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Executive Orders

EXECUTIVE ORDER KBB 07-18

Bond Allocation—Rapides Finance Authority

Amount of Allocation	Name of Issuer	Name of Project
\$60,000,000	Rapides Finance Authority	Cleco Power, LLC

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. KBB 2005-12 was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2007 (hereafter "the 2007 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2007 Ceiling; and

(3) a system of central record keeping for such allocations; and

WHEREAS, the Rapides Finance Authority has requested an allocation from the 2007 Ceiling to be used to finance the acquisition, construction, and installation of certain solid waste disposal facilities at the solid-fuel power plant of Cleco Power, LLC, located at 275 Rodemacher Road, in the city of Lena, parish of Rapides, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2007 Ceiling in the amount shown:

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana's Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2007, provided that such bonds are delivered to the initial purchasers thereof on or before November 25, 2007.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 27th day of August, 2007.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0709#007

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner

Fluoroquinolones in Seafood (LAC 7:XXXV.511)

This Rule is being adopted in accordance with R.S. 3:2A, 3:3B, R.S. 3:4608 and the Emergency Rule provisions of R.S. 49:953 B of the Administrative Procedure Act.

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rule declaring the country of China to be a geographic area where Fluoroquinolones is being used on or found in food producing animals or in products from such animals. The commissioner has reason to believe that China is a geographic area where Fluoroquinolones is being used on or found in food producing animals or in products from such animals because Mississippi and Alabama have found Fluoroquinolones in fish from China. Additionally, testing by the department has resulted in positive testing of fish from China for the presence of Fluoroquinolones.

Fluoroquinolones is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only. The FDA banned the extra label use of Fluoroquinolones in food producing animals in 1997 after determining that such use presented a risk to the public health. That ban is still in effect, see (21 CFR 530.41). "Extralabel use" means "actual use or intended use of a drug in an animal in a manner that is not in accordance with the approved labeling," see 21 CFR 530.3(a).

Since, the FDA has not established a safe level, tolerance level or safe concentration for Fluoroquinolones there is a zero tolerance level for Fluoroquinolones. Therefore, foods in which Fluoroquinolones are found are adulterated foods under the United States and Louisiana Food, Drug, and Cosmetics Acts.

Fluoroquinolones have been known to cause hypersensitivity or allergic reactions, toxicity-related reactions, and to an increased prevalence of infections due to antibiotic-resistant microorganisms. Hypersensitivity reactions can include life-threatening anaphylaxis, as well as urticaria, dermatitis, vomiting, and diarrhea. There is a significant chance that these reactions may be attributed to other factors, thereby causing a misdiagnosis, and subsequent mistreatment of a person's medical condition.

Toxicity can affect multiple organ systems and include peripheral neuropathies, seizures, phototoxicity, tendon rupture, fatal drug interactions and arthropathies in children. Fluoroquinolones should not be taken by pregnant and lactating women due to concern over the potential effect on a developing fetus.

The sale in Louisiana of seafood adulterated with Fluoroquinolones will expose Louisiana's citizens, including unborn children and nursing infants, to Fluoroquinolones and to the potential risks cited above, thereby presenting an imminent peril to the public's health, safety and welfare.

The Commissioner of Agriculture and Forestry has, therefore, determined that this Emergency Rule is necessary to include China as geographic area to which the provisions of Title 7 Part XXXV.511 of the Louisiana Administrative Code apply.

This Rule becomes effective upon signature, August 31, 2007, and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§511. Fluoroquinolones in Seafood Prohibited; Testing and Sale of

A. - K. ...

L. The commissioner declares that he has information that would lead a reasonable person to believe that Fluoroquinolones is being used on or found in food producing animals or in products from such animals, in the following geographic area(s).

1. The geographic area or areas are:

- a. the country of Vietnam;
- b. the country of China.

2. All seafood harvested from or produced, processed or packed in any of the above listed geographic areas is hereby declared to be subject to all the provisions of this Section, including sampling and testing provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2, 3:3, and 3:4608.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 33:38 (January 2007), LR 33:

Bob Odom
Commissioner

0709#013

DECLARATION OF EMERGENCY

Department of Economic Development Office of Business Development

Small Business Bonding Assistance (LAC 19.II.Chapter 5)

The Department of Economic Development, Office of Business Development, pursuant to the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), hereby amends the following the Rules of the Small and Emerging Business Development Program, Mentor Protégé Tax Credit Program, LAC 19:II., Chapter 5. The Department of Economic Development has found an immediate need to amend the existing rules in accordance with Act 356 of the 2007 Regular Session of the Louisiana Legislature and R.S. 47:6026. The state needs to provide for the growth and stability of Louisiana's entrepreneurial construction business environment by making available ready sources of technical assistance necessary to support this environment. This

program is intended to provide technical and economic benefits to Louisiana-based contractors who will create and/or retain jobs for Louisiana citizens; and enhance the entrepreneurial construction business environment thereby expanding the economy of the state and enlarging quality jobs available in Louisiana.

This Emergency Rule is effective on September 7, 2007, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information you may call the Small and Emerging Business Development Program at (225) 342-4320.

Title 19

CORPORATIONS AND BUSINESS

Part II. Small and Emerging

Business Development Program

Chapter 5. Mentor Protégé Tax Credit Program

§501. General

A. The intent of the Mentor-Protégé Tax Credit Program Act of 2007 (Act 356 of 2007; R.S. 47:6026 the provisions of which shall hereinafter be referred to as "Act 356") is to facilitate the growth and stability of Louisiana's economy by fostering the overall enhancement and development of protégé firms as a competitive contractor, subcontractor, joint venture partner, or supplier of local, state, federal, and private markets. These provisions are to be read in pari materiae with Act 356. For the purposes of this Rule, the "secretary" shall be either the Secretary of Economic Development or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026(D).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 23:53 (January 1997), amended LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:545 (April 2003), LR 30:756 (April 2004), LR 33:

§503. Guidelines for Participation

A. The Mentor/Protégé Program will be open to participation by any business entity, large or small, which meets the criteria for participation as outlined below.

1. Mentor Firms—

a. committed and able to provide professional guidance and support to its protégés to facilitate their development and growth, particularly in the critical areas of private and public procurements in construction;

b. demonstrates favorable financial health, including profitability for at least the last two years;

c. demonstrates the capability to provide managerial or technical skills transfer or capacity building;

d. capable of contracting with private and public entities;

e. in "good standing" with the Secretary of State, and not in violation of any state statutes, rules, or governing policies;

f. must remain in the program for the period of the developmental assistance as defined in the Mentor/Protégé plan; and

g. such other requirements by the secretary as shall be consistent with Act 356.

2. Protégé Firms—

a. is not an affiliate or related party of the mentor;

b. currently certified active in the Department of Economic Development's Small and Emerging Business

Development Program, or is registered in the state's Small Entrepreneurship/Hudson Initiative Program;

c. in "good standing" with the Secretary of State, and not in violation of any state statutes, rules, or governing policies;

d. must remain in the program for the period of the developmental assistance as defined in the Mentor/Protégé plan; and

e. such other requirements by the secretary as shall be consistent with Act 356.

B. Mentor Application and Selection

1. Approval of the secretary shall be obtained upon receipt and satisfactory review of an application that provides the information contained in the department's Mentor Application Template (see Attachment A). Upon receipt, the secretary shall make such requests for other information necessary to a determination that the business should or should not be certified as a mentor under the rules and consistent with Act 356.

2. The application shall be reviewed by the Department of Economic Development to determine if the applicant qualifies as a mentor under the rules and consistent with Act 356.

3. Mentor applicant shall be notified by email of the status of the application.

C. Protégé Selection

1. Selection of the protégé is the responsibility, and at the discretion, of the mentor, with the concurrence of Louisiana Economic Development.

2. Protégés shall be selected from firms that are certified active in the Small and Emerging Business Development program, or are registered in the Small Entrepreneurship/Hudson Initiative program, and who are otherwise qualified under these rules before it begins participation in the mentor-protégé arrangement. A protégé selected from another source or reference must be referred to the Department of Economic Development for certification in the Small and Emerging Business Development program or the Small Entrepreneurship/Hudson Initiative program. The protégé must meet the department's guidelines for certification in one or both of these programs as a condition of the Mentor/Protégé Agreement acceptance.

3. The mentor or Department of Economic Development will notify protégé of its application status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026(D).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:545 (April 2003), LR 30:756 (April 2004), LR 33:

§505. The Mentor-Protégé Agreement

A. The Mentor/Protégé Agreement is a written agreement between the mentor and protégé, and approved by the Department of Economic Development.

B. The Mentor/Protégé Agreement, signed by the respective firms, shall be submitted to the Department of Economic Development for approval. The agreement shall contain a description of the developmental assistance that is mutually agreed upon and in the best developmental interest of the protégé firm.

C. The Mentor/Protégé Agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement.

D. The Mentor/Protégé Agreement shall include information on the mentor's ability to provide managerial or technical skills transfer or capacity building;

E. The Mentor/Protégé Agreement shall include termination provisions complying with notice and due process rights of both parties and a statement agreeing to submit periodic report reviews and cooperate in any studies or surveys as may be required by the department in order to determine the extent of compliance with the terms of the agreement.

F. The submitted Mentor/Protégé Agreement shall be reviewed by Louisiana Economic Development and approved if the agreement is in compliance with the program's Mentor/Protégé guidelines and is consistent with Act 356.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026(D).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:545 (April 2003), LR 30:756 (April 2004), LR 33:

§507. Internal Controls and Monitoring

A. The Secretary of the Department of Economic Development, or his designee, will designate and may change from time to time, one or more persons on his staff to act as the department's project representative or as the "Mentor/Protégé Agreement Monitor" for each Mentor/Protégé Agreement, to provide liaison between the mentor, protégé and the department, and to perform various duties which are specifically provided for in the Mentor/Protégé Agreement.

B. The mentor and protégé are responsible to inform the department of any problems, delays or adverse conditions which will materially affect their ability to attain agreement objectives, prevent the meeting of time schedules and goals, or preclude the attainment of agreement work units by established time schedules and goals. A statement of the action taken or contemplated by the mentor and protégé and any assistance which may be needed to resolve the situation shall accompany such disclosure.

C. Department controls will include:

1. approving, reviewing and evaluating Mentor/Protégé agreements for goals and objectives;

2. reviewing semi-annual progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the approved agreement;

3. requesting and reviewing periodic reports and any studies or surveys as may be required by the program to determine program effectiveness and impact on the growth, stability and competitive position of small and emerging businesses in the state of Louisiana; and

4. continuous improvement of the program via ongoing and systematic research and development of program features, guidelines and operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026(D).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:545 (April 2003), LR 30:756 (April 2004), LR 33:

§509. The Mentor-Protégé Tax Credit

A. The following Mentor-Protégé tax credit rules shall be applicable to mentors who enter into a Mentor-Protégé Agreement.

1. The mentor may earn and apply for and, if qualified, be granted a refundable credit on any income or corporation franchise tax liability owed to the state by the mentor. The amount of the refundable credit shall be established by the Department of Economic Development and contained in the Mentor-Protégé Agreement.

2. The amount of the tax credits granted pursuant to the provisions of this Part shall not exceed fifty thousand dollars per Mentor/Protégé Agreement.

3. The mentor may participate in no more than two Mentor/Protégé Agreements in any one tax year without the prior written approval of the secretary.

4. The mentor/protégé tax credits granted by the Department of Economic Development in any fiscal year shall not exceed one million dollars.

5. The mentor/protégé tax credit shall be deemed earned on the date of the investment and may be claimed in the tax year in which the investment is made. The credit earned by an individual shall be claimed on their individual income tax return, the credit earned by an S-corporation shall be claimed as provided by R.S. 47:1675(G), the credit earned by a corporation other than an S-corporation shall be claimed on the corporation income and franchise tax return of the corporation, and the credit earned by a pass through entity shall be claimed on the income or franchise tax returns of the members or partners as provided by R.S. 47:1675(F).

6. A tax credit granted pursuant to this Part shall expire and have no value or effect on tax liability beginning with the twenty-first tax year after the tax year in which it was originally earned, applied for, and granted.

7. In the event it is subsequently determined by the Department of Economic Development that the mentor has not complied with the requirements of the Mentor/Protégé Agreement, or that the mentor was otherwise not qualified to earn a tax credit pursuant to this Part, any tax credits previously earned and applied against the mentor's tax liability shall be recaptured and added to the tax liability of the mentor for the year that such determination is made.

8. The secretary shall provide the mentor with all necessary and appropriate tax credit certificates as provided by statute and as shall assist the Department of Revenue in its determination of applicability of the credit

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026(D).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:545 (April 2003), LR 30:756 (April 2004), LR 33:

§511. Termination of Mentor Protégé Agreement.

A. Termination for Cause. The state may terminate the Mentor/Protégé Agreement for cause based upon the failure of the mentor or protégé to comply with the terms and/or conditions of the agreement, provided that the state shall give the mentor or protégé written notice specifying the failure. If within 30 days after receipt of such notice, the mentor or protégé shall not have either corrected such failure or, in a case which cannot be corrected in 30 days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the state may, at its option, place the mentor or protégé in default and the agreement shall terminate on the date specified in such notice. The mentor or protégé may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the state to comply with the terms and conditions of the agreement; provided that the mentor or protégé shall give the state written notice specifying the state's failure and a reasonable opportunity for the state to cure the defect.

B. Termination for Convenience. Either party may terminate the agreement at any time by giving 30 days written notice. The mentor shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily. The state may amend and/or terminate the agreement due to budgetary reductions or changes in funding priorities by the state upon giving 30 days written notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026(D).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:545 (April 2003), LR 30:756 (April 2004), LR 33:

§513. Non-Performance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026(D).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:545 (April 2003), LR 30:756 (April 2004), repealed LR 33:

§515. Conflict Resolution

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026(D).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:545 (April 2003), LR 30:756 (April 2004), repealed LR 33:

Fran Gladden
Deputy Secretary

0709#036

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Licensed Professional Counselors Board of Examiners**

Definitions and Requirements for Licensure
(LAC 46:LX.503 and 705)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) et seq., the Licensed Professional Counselors Board of Examiners declaring an Emergency Rule to implement Act 206 of 2007, relative to the scope of practice for Licensed Professional Counselors. Additionally, the board is revising and clarifying its Rules on clinical supervision of interns.

The effective date of this Emergency Rule is September 20, 2007, and it shall be in effect for 120 days or until a final Rule is promulgated, whichever occurs first.

The Emergency Rule is necessary to implement Act 206 of 2007, to ensure access to Licensed Professional Counselor services and insurance coverage for same. Additionally, the Emergency Rule is necessary to clarify requirements for Licensed Professional Counselor students and interns as to clinical supervision and degree requirements.

There will be no adverse fiscal impact on the state as a result of this Rule, inasmuch as the Licensed Professional Counselors Board operates solely on self-generated funds. Further, it will benefit the consumer by helping to assure insurance coverage for Licensed Professional Counselor services.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LX. Licensed Professional Counselors Board of Examiners

**Subpart 1. Licensed Professional Counselors
Chapter 5. License and Practice of Counseling**

§503. Definitions for Licensed Professional Counselors

A. For purposes of this Rule, the following definitions will apply:

Board—the Louisiana Licensed Professional Counselors Board of Examiners.

Licensed Professional Counselor—any person who holds himself out to the public for a fee or other personal gain, by any title or description of services incorporating the words "licensed professional counselor" or any similar term, and who offers to render professional mental health counseling/psychotherapy services denoting a client-counselor relationship in which the counselor assumes the responsibility for knowledge, skill, and ethical consideration needed to assist individuals, groups, organizations, or the general public, and who implies that he is licensed to practice mental health counseling.

Mental Health Counseling/Psychotherapy Services—those acts and behaviors coming within the practice of mental health counseling as defined in this Chapter, including diagnosis and treatment of conditions or disorders requiring mental health counseling/psychotherapy as defined in R.S.37:1103(4)(a). However, nothing in this Chapter shall

be construed to authorize any person licensed hereunder to administer or interpret test in accordance with the provision of R.S.37:2352(5), except as provided by LAC 46:LXIII.1702.E of the Louisiana Administrative Code, or engage in the practice of psychology or to prescribe, either orally or in writing, distribute, dispense, or administer any medications.

Practice of Mental Health Counseling/Psychotherapy—rendering or offering to individuals, groups, organizations, or the general public by a licensed professional counselor, any service consistent with his professional training as prescribed by R.S. 37:1107(A)(8), and code of ethics/behavior involving the application of principles, methods, or procedures of the mental health counseling profession which includes but are not limited to:

a. *Mental Health Counseling/Psychotherapy*—assisting an individual or group, through psychotherapy and the counseling relationship, to develop an understanding of personal problems, to define goals, and to plan actions reflecting his or their interests, abilities, aptitudes, and needs as these are related to personal and social concerns, educational progress, and occupations and careers.

i. *Mental Health Counseling Practicum*. Licensure requires the completion of a mental health counseling/psychotherapy practicum totaling 100 clock hours. The practicum includes:

(a). a minimum of 40 hours of direct counseling/psychotherapy with individuals or groups;

(b). a minimum of one hour per week of individual supervision by a counseling faculty member supervisor or supervisor working under the supervision of a program faculty member.

