-face encounter between a facility health professional and a Medicaid eligible patient for the purpose of providing medically needed outpatient services.

1. Encounters with more than one facility health professional that take place on the same day and at a single location constitute a single encounter.

2. Services shall not be arbitrarily delayed or split in order to bill additional encounters.

NOTE: Refer to the RHC and Physician's Current Procedural Terminology (CPT) Manuals for the definition of an encounter.

C. For an RHC which enrolls and receives approval to operate, the facility's initial PPS per visit rate shall be determined through a comparison to other RHCs in the same town/city/parish. The scope of services shall be considered in determining which proximate RHC most closely approximates the new provider. If no RHCs are available in the proximity, comparison shall be made to the nearest RHC offering the same scope of service. The rate will be set to that of the RHC comparative to the new provider.

D. The PPS per visit rate for each facility will be increased on July 1 of each year by the percentage increase in the published *Medicare Economic Index (MEI)* for primary 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 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006).

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of

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

0612#076

RULE

Department of Insurance Office of the Commissioner

Regulation 89—Suitability in Annuity Transactions (LAC 37:XIII.Chapter 117)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of the Louisiana Department of Insurance has adopted Regulation 89. This regulation implements standards and procedures to be adhered to by insurance producers, or an insurer where no producer is involved, with regard to determining the financial suitability of annuity products prior to recommending such a product to consumers.

Title 37 INSURANCE

Part XIII. Regulations

Chapter 117. Regulation Number 89—Suitability in Annuity Transactions

§11701. Purpose

A. The purpose of this regulation is to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006).

§11703. Scope

A. This regulation shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the recommended purchase or exchange.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006).

§11705. Authority

A. This regulation is promulgated under the authority of R.S. 22:3 and the auspices of Part XXVI:R.S. 22:1211 et seq., referred to as "Unfair Trade Practices."

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006).

§11707. Exemptions

A. Unless otherwise specifically included, this regulation shall not apply to recommendations involving:

1. direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;

2. contracts used to fund:

a. an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

b. a plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

c. a government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

d. a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

f. formal prepaid funeral contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006).

§11709. Definitions

Annuity—a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

Insurance Producer—a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

Insurer—a company required to be licensed under the laws of this state to provide insurance products, including annuities.

Recommendation—advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006).

§11711. Duties of Insurers and of Insurance Producers

A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

B. Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

1. the consumer's financial status;
2. the consumer's tax status;
3. the consumer's investment objectives; and
4. such other information used or considered to be

reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

C.1. Except as provided under Paragraph 2 of this Subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under Subsection A related to any recommendation if a consumer:

- a. refuses to provide relevant information requested by the insurer or insurance producer;
- b. decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or
- c. fails to provide complete or accurate information.

2. An insurer or insurance producer's recommendation subject to Paragraph 1 shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

D.1. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this regulation is established and maintained by complying with Paragraphs 3 to 5 of this Subsection, or shall establish and maintain such a system, including, but not limited to:

- a. maintaining written procedures; and
- b. conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.

2. A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this regulation, or shall establish and maintain such a system, including, but not limited to:

- a. maintaining written procedures; and
- b. conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.

3. An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Paragraph 1 with respect to insurance producers under contract with or employed by the third party.

4. An insurer shall make reasonable inquiry to assure that the third party contracting under Paragraph 3 of this Subsection is performing the functions required under Paragraph 1 of this Subsection and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

- a. the insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis

to represent, and does represent, that the third party is performing the required functions; and

b. the insurer, based on reasonable selection criteria, periodically selects third parties contracting under Paragraph 3 of this Subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

5. An insurer that contracts with a third party pursuant to Paragraph 3 of this Subsection and that complies with the requirements to supervise in Paragraph 4 of this Subsection shall have fulfilled its responsibilities under Paragraph 1 of this Subsection.