(c). a minimum of one and one-half hours per week of group supervision with other students in similar practical or internships by a program faculty member supervisor or a student supervisor working under the supervision of a program faculty member or an approved on-site supervisor that meets the on-site supervisor requirements established by the university.

ii. *Mental Health Counseling Internship*. Licensure requires the completion of a mental health counseling/psychotherapy internship totaling 300 clock hours. The internship includes:

(a). a minimum of 120 hours of direct counseling/psychotherapy with individuals or groups;

(b). a minimum of one hour per week of individual supervision by a counseling faculty member supervisor or an approved on-site supervisor that meets the supervisor requirements of the university.

a.ii.(c). - e.iii. ...

f. *Graduate Degree*—the substance of which is professional mental health counseling from a regionally accredited university as defined in Chapter 7.

i. a CACREP accredited—program or its equivalent as determined by the board.

g. In addition, the above should not be construed to include degrees in disciplines licensed elsewhere by the state of Louisiana (e.g., social work, psychology) with the exception of counseling psychology and vocational rehabilitation counseling programs.

h. *Supervision*—the process as defined in Chapter 7, §705 whereby a board-approved supervisor assists a

counselor intern in developing expertise in the use of mental health counseling/psychotherapeutic practices.

i. *Approved Supervisor*—an individual who has received a letter from the board certifying that he has met all the requirements for *approved supervisor* as defined in Chapter 7, §705.

j. *Counselor Intern*—an individual who has received a letter from the board certifying that he has met all the requirements for counselor intern as defined in Chapter 7, §705.

k. other definitions specific to licensed marriage and family therapists and MFT Interns can be found in §3105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 371101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Professional Counselors, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 16:302 (April 1990), LR 18:51 (January, 1992), LR 22:101 (February 1996), LR 24:437 (March 1998), LR 24:2124 (November 1998), LR 26:493 (March 2000), LR 29:130 (February 2003), LR 33:

Chapter 7. Requirements for Licensure of Licensed Professional Counselors

§705. Supervised Experience of Counselor Intern

A. Supervision Requirements

1. Supervision is defined as assisting the counselor intern in developing expertise in methods of the professional mental health counseling practice and in developing self-appraisal and professional development strategies. Supervision must comply with standards as set by the board.

2. Pursuant to R.S. 37:1107(A), an applicant for license must document a minimum of 3,000 hours of post-master's experience in professional mental health counseling under the clinical supervision of a board-approved supervisor, with said supervision occurring over a period of no less than two years and not more than seven years from the original date such supervision was approved. Five hundred hours of supervised experience may be gained for each 30 graduate semester hours earned beyond the required master's degree provided that such hours are clearly related to the field of mental health counseling, are earned from a regionally accredited institution, and are acceptable to the board, provided that in no case the applicant has less than the 2,000 hours of board-approved supervised experience within the aforementioned time limits. Only those applicants already receiving board-approved supervision prior to June 30, 1998 are exempt from the aforementioned time allowance.

a.i. Based on the above, the required 3,000 hours of counseling/psychotherapeutic experience shall be accrued in the following manner.

(a.) a minimum of 1,900 hours (up to 2,900) in direct counseling/psychotherapeutic services involving individuals, couples, families, or groups.

a.i.(b). - b. ...

c. To be eligible for supervision as a counselor intern, the applicant must provide proof of completion of a supervised practicum and internship as listed in §503, Definitions and each of the following eight content area. In order for a course to fulfill a content area requirement, it

must include in a substantial manner, the area in the description for the content areas.

i. Counseling/Psychotherapy Theories of Personality. Description: counseling/psychotherapy theories including both individual and systems perspectives; research and factors considered in applications of counseling/psychotherapy theories; or theories of personality including major theories of personality.

ii. - iii. ...

iv. Techniques of Counseling/Psychotherapy. Description: basic interviewing, assessment, and counseling/psychotherapeutic skills; counselor characteristics and behaviors that influence helping processes including age, gender and ethnic differences, verbal and non verbal behaviors and personal characteristics, orientations, and skills; client characteristics and behaviors that influence helping processes including age, gender and ethnic differences, verbal and non verbal behaviors and personal characteristics, traits, capabilities, and life circumstances.

v. Group Dynamics, Processes, and Counseling/Psychotherapy. Description: principles of group dynamics including group process components, developmental stage theories, and group members' roles and behaviors; group leadership styles and approaches including characteristics of various types of group leaders and leadership styles; theories of group counseling/psychotherapy including commonalities, distinguishing characteristics, and pertinent research and literature; group counseling/psychotherapeutic methods including group counselor orientations and behaviors, ethical standards, appropriate selection criteria and methods, and methods of evaluation of effectiveness; approaches used for other types of group work, including task groups, prevention groups, support group, and therapy groups.

2.c.vi. - 5. ...

6. The process of supervision must encompass multiple modes of supervision, including regularly scheduled live observation of counseling sessions (where possible) and review of audiotapes and/or videotapes of counseling sessions. The process may also include discussion of the counselor intern's self-reports, microtraining, interpersonal process recall, modeling, role-playing, and other supervisory techniques. [Supervision as defined in these rules does not require the approved supervisor to be in the same room with the counselor intern during the intern's provision of services to clients.]

7. - 11. ...

12. The counselor intern must have received a letter from the board certifying that he has met all the requirements for Counselor Intern as defined in this Chapter.

A.13. - B.3. ...

C. Responsibility of Applicant under Supervision

1. During the period of supervised counseling/psychotherapy experience, the proper identification title is counselor intern. Counselor interns shall not identify themselves as LPC Interns.

2. - 3. ...

4. Counselor interns may not initiate a private practice during their period of supervised counseling/psychotherapy experience. Counselor interns employed within their supervisors' private practice setting, or in a similar outpatient

setting, cannot, under any circumstances bill clients directly for services they render, unless the counselor intern is authorized to participate in the private practice by authority of a separate license issued by the state of Louisiana.

5. Upon completing of the required number of hours and a minimum two years of supervised counseling/psychotherapy experience, the counselor intern shall submit all license application forms, along with a fee to the board. A counselor intern must continue under supervision until notification from the board that licensure has been granted.

C.6. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.37:1101-1122.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 18:269 (March 1992), amended LR 21:465 (May 1995), LR 22:102 (February 1996), LR 24:1294 (July 1998), LR 24:2124 (November 1998), LR 26:493 (March 2000), LR 29:132 (February 2003), LR 33:

Gloria Bockrath
Board Chair

0709#027

DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis, and Treatment
Personal Care Services—Personal Care Workers Wage
Enhancement (LAC 50:XV.7321)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.7321 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for personal care services in the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program (*Louisiana Register*, Volume 28, Number 2). The bureau promulgated an Emergency Rule to amend the provisions of the February 20, 2003 Rule governing the reimbursement methodology for personal care services in the EPSDT Program to implement an hourly wage pass-through, hereafter referred to as a wage enhancement, payment to providers for personal care workers (*Louisiana Register*, Volume 33, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. This action is being taken to promote the health and well-being of Medicaid recipients by assisting providers to recruit and retain sufficient personal care workers to assure continued access to services.

Effective October 8, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services

Financing amends the provisions governing the reimbursement methodology for personal care services in the EPSDT Program to implement a wage enhancement payment to providers for personal care workers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening,

Diagnosis, and Treatment

Chapter 73. Personal Care Services

§7321. Reimbursement

A. ...

B. Personal Care Workers Wage Enhancement

1. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) personal care workers who provide services to Medicaid recipients.

a. At least 75 percent of the wage enhancement shall be paid to personal care workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. The minimum hourly rate paid to personal care workers shall be the current minimum wage plus 75 percent of the wage enhancement.

2. Providers shall be required to submit a certified wage register to the department verifying the personal care workers' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the personal care worker(s);
- b. total number of direct support hours worked; and
- c. the amount paid in employee benefits.

3. A separate report shall be submitted for paid overtime.

4. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

5. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

6. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

7. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to personal care workers may result in:

- a. forfeiture of eligibility for wage pass-through payments;
- b. recoupment of previous wage pass-through payments;
- c. Medicaid fraud charges; and
- d. disenrollment in the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:179 (February 2003), amended LR 33:

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

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

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

0709#068

DECLARATION OF EMERGENCY

Department of Health and Hospitals

Office of the Secretary

Bureau of Health Services Financing

Inpatient Hospital Services, Non-Rural Private Hospitals,
Children's Specialty Hospitals Psychiatric Units
(LAC 50:V.911)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:V.911 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides reimbursement to children's specialty hospitals for inpatient psychiatric services provided to children who require emergency admissions. The bureau now proposes to adopt provisions to allow for the reimbursement of inpatient psychiatric services provided to children who require non-emergency admissions to the psychiatric units of children's specialty hospitals.

This action is being taken to avoid imminent threat to the health and welfare of children who are in need of inpatient psychiatric services. It is estimated that implementation of this Emergency Rule will increase expenditures for inpatient psychological services by approximately \$797,984 for state fiscal year 2007-2008.

Effective for dates of service on or after September 6, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing inpatient psychiatric services provided to children in children's specialty hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural Private Hospitals

Subchapter A. General Provisions

§911. Children's Specialty Hospitals Psychiatric Units

A. A psychiatric sub-provider unit in a Medicare Prospective Payment System (PPS) exempt children's specialty hospital may enroll in the Medicaid Program. The hospital must submit an attestation to the department that the

unit meets the PPS exempt criteria outlined in 42 CFR 412.25 (except 412.25 (a)(1)(ii)). Enrollment of the new unit will be effective upon verification of the hospital's attestation by the department.

B. Changes in the number of beds in existing units may only be made at the start of the hospital's cost reporting period. The hospital must notify the department of changes in bed size at least 90 days prior to the end of the hospital's cost reporting period. Qualifying Medicaid services provided in these approved units shall be subjected to the existing pre-admission certification requirements for children and adolescents in distinct part psychiatric/substance abuse units in acute care general hospitals.

C. Reimbursement for services will be the inpatient psychiatric prospective per diem rate.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

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

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

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

0709#015

DECLARATION OF EMERGENCY

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

Inpatient Hospital Services—Non-Rural Private Hospitals Reimbursement Rate Increase (LAC 50:V.953-959)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:V.953-959 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in June of 1994 which established the prospective reimbursement methodology for inpatient services provided in private (non-state) acute care general hospitals (*Louisiana Register*, Volume 20, Number 6), free-standing psychiatric hospitals and distinct part psychiatric units (*Louisiana Register*, Volume 19, Number 6). In compliance with the directives of Act 17 of the 2006 Regular Session of the

Louisiana Legislature, the Bureau amended the reimbursement methodology for inpatient hospital services to increase the Medicaid reimbursement rates paid to private hospitals and free-standing and distinct part psychiatric units (*Louisiana Register*, Volume 33, Number 2).

Act 18 of the 2007 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program to increase the Medicaid reimbursement rates paid to private providers for inpatient and outpatient hospital services. In compliance with the directives of Act 18, the department now proposes to amend the reimbursement methodology for non-rural private inpatient hospital services to increase the Medicaid reimbursement rates paid for inpatient hospital services, including non-rural private (non-state) acute care hospitals, long term hospitals, hospital intensive neurological rehabilitation units and free-standing psychiatric hospitals and distinct part psychiatric units.

This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program and recipient access to providers of these medically necessary services. It is estimated that the implementation of this proposed Rule will increase expenditures for inpatient hospital services by approximately \$23,000,000 for state fiscal year 2007-08.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural Private Hospitals

Subchapter B. Reimbursement Methodology

§953. Non-State Acute Care Hospitals

A. For dates of service on or after September 1, 2007, the prospective per diem rate paid to non-rural private (non-state) acute care hospitals for inpatient services shall be increased by 4.75 percent of the rate on file for August 31, 2007.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§955. Long Term Hospitals

A. For dates of service on or after September 1, 2007, the prospective per diem rate paid to long term hospitals for inpatient services shall be increased by 4.75 percent of the rate on file for August 31, 2007.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§957. Hospital Intensive Neurological Rehabilitation Units

A. For dates of service on or after September 1, 2007, the prospective per diem rate paid to hospital intensive neurological rehabilitation care units shall be increased by 4.75 percent of the rate on file for August 31, 2007.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§959. Inpatient Psychiatric Hospital Services

A. For dates of service on or after September 1, 2007, the prospective per diem rate paid to private free-standing psychiatric hospitals and distinct part psychiatric units shall be increased by 4.75 percent of the rate on file for August 31, 2007.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

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

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

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

0709#008

DECLARATION OF EMERGENCY

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

Intermediate Care Facilities for the Mentally Retarded
Direct Service Professionals Wage Enhancement
(LAC 50:VII.32903)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:VII.32903 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for intermediate care facilities for the mentally retarded (ICFs/MR) that included the Inventory for Client and Agency Planning (ICAP) instruments (*Louisiana Register*, Volume 31, Number 9).

The Bureau by Emergency Rule amended the provisions of the September 20, 2005 Rule governing the reimbursement methodology for ICFs/MR by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the facility (*Louisiana Register*, Volume 33, Number 2). It is the intent that this wage enhancement be paid to the direct care staff. This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. This

action is being taken to prevent imminent peril to the health and well-being of ICFs/MR residents by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff.

Effective October 9, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for intermediate care facilities for the mentally retarded by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff.

**Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part VII. Long Term Care
Subpart 3. Intermediate Care Facilities
for the Mentally Retarded**

**Chapter 329. Reimbursement
Subchapter A. Reimbursement Methodology
§32903. Rate Determination**

A. - D.1.d. ...

e. Direct Service Provider Wage Enhancement. For dates of service on or after February 9, 2007, the direct care reimbursement in the amount of \$2 per hour to ICF-MR providers shall include a direct care service worker wage enhancement incentive. It is the intent that this wage enhancement be paid to the direct staff. Non compliance with the wage enhancement shall be subject to recoupment.

i. At least 75 percent of the wage enhancement shall be paid to the direct support professional and 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

ii. The wage enhancement will be added on to the current ICAP rate methodology as follows:

(a). per diem rates for recipients residing in 1-8 bed facilities will increase \$16;

(b). per diem rates for recipients residing in 9-16 bed facilities will increase \$15; and

(c). per diem rates for recipients residing in 16+ bed facilities will increase \$8;

D.2. - H.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1592 (July 2005), repromulgated LR 31:2253 (September 2005).

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

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

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

0709#070

DECLARATION OF EMERGENCY

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

Nursing Facilities Direct Support Professionals Wage Enhancement (LAC 50:VII.1305)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:VII.1301 and §1305 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule to establish a prospective payment system for nursing facilities based on recipient care needs that incorporates acuity measurements as determined under the Resource Utilization Group III (RUG III) resident classification methodology (*Louisiana Register*, Volume 28, Number 8). The August 20, 2002 Rule was subsequently amended to adopt provisions governing a quarterly adjustment of individual nursing facility rates based on overall case mix and to allow for the offset of installation costs for automatic fire sprinkler systems and two-hour rated walls in Medicaid-certified nursing facilities (*Louisiana Register*, Volume 32, Number 12). The bureau by Emergency Rule amended the provisions of the December 20, 2006 Rule governing the reimbursement methodology for nursing facilities by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff employed with the nursing facility (*Louisiana Register*, Volume 33, Number 2). It is the intent that this wage enhancement be paid to the direct care staff. This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. This action is being taken to promote the health and well-being of nursing facility residents by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff.

Effective October 9, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities by increasing the reimbursement paid to providers to implement a wage enhancement for direct care staff.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1305. Rate Determination

A. - D.1.h.Example. ...

i. For dates of service on or after February 9, 2007, the facility-specific direct care rate will be increased by a \$4.70 wage enhancement prior to the case-mix adjustment for direct care staff. The \$4.70 wage

enhancement will be included in the direct care component of the floor calculations. It is the intent that this wage enhancement be paid to the direct care staff.

D.2. - E. ...

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), LR 33:

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

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

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

0709#071

DECLARATION OF EMERGENCY

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt minimum licensing standards for nursing homes (*Louisiana Register*, Volume 24, Number 1).

Act 540 of the 2006 Regular Session of the Louisiana Legislature directed the department, in consultation with the Governor's Office of Homeland Security, to adopt provisions governing emergency preparedness requirements for nursing facilities. In compliance with the directives of Act 540, the department amended the January 20, 1998 Rule to revise the provisions governing emergency preparedness requirements for nursing facilities (*Louisiana Register*, Volume 32, Number 12). The department by Emergency Rule amended the December 20, 2006 Rule to further revise and clarify the provisions governing emergency preparedness requirements for nursing facilities (*Louisiana Register*, Volume 33, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 30, 2007 Emergency Rule. This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are

residents of nursing facilities that may be evacuated as a result of declared disasters or other emergencies.

Effective October 9, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing emergency preparedness requirements for nursing facilities.

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 Louisiana Model Nursing Home Emergency Plan and these regulations. The plan shall be 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.

1. Upon the department's request, a nursing facility shall forward its emergency preparedness information and documentation for review.

a. Emergency preparedness information and documentation shall, at a minimum, include:

- i. a copy of the nursing facility's emergency preparedness plan;
- ii. updates, amendments, modifications or changes to the nursing facility's emergency preparedness plan;
- iii. the number of operational beds; and
- iv. census information, including transportation requirements for residents.

2. After reviewing the nursing facility's plan, if the department determines that the plan is not viable or does not promote the health, safety and welfare of nursing facility residents, the facility shall, within 10 days of notification, respond with an acceptable plan of correction to amend its emergency preparedness plan.

B. The emergency preparedness plan shall be individualized and site specific. At a minimum, the nursing facility shall have a written emergency preparedness plan that addresses:

1. the nursing facility's procedures and criteria for determining if they should evacuate the facility or shelter in place;

a. for evacuation determinations, the nursing facility's plan shall provide for a primary sheltering host site(s) and alternative sheltering host sites outside the area of risk. These host sites must be verified by written agreements or contracts;

b. if the state or parish Office of Homeland Security and Emergency Preparedness (OHSEP) has ordered a mandatory evacuation of the parish or area in which the nursing facility is located, the facility shall evacuate unless the facility receives a written exemption from the ordering authority;

c. the nursing facility shall provide a plan for monitoring weather warnings and watches and evacuation

orders from local and state emergency preparedness officials;

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

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

4. an executable plan for coordinating transportation services, that shall be air-conditioned when available, required for evacuating residents to another location, including the following:

- a. a triage system for residents requiring specialized transportation and medical needs; and
- b. a written binding transportation agreement(s) for evacuating residents to a safe location; or
- c. a written plan for using transportation equipment owned by, or at the disposal of, the facility;

5. the procedures to notify the resident's family or responsible representative whether the facility is sheltering in place or evacuating. If the facility evacuates, notification shall include:

- a. the date and approximate time that the facility is evacuating;
- b. the place or location to which the nursing facility is evacuating, including the:
 - i. name;
 - ii. address; and
 - iii. telephone number;
- c. a telephone number that the family or responsible representative may call for information regarding the facility's evacuation;

6. the procedure or method whereby each nursing facility resident has a manner of identification attached to his person which remains with him at all times in the event of sheltering in place or evacuation;

7. the procedure or method whereby each nursing facility resident has the following minimum information included with him during all phases of an evacuation:

- a. current and active diagnosis;
- b. medications, including dosage and times administered;
- c. allergies;
- d. special dietary needs or restrictions; and
- e. next of kin, including contact information;

8. the procedure for ensuring that an adequate supply of the following items accompany residents on buses or other transportation during all phases of evacuation:

- a. water;
- b. food;
- c. nutritional supplies and supplements;
- d. medication; and
- e. other necessary supplies.

9. the procedures for ensuring that licensed nursing staff accompany residents on buses or other transportation during all phases of evacuation;

10. staffing patterns for sheltering in place and for evacuation, including contact information for such staff;

11. a plan for sheltering in place if the nursing facility determines that sheltering is appropriate;

a. if the nursing facility shelters in place, the facility's plan shall include provisions for seven days of necessary supplies on hand to include:

- i. drinking water, a minimum of one gallon per day per person;
- ii. water for sanitation;
- iii. non-perishable food, including special diets;
- iv. medications;
- v. medical supplies;
- vi. personal hygiene supplies; and
- vii. sanitary supplies;

b. a posted communications plan for contacting emergency services and monitoring emergency broadcasts. The communication plan shall include:

- i. the type of equipment;
- ii. back-up equipment;
- iii. the equipment's testing schedule; and
- iv. the power supply for the equipment being used;

and

c. generator capabilities to include:

- i. HVAC system;
- ii. sewerage system;
- iii. water system;
- iv. medical equipment;
- v. refrigeration;
- vi. lights;
- vii. communications; and
- viii. a plan for a seven day supply of fuel; and

12. the nursing facilities subject to the provisions of Louisiana R.S. 40:2009.25(A) shall have conducted a risk assessment of their facility to determine facility integrity in determining whether sheltering in place is appropriate. The assessment shall be reviewed and updated annually. The risk assessment shall include the following:

a. the facility's latitude and longitude;

b. flood zone determination, using the nursing facility's latitude and longitude;

c. elevations of the building(s), HVAC system(s), generator(s), fuel storage, electrical service and sewer motor, if applicable;

d. a building evaluation to include:

- i. the construction type;
- ii. roof type;
- iii. windows and shutters;
- iv. wind load; and
- v. interior safe zones;

e. an evaluation of each generator's fuel source(s), including refueling plans, output of the generator(s) and electrical load of required emergency equipment;

f. an evaluation of surroundings, including lay-down hazards and hazardous materials, such as:

- i. trees;
- ii. towers;
- iii. storage tanks;
- iv. other buildings; and
- v. pipe lines;

g. an evaluation of security for emergency supplies;

h. Sea, Lake and Overland Surge from Hurricanes (SLOSH) Modeling using the Maximum's of the Maximum Envelope of Waters (MOM); and

i. floor plans, of the building being used as the facility's shelter site, that indicate:

- i. the areas being used as shelter or safe zones;
- ii. emergency supply storage areas;
- ii. emergency power outlets;
- iii. communications center;
- iv. posted emergency information; and
- v. pre-designated command post.

C. Emergency Plan Activation, Review and Summary

1. The nursing facility's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The 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 emergency event or the planned drill.

2. Nursing facilities subject to the provisions of Louisiana R.S. 40:2009.25(B) shall submit a summary of the updated plan to the department's nursing facility emergency preparedness manager by March 1 of each year. If changes are made during the year, a summary of the amended plan shall be submitted within 30 days of the modification.

D. The nursing facility's plan shall be submitted to the OHSEP. Any recommendations by the OHSEP regarding the nursing facility's plan shall be documented and addressed by the facility.

E. ...

F. Evacuation, Temporary Relocation or Temporary Cessation

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 state or parish OHSEP, due to a declared disaster or other emergency, and that nursing facility sustains damages due to wind, flooding or experiences power outages for 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, and the facility has received a letter of approval from the department for reopening the facility.

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

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

c. The Health Standards Section will give priority to reopening surveys.

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 state or parish OHSEP, due to a declared disaster or other emergency, and the nursing facility does not sustain damages due to wind, flooding or experiences power outages for longer than 48 hours, the nursing facility may be reopened without the necessity of the required surveys. Prior to reopening, the

nursing facility shall notify the Health Standards Section in writing that the facility is reopening.

G. Authority to Reopen and Execution of Emergency Preparedness Plan

1. Before reopening at its licensed location, the nursing facility shall submit a written initial summary within 14 days from the date of evacuation to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

a. - d. ...

e. a list of all injuries and deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

2. A more detailed report shall be submitted upon request by the licensing agency.

a. - c. Repealed.

H. Sheltering in Place

1. If a nursing facility shelters in place at its licensed location during a declared disaster or other emergency, the nursing facility shall submit a written initial summary within 14 days from the date of the emergency event to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. The initial summary shall 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 all injuries and deaths of residents that occurred during the execution of the plan, including the date, time, causes and circumstances of these injuries and deaths.

2. A more detailed report shall be submitted upon request by the licensing agency.

I. Unlicensed Sheltering Sites

1. In the event that a nursing facility evacuates, temporarily relocates or temporarily ceases operations at its licensed location due to an evacuation order issued by the state or parish OHSEP, the nursing facility shall be allowed to remain at an unlicensed sheltering site for a maximum of five days. A nursing facility may request one extension, not to exceed five days, to remain at the unlicensed sheltering site.

a. The request shall be submitted in writing to the Health Standards Section and shall be based upon information that the nursing facility's residents will return to its licensed location, or be placed in alternate licensed nursing home beds within the extension period requested.

b. The extension will be granted for good cause shown and for circumstances beyond the control of the nursing facility.

c. This extension will be granted only if essential care and services to residents are ensured at the current sheltering facility.

2. Upon expiration of the five days or upon expiration of the written extension granted to the nursing facility, all residents shall be relocated to a licensed nursing facility and

the Health Standards Section and OHSEP shall be informed of the residents' new location(s).

J. Notification

1. In the event that a nursing facility evacuates, temporarily relocates or temporarily ceases operations at its licensed location as a result of an evacuation order issued by the state or parish OHSEP, the nursing facility must immediately give notice to the Health Standards Section and OHSEP by facsimile or email of the following:

a. the date and approximate time of the evacuation;

b. the sheltering host site(s) to which the nursing facility is evacuating; and

c. a list of residents being evacuated, which shall indicate the evacuation site for each resident.

2. Within 48 hours, the nursing facility must notify the Health Standards Section and OHSEP of any deviations from the intended sheltering host site(s) and must provide the Health Standards Section and OHSEP with a list of all residents and their locations.

AUTHORITY NOTE: Promulgated in accordance with 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), LR 33:

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

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

0709#073

DECLARATION OF EMERGENCY

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

Professional Services Program
Adult Immunizations
(LAC 50:IX.Chapters 83-87)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:IX.Chapters 83-87 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 18 of the 2007 Regular Session of the Louisiana Legislature authorized expenditures to the Medical Vendor Program to allow for the coverage of certain adult immunizations provided by a medical professional for influenza, pneumococcal and human papillomavirus (HPV) diseases. These immunizations will be covered for Medicaid

recipients who are age 21 or older. In compliance with the directives of Act 18, the Department now proposes to adopt provisions to allow for the reimbursement of adult immunizations for influenza, pneumococcal and HPV diseases. This Emergency Rule is being promulgated to promote the health and welfare of Medicaid recipients by ensuring recipient access to preventive care to aid in the eradication of serious illnesses that may disrupt normal family functioning. It is estimated that the implementation of this proposed Rule will increase expenditures for professional services by approximately \$10,428,811 for state fiscal year 2007-08.

Effective October 1, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts provisions for the coverage of certain adult immunizations.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 7. Immunizations

Chapter 83. Children's Immunizations (Reserved)

Chapter 85. Adult Immunizations

§8501. General Provisions

A. Effective October 1, 2007, the Department shall provide Medicaid coverage for certain immunizations administered by enrolled Medicaid providers for adult recipients, age 21 or older. Adult immunizations shall be covered for the following diseases:

1. influenza;
2. pneumococcal; and
3. human papillomavirus (HPV).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§8503. Coverage Restrictions

A. HPV Immunizations. Immunizations for HPV are restricted to female recipients from age 21 through 26 years old.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Chapter 87. Reimbursement

§8701. Reimbursement Methodology

A. Adult Immunizations. Providers shall be reimbursed according to the established fee schedule for the vaccine and the administration of the vaccine.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box

91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0709#062

DECLARATION OF EMERGENCY

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

Prosthetics and Orthotics Reimbursement Rate Increase
(LAC 50:XVII.501, 1505, 1707, 1907, and 10117)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:XVII.501 and to repeal LAC 50:XVII.1505, 1707, 1907 and 10117 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed and repromulgated provisions governing prosthetic and orthotic devices in the Medical Assistance Program (*Louisiana Register*, Volume 31, Number 7.) The bureau now proposes to amend the July 2005 Rule to repeal the reimbursement methodology for specific prosthetic and orthotic items and to increase the reimbursement rate.

This action is being taken to promote the health and welfare of Medicaid recipients and to maintain access to orthotic and prosthetic devices by encouraging the continued participation of providers in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures for orthotic and prosthetic devices by approximately \$983,118 for state fiscal year 2007-2008.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XVII. Prosthetics and Orthotics

Subpart 1. General Provisions

Chapter 5. Reimbursement

§501. Reimbursement Methodology

A. Effective for dates of service on or after September 6, 2007, the reimbursement for prosthetic and orthotic devices is 90 percent of the 2007 Medicare Fee Schedule amount or billed charges, whichever is the lesser amount, unless otherwise stipulated. If an item is not available at 90 percent of the 2007 Medicare fee schedule amount, the flat fee that will be utilized is the lowest cost at which the item has been determined to be widely available by analyzing usual and customary fees charged in the community.

1. This rate does not apply to prosthetics and orthotics that are:

- a. already priced at a higher amount than 90 percent of the 2007 Medicare Fee Schedule; or
- b. not included on the 2007 Medicare Fee Schedule, such as customized items for which there is no established fee that must be individually priced.

B. Items not listed on the Medicare Fee Schedule will continue to be priced in accordance with current policy.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1597 (July 2005), amended LR 33:

Subpart 3. Prothhetic Devices

Chapter 15. Artificial Eyes, Scleral Shell, and Related Services

§1505. Reimbursement

A. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1598 (July 2005), repealed LR 33:

Chapter 17. Breast or Mammary Prosthesis

§1707. Reimbursement

A. - B. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1598 (July 2005), repealed LR 33:

Chapter 19. Support and Surgical Stockings

§1907. Reimbursement

A. - B. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1598 (July 2005), repealed LR 33:

Subpart 5. Orthotic Devices

Chapter 101. General Provisions

§10117. Reimbursement

A. - B. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1599 (July 2005), repealed LR 33:

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

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

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

0709#014

DECLARATION OF EMERGENCY

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

School-Based Health Centers
(LAC 50:IX.Chapters 71-79)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:IX.Chapters 71-79 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:31.3, and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Adolescent School Health Initiative Act of 1991, R.S. 40:31.3, directed the Department of Health and Hospitals, Office of Public Health to establish an adolescent school health initiative to facilitate and encourage development of comprehensive health centers in public middle and secondary schools to provide preventive health services, counseling and acute health services to students. In compliance with the directives of the Adolescent School Health Initiative Act, the department established School Based Health Centers (SBHCs) to provide convenient access to preventive and primary health services for students who might otherwise have limited or no access to health care. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt provisions to allow for Medicaid coverage and reimbursement of mental health services provided to students by School Based Health Centers and to establish provisions for other Medicaid-covered services students already receive. This action is being taken to promote the public health and well-being of children by providing access to needed mental health services. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$654,588 for state fiscal year 2007-2008.

Effective August 25, 2007, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts provisions to allow for Medicaid coverage of mental health services provided to students by school based health centers.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 5. School-Based Health Centers

Chapter 71. General Provisions

§7101. Purpose

A. The Adolescent School Health Initiative Act of 1991 authorized the development of an adolescent school based health initiative to facilitate and encourage the provision of comprehensive health centers in public middle and secondary schools.

B. School Based Health Centers (SBHCs) provide convenient access to preventive and primary health care services for students who might otherwise have limited or no access to health care, and meet the physical and emotional health needs of adolescents at their school sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:31.3 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Chapter 73. Provider Participation

§7301. Provider Qualifications

A. The SBHC classification must be verified by the Office of Public Health, Adolescent School Health Program when applying for a Medicaid provider number.

1. Documentation of this verification must be provided upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:31.3 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7303. Standards of Participation

A. School Based Health Centers must comply with the applicable licensure, certification and program participation standards for all services rendered. The SBHC shall:

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

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. The SBHC shall provide comprehensive primary medical, social and mental health services, as well as health education, promotion and prevention services to meet the psychosocial and physical health needs of students enrolled in the SBHC in the context of their family, culture and environment.

C. School Based Health Centers shall acquire written parental consent in order to enroll a student as a patient.

D. The SBHC and all partners involved in service delivery must adhere to Health Insurance Portability and Accountability Act (HIPAA) privacy policies and procedures.

E. The SBHC must be enrolled as a KIDMED screening provider in addition to enrollment for providing any other services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:31.3 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Chapter 75. Services

§7501. Scope of Services

A. The Medicaid Program provides reimbursement for medically necessary health care services provided by School Based Health Centers including, but not limited to, the following services:

1. comprehensive health care assessments and screenings;

2. preventive health care services;
3. diagnosis and treatment;
4. management of chronic conditions;
5. laboratory tests; and
6. mental health services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:31.3 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Chapter 77. Staffing Requirements

§7701. Minimum Staffing Requirements

A. School Based Health Centers shall have, at a minimum, the following health care providers on staff:

1. one or more primary care providers, including a:

- a. physician;
- b. physician assistant; or
- c. nurse practitioner;

2. a medical director; and

3. a master's level social worker or licensed mental health professional.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

§7703. Staffing Qualifications for Mental Health Services

A. Mental health services rendered in Medicaid-enrolled SBHCs shall be provided by the following licensed, professional staff:

1. psychiatrists;
2. psychologists;
3. clinical nurse specialists;
4. nurse practitioners;
5. licensed clinical social workers; or
6. licensed professional counselors.

B. Professionals providing mental health services must:

1. be licensed and provide services under the provisions and scope of their Louisiana Practice Act;
2. be enrolled in Louisiana Medicaid and linked to the SBHC where services are rendered; and
3. adhere to any additional training or educational requirements in the mental health area as set forth in Medicaid SBHC policy.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

Chapter 79. Reimbursement

§7901. Reimbursement Methodology

A. Medicaid reimbursement is limited to medically necessary services that are covered by the Medicaid State Plan.

B. Medicaid covered services provided by SBHCs shall be reimbursed at the lower of either:

1. the provider's billed charges minus any third party coverage; or
2. the state's established schedule of fees for the service rendered, minus any third party coverage.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:

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

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

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

0709#009

DECLARATION OF EMERGENCY

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

Home and Community-Based Services Waivers
Children's Choice—Direct Support
Professionals Wage Enhancement
(LAC 50:XXI.12101)

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.12101 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for the Children's Choice Waiver (*Louisiana Register*, Volume 28, Number 9). The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions of the September 20, 2004 Rule governing the reimbursement methodology for the Children's Choice Waiver to implement an hourly wage pass-through payment to providers for direct care staff. The department amended the provisions of the February 9, 2007 Emergency Rule to also include a wage pass-through, hereafter referred to as a wage enhancement, payment for direct support professionals who provide Center-Based Respite services to Children's Choice recipients (*Louisiana Register*, Volume 33, Number 5). The department now proposes to amend the February 9, 2007 and May 20, 2007 Emergency Rules to further clarify the provisions governing the wage enhancement payment.

This action is being taken to promote the health and well-being of waiver recipients by assisting providers to recruit and retain sufficient direct care staff to assure continued access to services. It is estimated that implementation of this Emergency Rule will be cost neutral for state fiscal year 2007-2008.

Effective September 20, 2007, the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amends the provisions of the February 9, 2007 and May 20, 2007 Emergency Rules governing the reimbursement methodology for the Children's Choice Waiver.

Title 50

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

Subpart 9. Children's Choice

Chapter 121. Reimbursement §12101. Reimbursement Methodology

A. - B.4. ...

5. Direct Support Professionals Wage Enhancement.

a. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide Family Support services to Children's Choice recipients.

b. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide Center-Based Respite services to Children's Choice recipients.

c. At least 75 percent of the wage enhancement shall be paid in the aggregate to direct support workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

d. Effective September 20, 2007, the minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect on February 20, 2007 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

e. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

i. gross wage paid to the direct support professional(s);

ii. total number of direct support hours worked; and

iii. the amount paid in employee benefits.

f. A separate report shall be submitted for paid overtime.

g. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

h. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

i. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

j. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

i. forfeiture of eligibility for wage enhancement payments;

- ii. recoupment of previous wage enhancement payments;
- iii. Medicaid fraud charges; and
- iv. disenrollment in the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1987 (September 2002), amended LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0709#063

DECLARATION OF EMERGENCY

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

Home and Community-Based Services Waivers New Opportunities Waiver—Direct Support Professionals Wage Enhancement (LAC 50:XXI.14101)

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.14101 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services implemented a new home and community based services waiver, the New Opportunities Waiver (NOW), designed to enhance the support services available to individuals with developmental disabilities (*Louisiana Register*, Volume 30, Number 6). The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions of the June 20, 2004 Rule governing the reimbursement methodology for the New Opportunities Waiver to implement a wage pass-through payment for direct support professionals who provide Individual and Family Support Services to NOW recipients (*Louisiana Register*, Volume 33, Number 2). The department amended the provisions of the February 9, 2007 Emergency Rule to also include a wage pass-through payment, hereafter referred to as a wage enhancement, for direct support professionals who provide Day Habilitation,

Supported Employment, Employment-Related Training and Center-Based Respite services to NOW recipients (*Louisiana Register*, Volume 33, Number 5). The department now proposes to amend the February 9, 2007 and May 20, 2007 Emergency Rules to further clarify the provisions governing the wage enhancement payment.