6. An insurer, general agent or independent agency is not required by Paragraph 1 or 2 of this Subsection to:

- a. review, or provide for review of, all insurance producer solicited transactions; or
- b. include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

7. A general agent or independent agency contracting with an insurer pursuant to Paragraph 3 of this Subsection shall promptly, when requested by the insurer pursuant to Paragraph 4 of this Subsection, give a certification as described in Paragraph 4 of this Subsection or give a clear statement that it is unable to meet the certification criteria.

8. No person may provide a certification under Paragraph 4.a of this Subsection unless:

- a. the person is a senior manager with responsibility for the delegated functions; and
- b. the person has a reasonable basis for making the certification.

E. Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this Subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2268 (December 2006).

§11713. Mitigation of Responsibility

A. The commissioner may order:

1. an insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;

2. an insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation; and

3. a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation.

B. Any applicable penalty under R.S. 22:1217 for a violation of Section 11711.A.B or C.2 of this regulation may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2269 (December 2006).

§11715. Recordkeeping

A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 3 years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

B. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2270 (December 2006).

§11717. Severability

A. If any provision or item of this regulation, or the application thereof, is held to be invalid, such invalidity shall not affect other provisions, items, or applications of the regulation, which can be given effect without the invalid provisions, item, or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:2270 (December 2006).

James J. Donelon
Commissioner

0612#033

RULE

**Department of Public Safety and Corrections
Corrections Services**

Death Penalty (LAC 22:I.103)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), the Louisiana Department of Public Safety and Corrections, Corrections Services, has amended the contents of LAC 22:I.103, Death Penalty.

The purpose of the amendment of the aforementioned regulation is to clarify the requirements regarding the number of witnesses at an execution.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. Corrections

Chapter 1. Secretary's Office

§103. Death Penalty

A. - I.3.a. ...

b. The number of victim relationship witnesses may be limited to two. If more than two victim relationship

witnesses desire to attend the execution, the secretary is authorized to select from the interested parties the two victim relationship witnesses who will be authorized to attend. In the case of multiple victim's families, the secretary shall determine the number of witnesses, subject to the availability of appropriate physical space.

I.4. - J.8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:567-571 (as amended by Act No. 717 of the 1990 Regular Session of the Louisiana Legislature, by Act No. 159 of the 1991 Regular Session, Act No. 145 of the 2002 First Extraordinary Session and Act No. 283 of the 2003 Regular Session and as amended by Act 31 of the 2006 Regular Session of the Louisiana Legislature).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary, LR 6:10 (January 1980), amended LR 7:177 (April 1981), amended by the Department of Public Safety and Corrections, Corrections Services, LR 17:202 (February 1991), LR 18:77 (January 1992), LR 24:342 (February 1998), LR 25:2410 (December 1999), LR 28:2552 (December 2002), LR 29:2847 (December 2003), LR 31:2032 (August 2005), LR 32:2270 (December 2006).

Richard L. Stalder
Secretary

0612#050

RULE

**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, amended the Louisiana Administrative Code, Title 67, Part III, Subpart 3, Food Stamps at Chapter 19, Certification of Eligible Households and adopted Chapter 21, 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 amended §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. 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 32:2270 (December 2006).

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 32:2271 (December 2006).

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 32:2271 (December 2006).

§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 32:2271 (December 2006).

§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 32:2271 (December 2006).

§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 32:2271 (December 2006).

§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 32:2272 (December 2006).

§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 32:2272 (December 2006).

§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 32:2272 (December 2006).

§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 32:2272 (December 2006).

Ann S. Williamson
Secretary

0612#051

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

2007 Turkey Season (LAC 76:XIX.113-117)

The Wildlife and Fisheries Commission does hereby amend the turkey rules and regulations for the 2007 season.

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 32:2272 (December 2006).

§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 Racourci 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 32:2272 (December 2006).

§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 Beaugard	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

WMA	Non-Lottery Season Dates	Lottery Dates**	Permit Requirements
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 32:2274 (December 2006).

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