This action is being taken to promote the health and well-being of waiver recipients by assisting providers to recruit and retain sufficient direct care staff to assure continued access to services. It is estimated that implementation of this Emergency Rule will be cost neutral for state fiscal year 2007-2008.

Effective September 20, 2007, the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amends the provisions of the February 9, 2007 and May 20, 2007 Emergency Rules governing the reimbursement methodology for the New Opportunities Waiver.

Title 50

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

Subpart 11. New Opportunities Waiver

Chapter 141. Reimbursement

§14101. Reimbursement Methodology

A. - E.1. ...

F. Direct Support Professionals Wage Enhancement

1. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide Individual and Family Support Services to New Opportunities Waiver recipients.

2. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide the following services to New Opportunities Waiver recipients:

- a. Day Habilitation;
- b. Supported Employment;
- c. Employment-Related Training; and
- d. Center-Based Respite

3. At least 75 percent of the wage enhancement shall be paid in the aggregate to direct support workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent, shall be used to pay employer-related taxes, insurance and employee benefits.

4. Effective September 20, 2007, the minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect on February 20, 2007 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

5. Providers shall be required to submit a certified wage register to the department verifying the direct support professional's gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the direct support professional(s);
- b. total number of direct support hours worked; and
- c. the amount paid in employee benefits.

6. A separate report shall be submitted for paid overtime.

7. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

8. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

9. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

10. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

- a. forfeiture of eligibility for wage enhancement payments;
- b. recoupment of previous wage enhancement payments;
- c. Medicaid fraud charges; and
- d. disenrollment in the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0709#065

DECLARATION OF EMERGENCY

Department of Health and Hospitals

Office of the Secretary

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Supports Waiver—Direct Support Professionals
Wage Enhancement
(LAC 50:XXI.6101)

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.Chapter 61 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities implemented a

home and community-based services waiver, the Supports Waiver, to promote the independence of individuals with developmental disabilities by creating vocational and community inclusion options to enhance their lives (*Louisiana Register*, Volume 32, Number 9). The department promulgated an Emergency Rule to amend the provisions of the September 20, 2006 Rule governing the reimbursement methodology for the Supports Waiver to implement a wage enhancement payment to providers for direct support professionals (*Louisiana Register*, Volume 33, Number 5). The department now proposes to amend the May 20, 2007 Emergency Rule to further clarify the provisions governing the wage enhancement payment. This action is being taken to promote the health and well-being of waiver recipients by assisting providers to recruit and retain sufficient direct care staff to assure continued access to services. It is estimated that implementation of this emergency will be cost neutral for state fiscal year 2007-2008.

Effective September 20, 2007, the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities amends the provisions of the May 20, 2007 Emergency Rule governing the reimbursement methodology for the Supports Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based

Services Waivers

Subpart 5. Supports Waiver

Chapter 61. Reimbursement

§6101. Reimbursement Methodology

A. - H. ...

I. Direct Support Professionals Wage Enhancement

1. Effective May 20, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide the following services to Support Waiver recipients:

- a. habilitation;
- b. supported employment;
- c. day habilitation;
- d. center-based respite; and
- e. prevocational services.

2. At least 75 percent of the wage enhancement shall be paid in the aggregate to direct support workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent, shall be used to pay employer-related taxes, insurance and employee benefits.

3. Effective September 20, 2007, the minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect on February 20, 2007 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

4. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending March 31, 2007. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the direct support professional(s);
- b. total number of direct support hours worked; and
- c. the amount paid in employee benefits.

5. A separate report shall be submitted for paid overtime.

6. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

7. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

8. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

9. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

a. forfeiture of eligibility for wage enhancement payments;

b. recoupment of previous wage enhancement payments;

c. Medicaid fraud charges; and

d. disenrollment from the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0709#066

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Supports Waiver—Support Coordination Services
(LAC 50:XXI.5715, 5901 and 6101)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities adopts LAC 50:XXI.5715 and amends §§5901 and 6101 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities implemented a new home and community-based

services waiver, called the Supports Waiver, to promote the independence of individuals with developmental disabilities by creating vocational and community inclusion options to enhance their lives (*Louisiana Register*, Volume 32, Number 9).

Waiver recipients currently receive support coordination for the Supports Waiver through targeted case management services provided under the Medicaid State Plan and paid from all state general funds, pending approval of the associated Medicaid State Plan Amendment. The department by Emergency Rule amended the September 20, 2006 Rule governing the services covered in the Supports Waiver to include support coordination as a covered service (*Louisiana Register*, Volume 33, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 20, 2007 Emergency Room. This action is being taken to secure enhanced federal funding and eliminate the reliance on state general funds for support coordination services provided to Supports Waiver recipients.

Effective October 19, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the provisions governing the Supports Waiver to establish support coordination as a covered service.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community

Based Services Waivers

Subpart 5. Supports Waiver

Chapter 57. Covered Services

§5715. Support Coordination

A. Support coordination is a service that will assist recipients in gaining access to all of their necessary services, as well as medical, social, educational and other services, regardless of the funding source for the services. Support coordinators shall be responsible for on-going monitoring of the provision of services included in the recipient's approved CPOC.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:

Chapter 59. Provider Participation

§5901. General Provisions

A. - C.5. ...

6. Support Coordination. Providers must be licensed as support coordination agencies and enrolled in the Medicaid Program to deliver these 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, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 33:

Chapter 61. Reimbursement

§6101. Reimbursement Methodology

A. - H. ...

J. Support Coordination. Support coordination shall be reimbursed at a fixed monthly rate in accordance with the terms of the established contract.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006), amended LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0709#072

DECLARATION OF EMERGENCY

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

Targeted Case Management—Individuals with
Developmental Disabilities
(LAC 50:XV.10501, 10505 and 11701)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XV.10501, 10505 and 11701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing case management services provided to targeted population groups and certain home and community-based services waiver recipients (*Louisiana Register*, Volume 25, Number 7). In May 2004, the bureau repromulgated the July 1999 Rule in a codified format in Title 50 of the Louisiana Administrative Code (*Louisiana Register*, Volume 30, Number 5). The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities implemented a new home and community-based services waiver for persons with developmental disabilities, called the Supports Waiver. The department amended the provisions governing targeted case management to include recipients receiving services in the Supports Waiver and to change the name of the Mentally Retarded/Developmentally Disabled Waiver (*Louisiana Register*, Volume 32, Number 9). Case management services for Supports Waiver recipients are currently being paid from all state general funds pending approval of the associated Medicaid State Plan Amendment. The department by Emergency Rule amended the provisions of the September 20, 2006 Rule governing targeted case management to remove the coverage of case management services for

Supports Waiver recipients (*Louisiana Register*, Volume 33, Number 6). Case management services shall be provided as support coordination services and included as a covered service in the Supports Waiver program. This Emergency Rule is being promulgated to continue the provisions of the June 20, 2007 Emergency Rule. This action is being taken to secure enhanced federal funding and eliminate the reliance on state general funds for case management services provided to Supports Waiver recipients.

Effective October 19, 2007, the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends the provisions governing Targeted Case Management to remove the coverage of case management services for Supports Waiver recipients.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 7. Targeted Case Management

Chapter 105. Provider Participation

§10501. Participation Requirements

A. - D.7. ...

8. assure the recipient's right to elect to receive or terminate case management services (except for recipients in the New Opportunities Waiver, Elderly and Disabled Adult Waiver and Children's Choice Waiver programs). Assure that each recipient has freedom of choice in the selection of an available case management agency (every six months), a qualified case manager or other service providers and the right to change providers or case managers;

9. - 12. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1037 (May 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1608 (September 2006), amended LR 33:

§10505. Staff Education and Experience

A. - E.1.d. ...

e. Targeted EPSDT; and

f. Children's Choice Waiver.

2. - 2.e. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:38 (January 2003), LR 30:1038 (May 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1608 (September 2006), amended LR 33:

Chapter 117. Individuals with Developmental Disabilities

§11701. Introduction

A. The targeted population for case management services shall consist of individuals with developmental disabilities who are participants in the New Opportunities Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1043 (May 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office

for Citizens with Developmental Disabilities, LR 32:1608 (September 2006), amended LR 33:

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

Interested persons may submit written comments to Kathy Kliebert, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is the person responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0709#074

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services

Home and Community-Based Services Waiver Adult Day Health Care—Direct Service Professionals Wage Enhancement (LAC 50:XXI.3109)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends LAC 50:XXI.3109 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services adopted provisions governing the reimbursement methodology for the Adult Day Health Care (ADHC) Waiver (*Louisiana Register*, Volume 30, Number 9). The department, by Emergency Rule, amended the provisions of the September 20, 2004 Rule governing the reimbursement methodology for the ADHC Waiver by increasing reimbursement to providers to implement a wage enhancement for direct care staff (*Louisiana Register*, Volume 33, Number 2). It is the intent that the wage enhancement be paid to the direct care staff. This Emergency Rule is being promulgated to continue the provisions of the February 9, 2007 Emergency Rule. This action is being taken to promote the health and well-being of waiver recipients by assuring continued access to services through assisting providers to recruit and retain sufficient direct care staff.

Effective October 9, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends the provisions governing the reimbursement methodology for the Adult Day Health Care Waiver by increasing reimbursement to providers to implement a wage pass-through payment for direct care workers.

Title 50

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

Subpart 3. Adult Day Health Care

Chapter 31. Reimbursement

§3109. Provider Reimbursement

A. - B.7.a. ...

i. For dates of service on or after February 9, 2007, the facility-specific direct care price will be increased by \$1.11 to include a direct care service worker wage enhancement. It is the intent that this wage enhancement be paid to the direct care service workers.

7.b. - 8.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2048 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

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

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0709#069

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services

Home and Community-Based Services Waivers Elderly and Disabled Adults Waiver Direct Service Professionals Wage Enhancement (LAC 50:XXI.9101)

The Department of Health and Hospitals, Office of Aging and Adult Services adopts LAC 50:XXI.Chapter 91 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the Elderly and Disabled Adults (EDA) Waiver (*Louisiana Register*, Volume 28, Number 9). The bureau promulgated an Emergency Rule to adopt a

reimbursement methodology for the EDA Waiver and provisions to implement an hourly wage pass-through, hereafter referred to as a wage enhancement, payment to providers for direct care staff (*Louisiana Register*, Volume 33, Number 2). The department now proposes to amend the February 9, 2007 Emergency Rule to further clarify the provisions governing the wage enhancement payment.

This action is being taken to promote the health and well-being of waiver recipients by assisting providers to recruit and retain sufficient direct care staff to assure continued access to services. It is estimated that implementation of this Emergency Rule will be cost neutral for state fiscal year 2007-2008.

Effective September 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends the provisions of the February 9, 2007 Emergency Rule governing the reimbursement methodology for the Elderly and Disabled Adults Waiver.

Title 50

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

Subpart 7. Elderly and Disabled Adults Waiver

Chapter 91. Reimbursement

§9101. Reimbursement Methodology

A. Reimbursement for EDA Waiver services shall be a prospective flat rate for each approved unit of service provided to the recipient.

B. Direct Support Professionals Wage Enhancement

1. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide home and community-based waiver services to Medicaid recipients. Direct support professionals are persons who deliver direct care services such as assistance with the activities of daily living.

a. At least 75 percent of the wage enhancement shall be paid in the aggregate to the direct support professionals as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. Effective September 20, 2007, the minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect on February 20, 2007 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

2. Providers shall be required to submit a certified wage register to the department verifying the direct support professionals' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the direct support professional(s);
- b. total number of direct support hours worked; and
- c. the amount paid in employee benefits.

3. A separate report shall be submitted for paid overtime.

4. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

5. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

6. The wage enhancement payments reimbursed to providers are subject to audit by the department.

7. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to direct support professionals may result in:

- a. forfeiture of eligibility for wage enhancement payments;
- b. recoupment of previous wage enhancement payments;
- c. Medicaid fraud charges; and
- d. disenrollment in the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

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

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0709#064

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary Office of Aging and Adult Services

Personal Care Services—Long Term Personal Care Workers Wage Enhancement (LAC 50:XV.12917)

The Department of Health and Hospitals, Office of Aging and Adult Services amends LAC 50:XV.12917 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the coverage of personal care services as an optional service under the Medicaid State Plan (*Louisiana Register*, Volume 29, Number 6). The Department of Health and Hospitals, Office of Aging and Adult Services promulgated an Emergency Rule to amend the provisions of the June 20, 2003 Rule governing the reimbursement methodology for personal care services to implement an hourly wage pass-through, hereafter referred

to as a wage enhancement, payment to providers for personal care workers (*Louisiana Register*, Volume 33, Number 2). The department now proposes to amend the February 9, 2007 Emergency Rule to further clarify the provisions governing the wage enhancement payment.

This action is being taken to promote the health and well-being of Medicaid recipients by assisting providers to recruit and retain sufficient direct care staff to assure continued access to services. It is estimated that implementation of this Emergency Rule will be cost neutral for state fiscal year 2007-2008.

Effective September 20, 2007, the Department of Health and Hospitals, Office of Aging and Adult Services amends the provisions of the February 9, 2007 Emergency Rule governing the reimbursement methodology for personal care services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12917. Reimbursement Methodology

A. ...

B. Personal Care Workers Wage Enhancement.

1. Effective February 9, 2007, an hourly wage enhancement payment in the amount of \$2 will be reimbursed to providers for full-time equivalent (FTE) personal care workers who provide services to Medicaid recipients.

a. At least 75 percent of the wage enhancement shall be paid in the aggregate to personal care workers as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

b. Effective September 20, 2007, the minimum hourly rate paid to personal care workers shall be the federal minimum wage in effect on February 20, 2007 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

2. Providers shall be required to submit a certified wage register to the department verifying the personal care workers' gross wages for the quarter ending June 30, 2005. The wage register will be used to establish a payroll baseline for each provider. It shall include the following information:

- a. gross wage paid to the personal care worker(s);
- b. total number of personal care hours worked; and
- c. the amount paid in employee benefits.

3. A separate report shall be submitted for paid overtime.

4. The provider shall submit quarterly wage reports that verify that the 75 percent wage enhancement has been paid to the appropriate staff.

5. The provider shall submit a report, according to the department's specifications, that will be used to measure the effectiveness of the wage enhancement.

6. The wage enhancement payments reimbursed to providers shall be subject to audit by the department.

7. Noncompliance or failure to demonstrate that the wage enhancement was paid directly to personal care workers may result in:

a. forfeiture of eligibility for wage enhancement payments;

b. recoupment of previous wage enhancement payments;

c. Medicaid fraud charges; and

d. disenrollment in the Medicaid Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

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

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

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

0709#067

DECLARATION OF EMERGENCY

Department of Labor

Office of Unemployment Insurance Administration

Lost Wage Benefits for Domestic Violence Victims (LAC 40:IV.Chapter 5)

The Department of Labor (DOL) is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., to promulgate rules to enable Act 421 of the 2007 Regular Legislative Session.

The Emergency Rules are necessary to implement the "Lost Wage Benefits for Domestic Violence Victims Act" [R.S. 23:1770-1775] and to allow the Department of Labor to effectively administer this program effective August 15, 2007. A delay in promulgating these rules would have an adverse impact on the financial welfare of victims of domestic violence who are not eligible for regular unemployment insurance benefits under the provisions of R.S. 23:1601(1) and (2). Studies have shown that 96 percent of employed domestic violence victims experience some type of work-related problem due to the violence. Two to four million American women are abused each year. Domestic violence is a serious social concern which plagues society. Louisiana ranks second in the nation for homicides related to domestic abuse. The Louisiana Legislature has recently enacted domestic violence unemployment insurance legislation that will aid domestic violence victims in their ability to escape a violent relationship. It will further assist battered victims in obtaining temporary wage replacement when they must leave or are separated from their jobs because of domestic violence. Prior to this domestic violence unemployment insurance legislation, Louisiana had no vehicle in place to address the need for victims of domestic violence to receive unemployment insurance benefits. This

new legislation is a powerful weapon to help support victims in their efforts to ensure safety for themselves and their families when they confront a domestic violence crisis. It is imperative that the Department of Labor proceed expeditiously with the disposition of the domestic violence unemployment insurance program. Although domestic violence is not a new phenomenon, it is an imminent peril to public health, safety, and welfare that requires immediate action on operations, implementation, and use of funds now made available by the Act to provide required services in response to the immediate threat to the public. Failure to adopt this Rule on an emergency basis may prohibit battered victims from escaping violent relationships by removing their ability to sustain themselves and their children.

This Declaration of Emergency is effective August 15, 2007, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., or until regular rules are adopted in accordance with the Administrative Procedure Act, whichever occurs first.

Title 40
LABOR AND EMPLOYMENT
Part IV. Employment Security

Chapter 5. Lost Wage Benefits for Domestic Violence Victims

§501. Terminology Pertaining to Lost Wages for Domestic Violence Victims

A. Definitions

Domestic Abuse—includes but is not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family or household member against another. Minors are not excluded. *Domestic abuse* also includes abuse of persons 60 years of age or older and any disabled person 18 years of age or older when committed by an adult child or adult grandchild.

Family Members—spouses, former spouses, parents and children stepparents, stepchildren, foster parents and foster children.

Household Members—any person of the opposite sex presently or formerly living in the same residence with the defendant as a spouse whether married or not, who is seeking protection under this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

§503. Administration of Funds

A. Benefits under the Lost Wage Benefits for Domestic Violence Victims Act are provided to individuals who have lost their employment due to domestic violence and who, otherwise, would not be eligible for unemployment insurance benefits. Towards this end, it shall be the agency's intent to apply all rules, regulations, and laws of the unemployment insurance program with the exception of those clearly excluded by the statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

§505. Manner of Distribution

A. The application for and the distribution of benefits under this program shall be in the same manner and using the same methods as those of regular unemployment insurance benefits.

B. The records shall be maintained in a manner that allows for the monitoring and auditing of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

§507. Maximum Benefit Amount

A. The total benefit amount payable under the domestic violence victims program will be reduced by any amount paid from regular unemployment benefits and shall not exceed the maximum benefit amount established in the monetary determination of the unemployment insurance claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

§509. Filing Period

A. A claimant shall be eligible to file one new claim per calendar year. The term *new claim* is the first initial claim filed to request a determination of entitlement to and eligibility for compensation which results in an agency generated document of an appealable monetary determination provided to the potential claimant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

§511. Deductions

A. The following shall not be deducted from benefits of domestic violence victims:

1. severance pay;
2. vacation pay;
3. holiday pay;
4. bonus pay;
5. WARN Act pay;
6. wages in lieu of notice;
7. separation/dismissal pay;
8. tips/gratuities;
9. worker's compensation;
10. military retirement pay; and
11. other periodic payment based on previous work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

§513. Availability of Claimant

A. The requirements that an individual must be able to work, available for work and making an active search for work each week will not apply if the conditions that qualified the individual for the program do not permit him/her to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

John Warner Smith
Secretary

0709#001

DECLARATION OF EMERGENCY

**Department of Revenue
Policy Services Division
and
Department of Social Services
Office of the Secretary**

**School Readiness Tax Credits
(LAC 61:I.1903)**

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Revenue and the Department of Social Services to use emergency procedures to establish Rules, R.S. 36:474, R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6103, which allow the departments to make reasonable rules and regulations, the Secretary of the Department of Revenue and the Secretary of the Department of Social Services hereby find that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule. This Emergency Rule shall be effective upon approval of the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs or the passage of 60 days following publication whichever occurs first, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final Rule, whichever comes first.

This Emergency Rule is necessary to effectuate the intent of the legislature. The statutes in question clearly state that the Senate Committee of Revenue and Fiscal Affairs and the House Committee on Ways and Means have 60 days after publication of the Emergency Rule to take action on such Rule. Additionally, by statute any Rule needs to be effective by December 1 in order to be applicable to the tax year beginning January 1, 2008. A delay in promulgating this Rule would have an adverse impact on the entire school readiness tax credit program.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered

By the Secretary of Revenue

Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions

§1903. Administration of the School Readiness Tax Credits

A. General School Readiness Tax Credit Provisions

1. For purposes of the tax credits in R.S. 47:6101 through 6109, a child will be deemed to be five years of age or less if the child is five years of age or less on any day of the taxable year for which a credit is claimed.

2. The term "business" as used in this regulation means any for-profit or not-for-profit entity not including any individual operating in their personal capacity.

3. The credits provided for in R.S. 47:6101 through 6109 are applicable against individual income tax and corporation income and franchise tax but not against income taxes imposed on estates and trusts.

B. Child Care Expense Tax Credit

1. The Department of Revenue shall make available to qualifying child care facilities a credit certificate to be given to each taxpayer claiming the child care expense tax credit. The credit certificate will consist of a provider portion of the certificate and a taxpayer portion of the certificate.

2. The provider shall complete the provider portion of the credit certificate and shall submit the certificate to each taxpayer who had a child at the facility during the calendar year no later than January 31 of the succeeding year. The provider portion of the credit certificate will include, but not be limited to, the following information: the child care facility name, the child care facility star rating, the child care facility Louisiana tax identification number, the child care facility Department of Social Services license number, the name of the child attending the facility and the issue date and effective year. The provider shall submit to the Department of Revenue a list of all taxpayers to whom a certificate was issued.

3. The taxpayer shall complete the taxpayer portion of the certificate which will include, but not be limited to, the following information: the name and social security number of the taxpayer claiming the credit and the name, social security number and date of birth for the qualifying child for whom this credit is claimed on the tax return. The taxpayer must submit or maintain the certificate as required by the Secretary of the Department of Revenue in forms and instructions.

4. The Department of Social Services shall provide information necessary for the Secretary of the Department of Revenue to determine the child care provider's quality rating.

C. Child Care Provider Tax Credit

1. The average monthly number of children as used in R.S. 47:6105 is to be determined on a calendar year basis and the provider shall claim the credit for the tax year that includes December 31. The child care provider tax credit will be calculated based on the average monthly number of children participating full-time in the Child Care Assistance or Foster Care Program, from January to December of a calendar year, as follows:

a. full-time participation is considered when the Child Care Assistance or Foster Care Program pays for at least 12 days of service per child during the month; or

b. part-time participation is considered when the Child Care Assistance or Foster Care Program pays for at least 40 hours of service per child during the month; or

c. part-time participation is considered when the Child Care Assistance or Foster Care Program pays for at least 5 days but no more than 11 days of service per child during the month;

d. two part-time participants are considered one full-time participant for purposes of this calculation.

2. The Department of Social Services shall provide documentation to each qualifying provider of the average monthly number of children participating in the Child Care Assistance Program or in the Foster Care Program. If the provider has multiple sites, the Department of Social Services shall provide this information for each site. The certificate shall be delivered or mailed to all qualifying child care providers by March 1 of the year following the year the credit is earned. The certificate shall include, but not be limited to, the following information: the child care facility name, the child care facility star rating, the child care facility Department of Social Services license number and the issue date and effective year.

3. Child care providers that operate as a corporation or sole proprietorship shall submit or maintain the credit certificate as required by the Secretary of the Department of Revenue in forms and instructions.

4. For child care providers that operate as flow through entities such as partnerships, LLCs electing partnership treatment, or S corporations passing credits through to shareholders, every partner, member, or shareholder claiming the credit must submit or maintain copies of the information issued by the Department of Social Services for each site. Every partner, member, or shareholder claiming the credit must submit or maintain a schedule showing how the total credit is allocated to each partner, member or shareholder.

5. The Department of Social Services shall provide information necessary for the Secretary of the Department of Revenue to determine and/or verify the provider's quality rating.

D. Credit for Child Care Directors and Staff

1. The Department of Social Services shall provide information necessary for the Secretary of the Department of Revenue to determine and/or verify the director and staff levels for earning the credit.

2. In order to claim this credit, the Department of Social Services, or their representative, must provide child care facility directors and staff members with a certificate no later than January 31 that states which level of qualification the employee meets according to the criteria established by the Department of Social Services. The taxpayer must submit or maintain the certificate as required by the Secretary of the Department of Revenue in forms and instructions.

3. Each child care facility director and staff member will also have to verify that he/she has worked at the same child care facility for at least six months in the calendar year, unless otherwise approved by the Department of Social Services.

4. Child care director and staff levels will have such meaning as provided by regulation issued by the Department of Social Services.

E. Business-Supported Child Care Credits

1. Business Child Care Expense Credit

a. In order for a business to claim this credit, the business must provide the Department of Revenue the following information: the name and Louisiana revenue tax identification number of the child care facility to or for whom the eligible expenses were paid or made, the amount and nature of qualifying expenses at each child care facility

as defined in R.S. 47:6102 and the child care facility's quality rating.

b. The Department of Social Services shall provide information necessary for the Secretary of the Department of Revenue to determine and/or verify the facility's quality rating.

2. Payments and Donations to Child Care Resource and Referral Agencies

a. In order for a business to claim this portion of the business child care expense credit, the taxpayer must provide the Department of Revenue a receipt from the child care resource or referral agency for the amount of money the taxpayer paid and/or donated during the taxable year.

b. If the child care resource or referral agency is part of a larger charitable organization, only fees and/or donations made to the child care resource or referral agency division of that organization will qualify for this credit. For example, if Volunteers of America has a division that functions as a child care resource or referral agency, only fees and donations made to the division of that organization would qualify for the credit while all other donations to Volunteers of America would not.

c. The Department of Social Services shall provide to the Department of Revenue a list of qualifying child care resource or referral agencies for each calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474 , R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6103.

HISTORICAL NOTE: Promulgated by the Department of Revenue and the Department of Social Services, LR 33:

Cynthia Bridges
Secretary Department of Revenue
and
Ann S. Williamson
Secretary Department of Social Services

0709#054

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

Wind or Solar Energy Systems Tax Credits
(LAC 61:I.1907)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6030, the Secretary of the Department of Revenue hereby adopts Emergency Rule LAC 61:I.1907 pertaining to the administration of the wind or solar energy system income tax credits allowed by R.S. 47:6030. This Rule is being adopted as an Emergency Rule because Act 371 requires the Department of Revenue to promulgate regulations within 90 days of the effective date of the Act. Act 371 became effective on July 10, 2007. This Emergency Rule shall be effective October 1, 2007, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final Rule, whichever comes first.

**Title 61
REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered
by the Secretary of Revenue**

Chapter 19. Miscellaneous Tax Exemptions

§1907. Income Tax Credits for Wind or Solar Energy Systems

A. Revised Statute 47:6030 provides an income tax credit for the purchase and installation of a wind or solar energy system by a Louisiana homeowner or the owner of a residential rental apartment project located in the state.

B. Definitions

Charge Controller—an apparatus designed to control the state of charge of a bank of batteries.

Grid-Connected, Net Metering System—a wind or solar electric system interconnected with the utility grid in which the customer only pays the utility for the net energy used from the utility minus the energy fed into the grid by the customer. All interconnections must be in accordance with the capacity, safety and performance interconnection standards adopted as part of the Louisiana Public Service Commission's and the New Orleans City Council's, as appropriate, established Net Metering rules and procedures.

Inverter—an apparatus designed to convert direct current (DC) electrical current to alternating current (AC) electrical energy. Modern inverters also perform a variety of safety and power conditioning functions that allow them to safely interconnect with the electrical grid.

Photovoltaic Panel—a panel consisting of a collection of solar cells capable of producing direct current (DC) electrical energy when exposed to sunlight.

Residence—a single family dwelling, one dwelling unit of a multi-family owner occupied complex, or one residential dwelling unit of a rental apartment complex. All eligible residences must be located in Louisiana.

Solar Electric System—a system consisting of photovoltaic panels with the primary purpose of converting sunlight to electrical energy and all equipment and apparatus necessary to connect, store and process the electrical energy for connection to and use by an electrical load.

Solar Thermal System—a system consisting of a solar energy collector with the primary purpose of converting sunlight to thermal energy and all devices and apparatus necessary to transfer and store the collected thermal energy for the purposes of heating water, space heating, or space cooling.

Supplemental Heating Equipment—a device or apparatus installed in a solar thermal system that utilizes energy sources other than wind or sunlight to add heat to the system, with the exception of factory installed auxiliary heat strips that are an integral component of a specifically engineered solar hot water storage tank.

Wind Energy System—a system of apparatus and equipment with the primary purpose of intercepting and converting wind energy into mechanical or electrical energy and transferring this form of energy by a separate apparatus to the point of use or storage.

C. Household Eligibility for Wind and/or Solar Energy Systems Tax Credits

1. Each residence in the state is eligible for tax credits for the number of separate complete wind, solar electric, and

solar thermal energy systems necessary to ensure that the residence is supplied with all of its energy needs.

2. The credit for the purchase and installation of a wind energy system or solar energy system by a resident individual at his residence shall be claimed by the resident individual on his Louisiana individual income tax return.

3. The credit for the purchase and installation of a wind energy system or solar energy system by the owner of a residential rental apartment project shall be claimed by the owner on his Louisiana individual, corporate or fiduciary income tax return.

4. All wind or solar energy systems must be installed in the immediate vicinity of the residence claiming the credit such that the electrical, mechanical or thermal energy is delivered directly to the residence.

5. In order to claim a tax credit(s) for a wind energy system, solar electric energy system, or solar thermal energy system the components for each system must be purchased and installed at the same time as a system. Eligible components of systems are defined in Section D.1 through D.3 below.

D. Wind and Solar Energy Systems Eligible for the Tax Credit

1. The credit provided by R.S. 47:6030 is only allowed for complete and functioning wind energy systems or solar energy systems.

2. Wind Energy Systems

a. Eligible wind energy systems under the tax credit include systems designed to produce electrical energy and systems designed to produce mechanical energy through blades, sails, or turbines and may include the following.

System Type	Eligible System Components
DC Wind Electric Generation Systems	DC output wind turbine, controllers, towers & supports, charge controllers, inverters, batteries, battery boxes, DC & AC disconnects, junction boxes, monitors, display meters, lightning and ground fault protection, and wiring and related electrical devices and supplies from generator to residence or electrical load
AC Wind Electric Generation Systems	AC output wind turbine, controllers, towers & supports, charge controllers, power conditioners/grid interconnection devices, batteries, battery boxes, AC disconnects, junction boxes, monitors, display meters, lightning and ground fault protection, and wiring and related electrical devices and supplies from generator to residence or electrical load
Mechanical Wind Systems	mechanical output wind turbine, towers & supports, mechanical interconnection between turbine and mechanical load

3. Solar Electric Systems

a. Eligible solar electric systems under the tax credit include grid-connected net metering systems, grid-connect net metering systems with battery backup, stand alone alternating current (AC) systems and stand alone direct current (DC) systems, designed to produce electrical energy and may include the following.

System Type	Eligible System Components
Grid-Connected, Net Metering Solar Electric Systems	photovoltaic panels, mounting systems, inverters, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load

System Type	Eligible System Components
Grid-Connected, Net Metering Solar Electric Systems with Battery Backup	photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric AC Systems	photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric DC Systems	photovoltaic panels, mounting systems, charge controllers, batteries, battery cases, DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load

4. Solar Thermal Systems

a. Solar thermal systems eligible under the tax credit include systems designed to produce domestic hot water, systems designed to produce thermal energy for use in heating and cooling systems and solar pool heating systems and may include the following.

System Type	Eligible System Components
Domestic Solar Hot Water Systems	solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks
Heating and Cooling Thermal Energy Systems	solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks
Pool Solar Heating System	solar pool heating collectors, mounting systems and devices, controllers, actuators, valves, pool covers, air elimination devices, sensors, piping and other related materials from solar pool heating collectors to interconnection with pool filtration system

5. All wind and solar energy systems for which a tax credit is claimed shall include an Operations and Maintenance manual containing a working diagram of the system, explanations of the operations and functions of the component parts of the system and general maintenance procedures.

6. All photovoltaic panels, wind turbines, inverters and other electrical apparatus claiming the tax credit must be UL listed and installed in compliance with all applicable building and electrical codes.

7. All solar thermal apparatus claiming the tax credit must be certified by the Solar Rating and Certification Corporation (SRCC) and installed in compliance with all applicable building and plumbing codes.

8. Applicants applying for the tax credit on any system(s) must provide proof of purchase to the Louisiana Department of Revenue detailing the following:

- a. type of system applying for the tax credit;
- b. output capacity of the system:
 - i. Solar Electric Systems—total nameplate listed kW of all installed panels;
 - ii. Solar Thermal Systems—listed SRCC annual BTU output;
 - iii. Wind Electric Systems—total rated kW of all alternators and generators;
 - iv. Wind Mechanical Systems—shaft horsepower as rated by manufacturer, licensed contractor or licensed professional engineer;
- c. physical address where the system is installed in the state;
- d. total cost of the system as applied towards the tax credit separated by:
 - i. equipment costs;
 - ii. installation costs;
- e. make and model number of generators, alternators, turbines, photovoltaic panels, inverters, and solar thermal collectors applied for in the tax credit.

E. Tax Exemption Eligibility of Certain Costs

1. Eligible Costs—Eligible costs that can be included under the tax credit are reasonable and prudent costs for equipment and installation of the wind and solar energy systems defined in Subsection B and described in Subsection D above. All installation must be performed by a contractor duly licensed by and in good standing with the Louisiana State Contractors Licensing Board, the owner of the residence, or by a person who has received certification by a technical college in the installation of such systems. Equipment costs must be in accordance with Subsections D 4, 5, 6 and 7 above.

2. Ineligible Costs—Labor costs for individuals performing their own installations are not eligible for inclusion under the tax credit. Supplemental heating equipment costs used with solar collectors are not eligible for inclusion under the tax credit.

3. Whenever, in return for the purchase price or as an inducement to make a purchase, marketing rebates or incentives are offered, the eligible cost shall be reduced by the fair market value of the marketing rebate or incentive received. Such marketing rebates or incentives include, but are not limited to, cash rebates, prizes, gift certificates, trips or any other thing of value given by the installer to the customer as an inducement to purchase an eligible wind or solar energy system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6030 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 33:

Cynthia Bridges
Secretary

0709#053

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

Child Care Assistance Program—LA Pathways
(LAC 67:III.5125 and 5127)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:III Subpart 12, Chapter 51, Child Care Assistance Program, Subchapter D Louisiana Pathways Child Care Career Development System(LA Pathways). This Emergency Rule shall be effective upon approval of the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs or the passage of 60 days following publication whichever occurs first, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final Rule, whichever comes first.

This Emergency Rule is necessary to effectuate the intent of the legislators in Act 394, Regular Session 2007. Revised Statute 47: 6103 clearly states that the Senate Committee of Revenue and Fiscal Affairs and the House Committee on Ways and Means have 60 days after publication of the emergency rule to take action on such rule. Additionally, by statute any rule needs to be effective by December 1, 2007, in order to be applicable to the tax year beginning January 1, 2008. A delay in promulgating this Rule would have an adverse impact on the entire school readiness tax credit program.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance Program

Subchapter D. Louisiana Pathways Child Care Career Development System (LA Pathways)

§5125. Authority

A. LA Pathways is the state practitioner registry maintained by the Department of Social Services. LA Pathways offers child care staff, including directors, teachers, assistant teachers and other classroom staff, a formal mechanism to track their training and educational attainment, experience and professional affiliation in the field of early care and education.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474 and R.S. 47:6101 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5127. Participation in LA Pathways

A. Any individual working or planning to work in the child care industry is eligible to enroll in LA Pathways by completing an application and forwarding the required documents. An application for enrollment and information about enrollment is available at <http://pathways.louisiana.gov> or by phoning the Division of Child Care and Early Childhood Education at 225-342-0694.

LA Pathways will register child care directors and staff according to requirements based on training and education, experience and professional activities, as approved by the Department of Social Services. Participation is voluntary.

B. Requirement for the Administrator Track for LA Pathways

Child Care Career Ladder Titles	Training and Education Requirements	Experience Requirements	Professional Activity Requirements
Assistant Director I	annual training as required by Licensing Minimum Standard	none	Encourage to participate in an early childhood professional organization
Assistant Director II	60 clock hours in approved core knowledge (CDA) subject areas including 6 hours in regulations	minimum 6 months	Encourage to participate in an early childhood professional organization
Assistant Director III	90 clock hours in approved core knowledge (CDA) subject areas including 15 hours in approved Administrative Training Categories	minimum 1 year	Encourage to participate in an early childhood professional organization
Director	as required by Licensing Minimum Standards	as required by licensing	Encourage to participate in an early childhood professional organization
Director I	CDA Credential or approved early childhood diploma and 30 clock hrs. in approved Administrative Training Categories or related associate degree or 30 hours toward associate degree with 4 college courses in early childhood or child development	minimum 1 year	Membership in an early childhood professional organization.
Director II	CDA Credential or approved early childhood diploma and 45 clock hrs. in approved Administrative Training Categories or National Administrative Credential or associate degree in early childhood or child development or related associate degree with 4 college courses in early childhood or child development or related bachelor degree with 3 college courses in early childhood or child development	minimum 18 months	Membership in an early childhood professional organization and service to the profession such as: serving on a board or committee, presenting at a conference, participating as a CDA advisor or mentor, attendance at a conference or professional event

Child Care Career Ladder Titles	Training and Education Requirements	Experience Requirements	Professional Activity Requirements
Director III Administrator Certificate To receive an Administrator Certificate you must have 75 clock hours of instruction in approved Administrative Training Categories 2 college courses in approved administration can be substituted for the Administrator Certificate	CDA Credential or approved early childhood diploma and Administrator Certificate or associate degree in child development or early childhood and Administrator Certificate or bachelor degree in early childhood or child development of which 3 college courses focus on infants and toddlers and Administrator Certificate or related bachelor degree with 6 college courses in early childhood or child development of which 3 courses focus on infants and toddlers and Administrator Certificate	minimum 2 years	Membership in an early childhood professional organization and service to the profession such as: serving on a board or committee, presenting at a conference, participating as a CDA mentor or advisor, attendance at a conference or professional event
Level VIII Director IV	master degree in early childhood, child development or early childhood administration of which 3 courses focus on infants and toddlers and Administrator Certificate or related masters degree with 8 college courses in early childhood or child development of which 3 courses focus on infants and toddlers and Administrator Certificate	minimum 2 years	Membership in an early childhood professional organization and service to the profession such as: serving on a board or committee, presenting at a conference, participating as a CDA mentor or advisor, attendance at a conference or professional event

C. Requirements for the Classroom Track for LA Pathways.

Child Care Career Ladder Titles	Training and Education Requirements	Experience Requirements	Professional Activity Requirements
Child Care Staff I	as required by licensing regulations	none	encouraged to participate in an early childhood professional organization

Child Care Career Ladder Titles	Training and Education Requirements	Experience Requirements	Professional Activity Requirements
Child Care Staff II	12 clock hours of instruction in approved core knowledge (CDA) subject areas	minimum 6 months	encouraged to participate in an early childhood professional organization
Child Care Staff III	30 clock hours of instruction in approved core knowledge (CDA) subject areas	minimum 1 year	encouraged to participate in an early childhood professional organization
Child Care Staff IV	60 clock hours of instruction in approved core knowledge (CDA) subject areas	minimum 1 year	encouraged to participate in an early childhood professional organization
Child Care Assistant Teacher I	90 clock hours of instruction in approved core knowledge (CDA) subject areas	minimum 1 year	encouraged to participate in an early childhood professional organization
Child Care Assistant Teacher II	120 clock hours of instruction in approved core knowledge (CDA) subject areas	minimum 1 year	encouraged to participate in an early childhood professional organization
Child Care Teacher I	CDA credential In preschool or infant/toddler specialization or approved early childhood diploma	minimum 1 year	encouraged to participate in an early childhood professional organization
Child Care Teacher II	CDA credential or approved early childhood diploma and 9 CEU's or 2 early childhood college courses or 30 hours toward associate degree with 4 college courses in early childhood or child development or related associate degree	minimum 2 years	membership in an early childhood professional organization and service to the profession such as: committee or board membership, service as a CDA advisor or mentor, attendance at a professional conference or event, conference presentation, advocacy and leadership activities
Child Care Teacher III	associate degree in early childhood or child development or related associate degree with 4 college courses in early childhood or child development or bachelor degree in early childhood or child development or related bachelor degree with 3 college courses in early childhood or child development	minimum 2 years	membership in an early childhood professional organization and service to the profession such as: committee or board membership, service as a CDA advisor or mentor, attendance at a professional conference or event, conference presentation, advocacy and leadership activities

Child Care Career Ladder Titles	Training and Education Requirements	Experience Requirements	Professional Activity Requirements
Child Care Teacher IV	bachelor degree in early childhood or child development of which 3 college courses focus on infants and toddlers or related bachelor degree with 6 early childhood or child development college courses of which 3 focus on infants and toddlers	minimum 2 years	membership in an early childhood professional organization and service to the profession such as: committee or board membership, service as a CDA advisor or mentor, attendance at a professional conference or event, conference presentation, advocacy and leadership activities
Child Care Master Teacher	graduate degree in early childhood or child development or unrelated graduate degree with 4 early childhood or child development college courses	minimum 2 years	membership in an early childhood professional organization and service to the profession such as: committee or board membership, service as a CDA advisor or mentor, attendance at a professional conference or event, conference presentation, advocacy and leadership activities

D. Qualification for the School Readiness Tax Credit for child care directors and staff.

1. The Department of Social Services shall provide information necessary for the Secretary of the Department of Revenue to determine and/or verify the director and staff levels for earning the credit.

2. Child Care Director Levels:

a. Directors who are classified as Director I by LA Pathways are classified as meeting Level I qualifications for purposes of this credit.

b. Directors who are classified as Director II by LA Pathways are classified as meeting Level II qualifications for purposes of this credit.

c. Directors who are classified as Director III by LA Pathways are classified as meeting Level III qualifications for purposes of this credit.

d. Directors who are classified as Director IV by LA Pathways are classified as meeting Level IV qualifications for purposes of this credit.

3. Child Care Staff Levels:

a. Staff members who are classified as Child Care Teacher I by LA Pathways are classified as meeting Level I requirements for purposes of this credit.

b. Staff members who are classified as Child Care Teacher II by LA Pathways are classified as meeting Level II requirements for purposes of this credit.

c. Staff members who are classified as Child Care Teacher III by LA Pathways are classified as meeting Level III requirements for purposes of this credit.

d. Staff members who are classified as Child Care Teacher IV or Child Care Master Teacher by LA Pathways are classified as meeting Level IV requirements for purposes of this credit.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474 and R.S. 47:6101 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Ann S. Williamson
Secretary

0709#012

DECLARATION OF EMERGENCY

Department of Social Services Family Support

Child Care Quality Rating System (LAC 67:III.5115-5123)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:III Subpart 12, Chapter 51, Child Care Assistance Program, Subchapter C, Child Care Quality Rating System (QRS) effective, August 17, 2007. This Rule shall remain in effect for a period of 120 days.

Adoption of Subchapter C, Quality Rating System (QRS), is pursuant to the authority granted to the Department by the Child Care and Development Fund (CCDF). As a result of the devastation resulting from Hurricanes Katrina and Rita, child care centers in Louisiana have struggled to rebuild in affected areas. In other parts of the state, the centers have expanded their capacity to serve these displaced families. In an effort to guide child care centers as they restore critically needed child care services, the agency has established a quality rating system which uses licensing as the foundation and sets a continuum of quality indicators focused in the social-emotional needs of children. The Quality Rating System will provide a mechanism by which child care centers can be assessed regarding the level of quality care given. The QRS will also provide a guide for parents to choose higher settings of child care beyond basic licensure and will offer a structure for child care centers to communicate the level of quality provided in their facility.

This Declaration of Emergency is preceded by and shall replace the Declaration of Emergency effected May 1, 2007, and published in the May 2007 issue of the *Louisiana Register*.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance Program

Subchapter C. Child Care Quality Rating System

§5115. Authority

The Child Care Quality Rating System is established and administered under the authority of state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5117. Definitions

Approved Courses—courses that are deemed approved by the department.

Assistant Directors—must be on site for a minimum of 20 hours per week for centers with an enrollment of 101 or more.

Assistant Teachers—any staff who cares for children at least 16 or more hours per week and is not a lead teacher and meets the assistant teacher criteria.

Child Care Center—a licensed day care center.

Child Care Resource and Referral (CCR&R)—a state and/or local organizations with whom the department has contracted to provide services to families, early childhood professionals, and communities statewide.

Child Development Associate (CDA) Credential—a nationally recognized credential which can be used to meet staff qualification requirements.

Director—an administrator who meets the director qualifications and is on-site a minimum of 30 hours per week. This requirement can be met by having one or more persons on site who meet these qualifications.

Early Childhood Environment Rating Scale-Revised (ECERS-R)—a research-based assessment tool that measures environmental indicators of quality in preschool classrooms with children ages 2.5–5 years of age.

Environment Rating Scales (ERS)—the assessment tools developed at Frank Porter Graham Child Development Institute at the University North Carolina that measure environmental indicators of quality. They include the Infant Toddler Environment Rating Scale-Revised (ITERS-R) and the Early Childhood Environment Rating Scale-Revised (ECERS-R), as well as the School Age Care Environment Rating Scale (SACERS) for school age programs, and the Family Child Care Environment Rating Scale-Revised (FCCERS-R) for family child care homes.

Group—those children who are assigned for most of the day to a specific teacher and who occupy an individual classroom or well defined space that prevents intermingling of children from different groups within a larger group or area.

Infant Toddler Environment Rating Scale-Revised (ITERS-R)—a research-based assessment tool that measures environmental indicators of quality in preschool classrooms with children 0-2.5 years of age.

Lead Teacher—a teacher who has primary responsibility for a designated classroom including, planning and supervision and spends at least 25 hours a week in that classroom. All classrooms must have a lead teacher.

Louisiana Pathways Child Care Career Development System—the state practitioner registry maintained by the Department of Social Services and/or its contractor. LA Pathways registers child care directors and staff according to requirements based on training and education, experience, and professional activities, as approved by the Department of Social Services. Categories are established for child care staff, child care assistant teacher, child care teacher, child care assistant director and child care director. Information on LA Pathways can be found at <http://pathways.louisiana.gov/> or www.dss.state.la.us.

Quality Rating System (QRS) Points—points given in the Program, Staff Qualifications, Administrative Practices, and Family and Community Involvement areas. All items

within a point must be verified to receive credit. The total points earned determine the star award at star rating 3, 4, and 5.

Service Period—the months within the calendar quarter for which a child received care.

Social Emotional Subscales of the Environment Rating Scales—a subscale of the ECERS-R and ITERS-R generated by the scores earned on the Language-Reasoning, Interaction and Program Structure subscales of the ECERS-R and the Listening and Talking, Interaction and Program Structure subscales of the ITERS-R. This new subscale score will be used to determine the ERS score for Program Points 1–4.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5119. Quality Rating System Requirements

A. The Child Care Quality Rating System (QRS) is designed to assess levels of child care, support improvements of child care centers, and communicate the level of quality in early care and education programs. The QRS consists of five star ratings that can be earned by a licensed child care center, uses licensing as the foundation, and has four star ratings above Louisiana's licensing standards. The system components (Administrative Practices, Family and Community Involvement, Program, and Staff Qualifications) have indicators that must be achieved to earn the star rating.

1. Foundation One Star—to participate at the one-star level, a child care center shall have a license to operate and comply with standards as defined in LAC 48:I.5301-5354.

2. Foundation Two Star—to earn a two-star award, a child care center must meet all the standards for a Foundation One Star, have been in operation for six months, and meet the following.

a. Administrative Practices

i. Written personnel policies including:

- (a). operational hours;
- (b). dress code;
- (c). use of telephone; and
- (d). schedule.

ii. Job descriptions that include a list of qualifications on file and are provided to all staff.

iii. Provide one staff benefit from the list of options below for all full-time staff. Staff benefit options:

(a). Employee health insurance or comparable health benefits;

(b). paid annual leave;

(c). paid sick leave;

(d). paid holidays;

(e). child care benefit/discount;

(f). bonus based on merit/achievement or education;

(g). retirement compensation;

(h). annual increments based on merit;

(i). tuition reimbursement, and other related educational expenses such as books, travel, fees, substitutes;

(j). differential shift pay;

(k). flextime;

(l). pay professional association membership fee.

b. Family and Community Involvement

i. Parent provided pre-enrollment visit and center tour.

ii. Give every parent enrolling a child a list of community resources including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, food stamps and information on a child's medical home.

c. Program

i. Make four of the following activity areas available daily:

- (a). art and creative play;
- (b). children's books;
- (c). blocks and block building;
- (d). manipulatives; and
- (e). family living and dramatic play.

ii. Complete a self assessment of program and develop an improvement plan.

d. Staff Qualifications

i. Directors and teachers must join and maintain a current record with the Louisiana Pathways Child Care Career Development System Registry. A director must complete three hours of Environment Rating Scales training.

ii. Director (on-site)

(a). Three semester hour credits in care of young children or child development¹ and

(b). Three semester hour credits in administration² and

(c). One year experience in teaching young children in an early childhood program.

iii. Assistant Director

(a). Three semester hour credits in care of young children or child development.¹

iv. Teacher. Seventy-five percent of lead teachers must meet one of the following:

(a). complete three semester hour credits course in care of young children or child development¹ from a list of approved courses or enroll in the course and complete within one year of employment.

3. Point Standards for child care centers seeking Three Star rating, Four Star rating, and Five Star ratings. To achieve a higher rating, a Child Care Center must meet all requirements of the Foundation Two Star and earn points in the Program and Staff Qualifications by meeting the requirements listed below. At least one point must be earned in each Program and Staff Qualifications. The Quality Point referenced in Subparagraph 3.c. may also be earned. The total number of points will determine the Star rating awarded to the center.

Total Number of Points	Star Rating
3-5 points	Three Stars
6-9 points	Four Stars
10-11 points	Five Stars

a. Program

Points	Criteria								
1	An average of 3.75 on the designated social-emotional subscale of the Environment Rating Scales (ERS) ³ , with no one classroom score lower than 3.0 on the subscale.								
2	An average of 4.0 on the designated social-emotional subscale of the ERS ³ with no one classroom score lower than 3.0 on the subscale.								
3	<p>1. An average of 4.25 on the designated social-emotional subscale of the ERS³ with no one classroom score lower than 3.25 on the subscale.</p> <p>2. Staff: Child Ratio and Group Size</p> <table border="1" style="width: 100%;"> <tr> <td>0-12 months 1:4,8</td> <td>25-36 months 1:8, 16</td> <td>4 yrs 1:12, 24</td> <td>6 yrs & up 1:20, 30</td> </tr> <tr> <td>13-24 months 1:6,12</td> <td>3 yrs 1:10, 20</td> <td>5 yrs 1:15, 30</td> <td></td> </tr> </table> <p>3. Written transition procedures for children moving within a program or to other programs or beginning school.</p>	0-12 months 1:4,8	25-36 months 1:8, 16	4 yrs 1:12, 24	6 yrs & up 1:20, 30	13-24 months 1:6,12	3 yrs 1:10, 20	5 yrs 1:15, 30	
0-12 months 1:4,8	25-36 months 1:8, 16	4 yrs 1:12, 24	6 yrs & up 1:20, 30						
13-24 months 1:6,12	3 yrs 1:10, 20	5 yrs 1:15, 30							
4	<p>1. An average of 4.5 on the designated social-emotional subscale of the ERS with no one classroom score lower than 3.5 on the overall ERS.</p> <p>2. Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources.</p> <p>3. Staff: Child Ratio and Group Size</p> <table border="1" style="width: 100%;"> <tr> <td>0-12 months 1:4, 8</td> <td>25-36 months 1:8, 16</td> <td>4 yrs 1:12, 24</td> <td>6 yrs & up 1:20, 30</td> </tr> <tr> <td>13-24 months 1:6, 12</td> <td>3 yrs 1:10, 20</td> <td>5 yrs 1:15, 30</td> <td></td> </tr> </table> <p>4. Written transition procedures for children moving within a program or to other programs or beginning school.</p>	0-12 months 1:4, 8	25-36 months 1:8, 16	4 yrs 1:12, 24	6 yrs & up 1:20, 30	13-24 months 1:6, 12	3 yrs 1:10, 20	5 yrs 1:15, 30	
0-12 months 1:4, 8	25-36 months 1:8, 16	4 yrs 1:12, 24	6 yrs & up 1:20, 30						
13-24 months 1:6, 12	3 yrs 1:10, 20	5 yrs 1:15, 30							

Points	Criteria
5	<ol style="list-style-type: none"> An average of 5.0 on the overall ERS, with no one classroom score lower than 4.0. Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources. Provide a plan for continuity of care for all children 0-36 months of age. Implementation of Louisiana's Early Learning Guidelines and Program Standards; Birth through Three, (DSS October 2006) and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003). Staff: Child Ratio and Group Size: 0-24 months 1:4, 8 2 yrs 1:6, 12 3 yrs 1:8, 16 4 yrs 1:10, 20 5 yrs 1:10, 20 6 yrs and up 1:12, 24

b. Staff Qualifications

Points	Criteria
1	<p>All teachers and directors complete three hours of ERS training.</p> <p>Director (on-site)</p> <ol style="list-style-type: none"> Six semester hour credits in care of young children or child development¹, and Three semester hour credits in administrative coursework², and One year experience teaching young children in an early childhood program. <p>Assistant Director</p> <p>Three semester hour credits in care of young children or child development.¹</p> <p>Lead Teacher</p> <p>All of Lead Teachers must complete three semester hour credits in care of young children or child development from a list of approved courses¹ or enroll in the course and complete within one year of employment.</p> <p>Assistant Teacher</p> <p>Fifty percent of Assistant Teachers must have completed or be enrolled in three semester hour credits in the care of young children or child development¹ and complete the course within one year of employment.</p>
2	<p>All teachers and directors complete three hours of ERS training.</p> <p>Director</p> <ol style="list-style-type: none"> Nine semester hour credits in care of young children or child development¹, and Three semester hour credits in administrative coursework², and One year of teaching experience and one year teaching or administrative experience in an early childhood program. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in care of young children or child development¹, and Three semester hour credits in administrative coursework², and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> Seventy-five percent of Lead Teachers must have completed six semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed three semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete within one year of employment, and One year full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>50 percent of Assistant Teachers must have completed or be enrolled in three semester hour credits in the care of young children or child development¹ and complete the course within one year of employment.</p>
3	<p>Directors and all teachers complete six hours of ERS training. Directors and lead teachers complete training in social-emotional screening of children. Director completes training in Louisiana's Early Learning Guidelines and Program Standards Birth Through Three (DSS October 2005) and the LA Content Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> Twelve semester hours in care of young children or child development¹, and Six semester hours of administrative coursework², and One year teaching experience and 1 year administrative experience and one year teaching or administrative experience in an early childhood setting for a total of three years experience. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in care of young children or child development¹, and Three semester hour credits in administrative coursework², and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> Seventy-five percent of Lead Teachers must have completed nine semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed six semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete within one year of employment, and One year full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>50 percent Assistant Teachers must have completed three semester hour credits in the care of young children or child development¹.</p>

Points	Criteria
4	<p>Directors and all teachers complete 6 hours of ERS training. Directors and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs.</p> <p>Directors and lead teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth Through Three, (DSS October 2005) and the LA Content Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> 1. Fifteen semester hour credits in the care of young children or child development¹, and 2. Six semester hour credits of administrative coursework², and 3. One year teaching experience and one year administrative experience and two years teaching and/or administrative experience in an early childhood setting for a total of four years experience. <p>Assistant Director</p> <ol style="list-style-type: none"> 1. Three semester hour credits in care of young children or child development¹, and 2. Three semester hour credits in administrative coursework², and 3. One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> 1. Seventy-five percent of Lead Teachers must have completed 12 semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed nine semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete within one year of employment, and 2. Two years full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>All Assistant Teachers must have completed three semester hour credits in the care of young children or child development¹.</p>
5	<p>Directors and all teachers complete six hours of ERS training. Directors and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs.</p> <p>Directors and all teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth Through Three, (DSS October 2005) and the LA Content Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> 1. Associate's degree in the care of young children, child development or related field, with specific coursework in infant-toddler care, care of exceptional children and care of school age children or equivalent such as Director III LA Pathways and/or including, 2. Six semester hour credits or 75 hours of administrative training², and 3. One year teaching experience and one year administrative experience and three years teaching and/or administrative experience in an early childhood setting for a total of five years experience. <p>Assistant Director</p> <ol style="list-style-type: none"> 1. Six semester hour credits in care of young children or child development¹, and 2. Three semester hour credits in administration², and 3. One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> 1. All Lead Teachers must have six semester hour credits in the care of young children or child development¹ from a list of approved courses, and 2. Seventy-five percent of Lead Teachers must have completed 15 semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed 12 semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete within a year of employment, and 3. Two years full-time experience in an early childhood setting for all teachers. <p>Assistant Teacher</p> <p>All Assistant Teachers must have completed six semester hour credits in the care of young children or child development¹ or have completed three semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete within one year of employment.</p>

c. An additional Quality Point can be earned by meeting additional requirements in both the Administrative Practices and the Family/Community Involvement areas.

Quality Point	
Points	Criteria
1	<p>Administrative Practices - meet three requirements below</p> <ol style="list-style-type: none"> 1. Provide four of the benefits from the list* of options below for all full time staff. 2. Include grievance procedure and a professional conduct code for staff in written personnel policies. 3. Pay scale based on education, experience, responsibilities and merit. 4. Provide training to staff on cultural sensitivity. 5. Written parent and staff confidentiality policy and provide training to staff <p>and</p> <p>Family/Community Involvement - meet four requirements below</p> <ol style="list-style-type: none"> 1. Participate in meetings for directors provided by Resource and Referral agency at least quarterly, with the director or assistant director attending 50 percent of the meetings. 2. Provide a complaint process for parents. 3. Offer opportunity for a formal parent/teacher conference meeting annually. 4. Provide an expanded list of local community resources to parents annually including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, food stamps and information on a child's medical home. 5. Parent Advisory Council meets annually to review policies, procedures and parent handbook. 6. One group meeting per year offered to all families. 7. One parent education workshop offered per year by center or other agency.

The following footnotes reference program criteria and staff qualifications in Section 5119:

Staff Qualifications

¹The following may be substituted to meet this requirement of three semester hour credits in the care of young children or child development: a CDA or have approved high school child development courses or have five years full-time experience in an early childhood program or have completed a Child Care Assistant Teacher 1 LA Pathways Classroom Certificate. The following may be used to meet the requirement of up to six semester hour credits in the care of young children or child development: CDA or have completed a Child Care Assistant Teacher 2 LA Pathways Classroom Certificate. An individual may use the above substitutions to meet the requirements for a maximum of six semester hour credits.

²The following may be substituted to meet the requirement for three semester hour credits in administration: LA Pathways Administrator Certificate or National Administrator Credential (NAC) or three years experience in administration or a combination of one year in administration experience and four years in teaching young children in an early childhood program.

NOTE: For Director Qualification: Experience in teaching young children or administration may only be substituted one time. At the next QRS review, the necessary educational requirement (credits in the care of young children or child development or credits in administration) must be met.

³For the purpose of this document, the designated social-emotional subscale of the ERS is defined as consisting of the following subscales: ITERS-R—Listening and Talking, Interaction and Program Structure; ECERS-R—Language—Reasoning, Interaction and Program Structure.

* Staff benefits options: employee health insurance or comparable health benefits; paid annual leave; paid sick leave; paid holiday; child care benefit/discount; bonus based on merit/achievement or education; retirement compensation; annual increments based on merit; tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes; differential shift pay, flextime, paid professional association fee.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5121. Participation

A. A child care center will complete the application for participation in the Quality Rating System. A quality rating verification visit will be conducted by the department and one or more stars may be awarded.

B. Quality ratings will be valid for one year from the date of the star rating award. Ratings will have to be earned annually through the quality rating verification process.

C. Centers with one-star award may apply for a quality rating verification after receiving their one-star award. Centers with more than one-star may apply for a quality rating review six months after the date of their current rating award.

D. Centers that have achieved a Star Rating will have their rating revoked if the child care license is revoked or if the child care center is referred to the designated licensing committee with a recommendation from the department for revocation.

E. Centers that have achieved a star rating may have their rating reviewed and modified if, at any time, it becomes known to the department or the department receives information or has actual knowledge that the child care center no longer meets standards for the center's current star rating award.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5123. Quality Rating System Awards

A. Bonus payments will be issued after the end of each calendar quarter to Class A child care centers that care for children receiving assistance from the Child Care Assistance Program and for children in the state's Foster Care Program in accordance with the star rating for the service(s) period for that quarter. The payment is equal to a percentage, as defined below, of all child care subsidy payments received from the department by the Class A center for services provided during the service period(s) based for that quarter on the center's rating(s):

1. one star—0 percent;
2. two star—3 percent;
3. three star—8 percent;
4. four star—13.5 percent;
5. five star—20 percent.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Ann S. Williamson
Secretary

0709#003

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

TANF—Domestic Violence and Homeless Initiative
(LAC 67:III.5509 and 5589)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to amend LAC 67:III.5509, Domestic Violence Services, and 5589, Homeless Initiative. These amendments are necessary to allow the agency to provide community collaboration training for the purpose of educating the community regarding domestic violence and the available services to victims of domestic violence provided by the agency and to clarify available services provided to the homeless. An Emergency Rule is needed for the agency to remain in compliance with federal regulations regarding Louisiana's Temporary Assistance to Needy Families (TANF) block grant. This Emergency Rule, effective October 13, 2007, will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective June 15, 2007, since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. (The final Rule will be published in the October 2007 issue.)

Section 5509, Domestic Violence Services, is being amended to clarify services provided to victims of domestic violence and their children. Section 5589 Homeless Initiative is being amended to clarify the definition of basic needs concerning homelessness.

The authorization for emergency actions in these matters is contained in Act 17 of the 2006 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

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

Chapter 55. TANF Initiatives

§5509. Domestic Violence Services

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to provide services for victims of domestic violence and their children, including rural outreach and community collaboration training for the purpose of educating attendees about domestic violence and the available services provided by the Department of Social Services including but not limited to TANF, Food Stamps, Child Care, and Employment Training.

B. - D. ...

E. Direct services that provide for basic needs and are provided in response to an episode of need or a specific crisis situation and are non-recurrent, such as but not limited to food, clothing, and shelter assistance, will not be provided beyond four months.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2099 (November 2006), amended LR 33:0000 (July 2007).

§5589. Homeless Initiative

A. Effective December 1, 2006, the Office of Family Support shall enter into contracts with public agencies, non-profit organizations, or for-profit organizations to end the cycle of homelessness in Louisiana by providing services to homeless families which include but are not limited to comprehensive case management, educational and employment opportunities for adult participants, community referrals, life skill modules, and housing options. Direct services that are provided in response to an episode of need or a specific crisis situation and are non-recurrent, such as but not limited to food, clothing, and shelter assistance, will not be provided beyond four months.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 17, 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:674 (April 2007), amended LR 33:

Ann S. Williamson
Secretary

0709#059

DECLARATION OF EMERGENCY

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

2007-08 Deer Tagging and Validation

In accordance with the provisions of R.S. 49:953B and 967D(1) of the Administrative Procedure Act, and under the authority of R.S. 56:115 and 56:108, the Wildlife and

Fisheries Commission hereby adopts the following Emergency Rule:

Whereas this commission previously established rules and regulations pertaining to mandatory deer tagging and validation statewide for the 2007-08 Deer Season, and because problems associated with hunters being able to obtain deer tags at the time hunting licenses went on sale on June 1, 2007 caused hunters to obtain licenses without tags or with improper tags, the department recommends that the mandatory requirements for statewide deer tagging and validation be suspended for the 2007-08, and that deer tagging and reporting be done on a voluntary basis for the 2007-08 deer season. Therefore, this commission hereby adopts the following regulation:

The Wildlife and Fisheries Commission suspends the rules and regulations requiring mandatory deer tagging and validation for the 2007-08 deer season. Tagging and reporting will be voluntary for the 2007-08 deer season.

This action must be taken by Declaration of Emergency since the commission's rules and regulations for the 2007-08 have been approved and submitted to the legislative leadership and the State Register, and insufficient time remains to make these changes via standard rulemaking prior to the opening of the 2007-08 Deer Season.

This provision supersedes the corresponding provision contained in LAC 76:XIX.111 which was promulgated as a Rule and published in the *Louisiana Register* [LR 33:1382 (July 2007)].

Earl P. King, Jr.
Chairman

0709#040

DECLARATION OF EMERGENCY

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

2007-08 Ducks, Coots, and Geese Hunting Season

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

The hunting season for ducks, coots and geese during the 2007-2008 hunting season shall be as follows:

Ducks and Coots: 60 days

West Zone: November 10 - December 2
December 15 - January 20

East Zone: November 17 - December 2
December 15 - January 27

Youth Waterfowl Weekend - November 3-4 in West Zone, November 10-11 in East Zone.

Daily Bag Limits: The daily bag limit on ducks is 6 and may include no more than 4 mallards (no more than 2 of which may be females), 1 pintail, 3 mottled ducks, 1 black duck, 2 wood ducks, 2 scaup, 2 redheads and 2 canvasback. Daily bag limit on coots is 15.

Mergansers - The daily bag limit for mergansers is 5, only 2 of which may be a hooded merganser. Merganser limits are in addition to the daily bag limit for ducks.

Possession Limit - The possession limit on ducks, coots and mergansers is twice the daily bag limit.

Geese: 72 days

Light Geese (Snow, Blue and Ross's) and

White-Fronted Geese

West Zone: November 10 – December 2

December 15 - February 1

East Zone: November 5 - December 2

December 15 - January 27

Daily bag limit on light geese (snow, blue and Ross's):
20

Possession limit on light geese (snow, blue and Ross's):
None

Daily Limit on white-fronted geese: 2

Possession Limit on white-fronted geese: 4

Canada Geese: Closed in the area described below

January 12 - January 27

Daily Limit on Canada geese: 1

Possession limit on Canada geese: 2

The Canada Goose Season will be open statewide except for a portion of southwest Louisiana. The closed area is described as follows: Beginning at the Texas State Line, proceeding east along Hwy. 82 to the Calcasieu Ship Channel, then north along the Calcasieu Ship Channel to its junction with the Intracoastal Canal, then east along the Intracoastal Canal to its juncture with LA Hwy. 82, then south along LA Hwy. 82 to its juncture with Parish Road 3147, then south and east along Parish Road 3147 to Freshwater Bayou Canal, then south to the Gulf of Mexico, then west along the shoreline of the Gulf of Mexico to the Texas State Line, then north to the point of beginning at LA Hwy. 82. Open waters of Lake Arthur and the Mermentau River from the Highway 14 bridge southward will also be closed to Canada goose hunting.

A special permit shall be required to participate in the Canada Goose Season. A permit is required of everyone, regardless of age, and a non-refundable \$5 administrative fee will be charged. This permit may be obtained from any license vendor.

Conservation Order for Light Geese

(Snow, Blue and Ross's)

West Zone: December 3 - December 14

February 2 - March 9

East Zone: December 3 - December 14

January 28 - March 9

Only snow, blue and Ross's geese may be taken under the terms of the Conservation Order, which allows the use of electronic calls and unplugged shotguns and eliminates the daily bag and possession limits. During the Conservation Order, shooting hours begins one-half hour before sunrise and extends until one-half hour after sunset.

Rails: November 10 - January 2

Kind and Clapper: Daily bag limit 15 in the aggregate, possession 30.

Sora and Virginia: Daily bag and possession 25 in the aggregate.

Gallinules: November 10 - January 2

Daily bag limit 15, Possession limit 30

Snipe: November 3 - December 3

December 15 - February 28

Daily bag limit 8, Possession limit 16

Shooting Hours: One-half hour before sunrise to sunset, except at the Spanish Lake Recreation Area in Iberia Parish where shooting hours, including the Conservation Order, end at 2 p.m.

Extended Falconry Seasons for Ducks, Rails and Gallinules:

Statewide: November 3 - February 1

Sixteen days of the total season lengths for rails, gallinules and extended falconry seasons were used during the September teal season.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 200,000 sportsmen, selection of season dates, bag limits and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective November 1, 2007 and extend through one-half hour after sunset on March 9, 2008.

Bryant O. Hammett, Jr.
Secretary

0709#039

Rules

RULE

Department of Agriculture and Forestry Horticulture Commission

Retail Florists (LAC 7:XXIX.102, 117 and 123)

In accordance with R.S. 49:953(A)(1)(a), notice is hereby given that the Horticulture Commission adopts amendments to its regulations. The amendments add a preamble to the definitions in the regulations, define floral design, clarify the wording of existing professional standards and requirements for retail florists, establish additional professional standards for retail florists, and consolidate into one Section professional and occupational requirements that were in two Sections.

These regulations comply with the statutory law administered by the Horticulture Commission and are enabled by R.S. 3:3801(F) and R.S. 3:3804(A).

Title 7

AGRICULTURE AND ANIMALS

Part XXIX. Horticulture Commission

Chapter 1. Horticulture

§102. Definitions

A. The words and terms defined in R.S. 3:3803 are applicable to this Chapter.

B. The following words and terms are defined for the purpose of enforcing the provisions of R.S. 3:3801 et seq.

* * *

Floral Design—an arrangement of cut flowers, ornamental plants, other living or freshly cut plant materials, or any combination thereof intentionally constructed so as to constitute a planned relationship among them.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801 and R.S. 3:3804.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Horticulture Commission, LR 26:627 (April 2000), amended LR 33:1854 (September 2007).

§117. Professional and Occupational Standards and Requirements

A. Retail Florist

1. Professional Standards

a. All cut flowers, ornamental plants, and living or freshly cut plant materials sold or offered for sale must be fresh, of high quality, and free from injurious insects, diseases, and other pests. No plant material of low quality and no wilted or dead plant materials may be offered for sale to the general public or sold to a consumer except when specifically requested by the consumer.

b. Floral designs, cut flowers, ornamental plants, and living or freshly cut plant materials must be cared for in a manner that, to the extent reasonably possible, maintains their freshness and increases their longevity.

c. Coolers where floral designs, cut flowers, ornamental plants, or living or freshly cut plant materials, are kept or stored must be clean and maintained at a

temperature conducive to prolonging the freshness of the said products kept or stored in the coolers.

d. Containers holding cut flowers or living or freshly cut plant materials must be maintained in a manner that does not adversely affect the cut flowers or plant material. Water in containers must be changed periodically so as to remain clean at all times.

e. Floral designs shall be prepared in a good and workmanlike manner and shall satisfy the consumer's requests that are objective in nature. All reasonable efforts should be made to satisfy the consumer's requests that are subjective in nature. All floral designs must be constructed in such a manner as to remain intact during transportation.

f. All wires, steel picks, corsage pins, and other sharp objects employed in the construction of a floral design must be used in a manner that will maintain the integrity of the floral design while minimizing the risk of injury to any person handling the floral design.

g. Compliance with equivalent procedures and techniques set forth in James L. Johnson, William J. McKinley, Jr. and M. Buddy Benz, *Flowers: Creative Design* (San Jacinto Publishing Co. 7th ed. 2001; distributed by Texas A&M Univ. Press) will establish a rebuttable presumption of compliance by the licensee with these professional standards.

2. Requirements

a. Retail florist shops that lose their licensed florist will be granted a grace period of 90 days of operating without the services of a full-time licensed florist. This grace period shall end 90 days from that date. The purpose of this grace period is to provide the florist shop an opportunity to employ a licensed person. This grace period can only be used once in a 12-month period. Retail florist shops shall cease to engage in the profession of retail florist after the grace period has been exhausted. In the event a retail florist shop, despite reasonable prevention efforts, loses its only or only remaining regularly employed licensed retail florist, the florist shop must replace the regularly employed licensed retail florist as soon as possible but in no event more than 90 days from the first day the retail florist shop operated without a regularly employed licensed retail florist. Notwithstanding the foregoing, no retail florist shop shall operate without a regularly licensed retail florist for more than a total of 90 days in any 12-month period that follows the first day of operation without a regularly employed licensed retail florist.

b. Retail florists may rent potted ornamental plants for special events such as weddings, conventions, trade shows, etc., if such plants are normally and customarily sold by florists and such plants do not require maintenance, other than normal watering. Plants rented by retail florists for a special event shall be rented only for the duration of that special event.

B. Landscape Architect

1. - 5.h. ...

C. Wholesale Florist

1. - 3. ...

- D. Horticulturist
 - 1. - 5. ...
- E. Arborist
 - 1. - 9. ...
- F. Landscape Contractor
 - 1. - 6. ...
- G. Nursery Stock Dealer
 - 1. - 6. ...
- H. Cut Flower Dealer
 - 1. - 3. ...

4. The restriction against a cut flower dealer locating within 300 feet of an established retail florist shall not apply to cut flower dealers in permanent locations. In addition, cut flower dealers operating from a mobile unit shall not sell cut flowers, within 300 feet of place of business that holds a cut flower dealer's permit.

- I. Utility Arborist
 - 1. - 5. ...
- J. Landscape Irrigation Contractor
 - 1. - 4. ...

5. The following clarifications apply to licensed landscape irrigation contractors.

a. A licensed landscape irrigation contractor is not required to have a water supply protection specialist endorsement from the State Plumbing Board in order to install an irrigation system up to the point of connecting the irrigation system to a public or private water supply system or installing a backflow prevention device.

b. A licensed landscape irrigation contractor shall also have a water supply protection specialist endorsement from the State Plumbing Board before connecting any irrigation system to a public or private water supply system or installing a backflow prevention device, pursuant to R.S. 3:3808(P)(4), (5).

c. A governing authority, such as a parish or municipality, shall issue all necessary permits, including necessary electrical permits, to a licensed landscape irrigation contractor who does not hold a water supply protection specialist endorsement for the installation of an irrigation system, except for those permits that would allow such a licensed landscape irrigation contractor to connect the irrigation system to a public or private water supply system or install a backflow prevention device.

d. A governing authority, such as a parish or municipality shall issue all necessary permits to a licensed landscape irrigation contractor who holds a water supply protection specialist endorsement from the State Plumbing Board for the installation of an irrigation system, including necessary electrical permits and those permits that would allow such a licensed landscape irrigation contractor to connect the irrigation system to a public or private water supply system or install a backflow prevention device.

e. A licensed landscape irrigation contractor who also holds a water supply protection specialist endorsement from the State Plumbing Board is required by R.S. 3:3816(6) to install backflow prevention devices in accordance with ordinances adopted by local governing authorities, such as parishes and municipalities, regulating the installation of backflow prevention devices. If a local governing authority does not have an ordinance regulating the installation of backflow prevention devices, such devices shall be installed

in accordance with the requirements of Part XIV (Plumbing) of the Sanitary Code, State of Louisiana.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:185 (April 1982), amended LR 9:410 (June 1983), LR 11:317 (April 1985), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 20:640 (June 1994), LR 27:1832 (November 2001), LR 31:1054 (May 2005), LR 32:78 (January 2006), LR 32:1010 (June 2006), LR 33:1854 (September 2007).

§123. Clarifications

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:187 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 31:1054 (May 2005), repealed LR 33:1854 (September 2007).

Bob Odom
Commissioner

0709#020

RULE

**Department of Agriculture and Forestry
Office of Agriculture and Environmental Sciences**

**Restriction on Application of Certain Pesticides
(LAC 7:XXIII.143)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Advisory Commission on Pesticides, amends existing regulations for the implementation of regulations governing the use of the pesticide 2, 4-D and products containing 2, 4-D.

The applications of 2, 4-D in certain parishes, in accordance with the current regulations and labels, have not been sufficient to control drift onto non-target areas. Failure to prevent the drift onto non-target areas will adversely affect other crops, particularly cotton. The adverse effects to the cotton crop and other non-target crops will cause irreparable harm to the economy of central Louisiana and to Louisiana agricultural producers.

The department has, therefore, determined that these Rules implement further restrictions on the application of 2, 4-D, and products containing 2, 4-D.

This Rule complies with and is enabled by R.S. 3:3203.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

**Chapter 1. Advisory Commission on Pesticides
Subchapter I. Regulations Governing Application of Pesticides**

§143. Restrictions on Application of Certain Pesticides

A. In addition to all other pesticides classified by EPA as restricted use pesticides, the pesticides listed in §143.B are classified as restricted use pesticides within the state of Louisiana, except:

1. when formulated in concentration of 2 percent or less; or
2. when formulated with fertilizer for use by homeowners; or
3. when formulated in containers of 1 quart or less or 2 pounds dry weight or less.

B. - O. ...

P. Regulations Governing Aerial Applications of 2, 4-D or Products Containing 2, 4-D

1. Registration Requirements

a. Prior to making any commercial aerial or ground application of 2, 4-D or products containing 2, 4-D, as described in LAC 7:XXIII.143.P.3.a.i, the owner/operator must first register such intent by notifying the Louisiana Department of Agriculture and Forestry, Division of Pesticides and Environmental Programs ("DPEP") in writing.

b. All permits and written authorizations of applications of 2, 4-D or products containing 2, 4-D in the areas listed in LAC 7:XXIII.143.P.3.a.i., shall be a part of the record keeping requirements, and be in the possession of the owner/operator prior to application.

2. Grower Liability. Growers of crops shall not force or coerce applicators to apply 2, 4-D or products containing 2, 4-D to their crops when the applicators, conforming to the Louisiana Pesticide Law and rules and regulations promulgated there under or to the pesticide label, deem it unsafe to make such applications. Growers found to be in violation of this Section may be subject to a stop order, subject to an appeal to the Advisory Commission on Pesticides.

3. 2, 4-D or Products Containing 2, 4-D

a. Application Restriction

i. Aerial application of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually between April 3 and May 1 in the following parishes: Allen (East of U.S. Highway 165 and North of U.S. Highway 190), Avoyelles (West of LA Highway 1), Evangeline, Pointe Coupee (West of LA Highway 1 and North of U.S. Highway 190), Rapides, and St. Landry (North of U.S. Highway 190).

ii. Applications of 2, 4-D, or products containing 2, 4-D, shall not be made in any manner by any commercial or private applicators between May 1 and August 1 in the areas listed in LAC 7:XXIII.143.P.3.a.i., except commercial applications of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually between May 1 and August 1 in the area south of LA Highway 104 and LA Highway 26 and north of U.S. Highway 190 between U.S. Highway 165 and LA. Highway 13 in the parishes of Allen and Evangeline, and except upon written application to and the specific written authorization by the Assistant Commissioner of the Office of Agricultural and Environmental Sciences, or in his absence the Commissioner of Agriculture and Forestry.

4. Procedures for Permitting Applications of 2, 4-D or Products Containing 2, 4-D

a. Prior to any application of 2, 4-D, or products containing 2, 4-D, a permit shall be obtained in writing from DPEP. Such permits may contain limited conditions of applications and shall be good for five days from the date

issued. Growers or commercial ground or aerial applicators shall obtain permits from DPEP. Commercial ground and aerial applicators shall fax daily to DPEP all permitted or written authorized applications of 2, 4-D or products containing 2, 4-D. The faxed information shall include but not be limited to the following:

- i. wind speed and direction at time of application;
- ii. temperature at time of application;
- iii. field location and quantity of acreage;
- iv. time of application;
- v. grower name, address and phone number;
- vi. owner/operator firm name, address and phone number;
- vii. applicator name, address, phone number and certification number;
- viii. product name and EPA registration number;
- ix. any other relevant information.

b. The determination as to whether a permit for application is to be given shall be based on criteria including but not limited to:

- i. weather patterns and predictions;
- ii. wind speed and direction;
- iii. propensity for drift;
- iv. distance to susceptible crops;
- v. quantity of acreage to be treated;
- vi. extent and presence of vegetation in the buffer zone;
- vii. any other relevant data.

5. Monitoring of 2, 4-D or Products Containing 2, 4-D

a. Growers or owner/operators shall apply to the DPEP, on forms prescribed by the commissioner, all requests for aerial applications of 2, 4-D or products containing 2, 4-D.

b. All owner/operators and private applicators shall maintain a record of 2, 4-D or products containing 2, 4-D applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1672 (October 2001), LR 33:1855 (September 2007).

Bob Odom
Commissioner

0709#021

RULE

**Department of Education
Board of Regents**

Proprietary Schools (LAC 28:III.Chapters 1-21)

In accordance with the Administrative Procedure Act, R.S. 17:3141 et seq., the State Board of Regents has amended LAC 28, Part III, Proprietary Schools.

**Title 28
EDUCATION**

Part III. Proprietary Schools

Chapter 1. General Provisions

§101. Citation and Abbreviation

A. These rules and regulations of the Board of Regents ("Board") govern the licensing and monitoring of proprietary schools operating in Louisiana upon the recommendation and advice of the Proprietary Schools Advisory Commission ("Commission").

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(D)(2) and (E).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1857 (September 2007).

§103. Definitions

Proprietary Schools, hereinafter referred to as "school"—any business enterprise operated on a profit or on a nonprofit basis which maintains a place of business within this state, or which sells or offers for sale any course of instruction in this state, either by correspondence using the mails or by any other means of communication, or by personal solicitation, at which place of business such course or course of instruction or study is available through classroom instruction, or both, to a person or persons for the purpose of training or preparing such person(s) for a field of endeavor in a business, trade, technical, or industrial occupation, except as hereinafter excluded. For purposes of this definition, a school that sells or offers for sale any course of instruction in this state through the internet or by correspondence is deemed a school only if it is also domiciled in the state or has a physical presence in the state. Physical presence shall include a mailing address in the state, a solicitor recruiting students in the state, or actual facilities in the state. The definition of a school shall not include:

1. a school or educational institution supported entirely or partly by public funds from either a local or state source. This provision only exempts from the board's regulation those schools that derive direct and significant support from public funds (such as through direct appropriation, and not schools that derive indirect benefit from public funds, such as through contractual payments from governmental agencies);

2. a parochial, denominational or eleemosynary school or institution that provides religious training or theological education; however, any such school or institution that also offers training in a secular field of endeavor shall be subject to the provisions of this Chapter;

3. a school or training program which offers instruction primarily in the field of recreation, health, entertainment or personal enrichment and which does not purport to prepare or qualify persons for employment as determined by the commission;

4. a course or courses of instruction or study sponsored by an employer exclusively for the training and preparation of its own employees when the employer is not primarily engaged in the business of selling or offering course of instruction or study. This includes those businesses that engage in contract training exclusively, and where admission/enrollment is not available to the general public;

5. a course or courses of study or instruction sponsored by a recognized trade, business or professional

organization for the instruction of the members of such organization;

6. private colleges and universities which only award a baccalaureate or higher degree and which maintain and operate educational programs for which academic credits are given;

7. a private school which provides a basic academic education comparable to that provided in the public schools of the state;

8. a school offering a program only for children under six years of age;

9. a school which is otherwise regulated and licensed under the laws of this state;

10. a private tutor, teacher or individual engaged in giving private tutoring or lessons to five persons or less in non-school connected activities severed from the regular curriculum of a school as determined by the commission;

11. a day camp;

12. a training program that does not have attendance requirements in place for persons taking the courses and which offers for sale only non-sequential and non-continuous courses of one week duration or less which do not exceed 20 hours of training;

13. a manufacturer-certified training center that offers, at no additional charge to the person receiving training, manufacturer-authorized training that is included as part of the manufacturer's pricing package to prepare persons for certification conferred by the manufacturer and that uses course equipment and materials which are developed and sold by the manufacturer and course instructors and facilities which are certified by the manufacturer;

14. a school or business enterprise which offers instruction to prepare students for tests which are required for entry into a post secondary program of study; or

15. a business which engages in contract training and is reimbursed by the business.

Branch School—a separate facility established by a main school, under the main school's management, control and supervision. The branch may offer full student services and is under the supervision of a designated on-site employee responsible for the day-to-day operation of the branch. Each branch school shall be separately licensed and bonded.

Commission Staff—the staff of the board's Proprietary Schools Section, authorized to aid in the administration of the commission's functions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.2(5).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1857 (September 2007).

§105. Proprietary Schools Law and the Administrative Procedure Act Incorporated

A. R.S. 17.3141.1 et seq., inclusive, known as the Proprietary Schools Law, and R.S. 49:951 et seq., known as the Administrative Procedure Act, in their currently existing form and as may be amended, are hereby incorporated herein. All remedies and procedures available to the public under these laws, as they pertain to this commission, are hereby made available herein as rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.1, R.S. 49:954.1(A), R.S. 17:3141.3(E).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1857 (September 2007).

§107. Computation of Time

A. In computing a period of time allowed or prescribed by these rules, by law or by order of the commission or of court, the date of the act, event, or default after which the period begins to run is not to be included. The last day of the period is to be included, unless it is a legal holiday or a day of the weekend, in which event the period runs until the end of the next day, which is not a legal holiday or a day of the weekend.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), La. C.C.P. art. 5059.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1858 (September 2007).

Chapter 3. Procedures

Subchapter A. General Procedural Rules

§301. Initiation of Proceedings

A. Proceedings. Proceedings for the adoption, amendment, or repeal of a rule may be commenced by the board or commission upon its own initiative or pursuant to reasonable grounds therefore. The commission however, shall initiate procedures to adopt, amend or repeal a rule whenever the attorney general requests same.

B. Process for Initiation. Any interested person may petition the commission requesting the adoption, amendment, or repeal of a rule. The petition shall be filed in the office of the commission located at the Claiborne Building, the Louisiana Board of Regents, Proprietary Schools Section, 1201 N. Third St., Suite 6-200, Baton Rouge, LA 70802 or P.O. Box 3677, Baton Rouge, LA 70821, or such other address in the event the commission relocates, at any time during normal office hours, from 8 a.m. to 4:30 pm, except for legal holidays and the weekend. Within 90 days after submission of a petition, the commission shall either deny the petition in writing stating reasons for the denial, or shall initiate rule-making proceedings in accordance with these rules. Any person whose petition is not deemed by the commission sufficient to warrant the holding of a rule-making proceeding will be promptly notified of that determination and may be given an opportunity to submit additional data.

C. Investigations and Conferences. In connection with any rule-making proceedings, the commission at any time may conduct such investigations, make such studies, and hold such conferences as it may deem necessary.

D. Notice. Prior to the adoption, amendment, or repeal of any rule, the commission shall give notice of its intended action in accordance with R.S. 49:953(A)(1). The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made a timely request of the agency for advance notice of its rule-making proceedings and shall be published at least once in the official state journal.

E. Opportunity to be Heard. Prior to the adoption, amendment, or repeal of any rule, the commission shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing, in accordance with R.S. 49:953(A)(2).

F. Emergency Rules. If the commission finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than that provided above, it may proceed to adopt emergency rules in accordance with R.S. 49:953(B). The emergency rule thus adopted may be effective for a period not to exceed 60 days, but the adoption of an identical rule otherwise under these rules is not precluded.

G. Filing, Publication and Effective Date of Rule. The commission shall file with the Office of State Register a certified copy of any rule or regulation adopted upon the completion of a rule-making proceeding and publish the same in the official state journal in accordance with R.S. 49:954. Such rules or regulations shall become effective pursuant to R.S. 49:954(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953, R.S. 49:954.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1858 (September 2007).

Subchapter B. Pleadings

§303. Petition to Adopt, Amend or Repeal a Rule

A. Petition to Adopt, Amend, or Repeal a Rule

1. A petition to adopt, amend, or repeal a rule shall be typed or printed on either standard letter size bond paper or on standard legal size bond paper;

2. the petition shall be dated and shall contain the following:

a. the title of the pleading (i.e., "petition");

b. the names of the petitioners;

c. the names of representatives and legal counselors of such petitioners (if applicable);

d. all pertinent allegations of fact, data, views, arguments and reasons supporting the action sought by the petition;

e. a statement or prayer expressing the exact action sought by the petition; and

f. the signatures of all petitioners, if individual, natural persons, or the signatures of duly qualified representatives of petitioner, if a governmental agency or subdivision or an association of persons;

3. the petition, in setting forth all pertinent allegations of fact, data, views, arguments, and reasons supporting the action sought by the petition, shall contain separate, numbered paragraphs, one for each fact, data, view, argument, and reason set forth;

4. the petition, in expressing the exact action sought by it, shall cite and quote the rule to be adopted, amended, or repealed; and if a rule is sought to be amended, the petition shall quote the rule as it would read after amendment, if it were in fact amended; and

5. only substantial compliance is necessary to meet the requirements of form, and to that end, the provisions of this section shall be liberally construed in favor of accepting the petition.

B. Other Pleadings. Pleadings of any type may be submitted to the commission. They shall be similar in form to that of petitions, except that they may exclude those things peculiar to petitions and shall include those things to which they pertain.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1858 (September 2007).

Subchapter C. Citation and Production of Evidence for Rule-Making Procedures

§305. Voluntary Submission of Evidence

A. Any interested person may voluntarily submit evidence, testimonial or real, to the commission, such evidence being relevant and material to any issue involved in the adoption, amendment or repeal of any rule, to the corroboration of or to the unreliability or inaccuracy of any witness or other source of evidence submitted, or to the credibility or non-credibility of any witness or other source of evidence submitted, in the same form and manner as otherwise provided herein or by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1859 (September 2007).

Subchapter D. Public Hearings

§307. Adjudication

A. Process. In any matter defined as adjudication in R.S. 49:951(1), notice shall be given, hearings held and a decision or order issued, all in accordance with the procedures provided for adjudications in R.S. 49:955-961. Upon the conclusion of the hearing and consideration of all evidence presented, the commission shall submit a recommended decision or order to the board for board approval.

B. Rules of Evidence

1. The commission may admit and give probative effect to evidence which possesses probative value and which is commonly accepted by reasonably prudent men in the conduct of their affairs. It shall give effect to the rules of privilege recognized by law. It shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

2. all evidence, including records and documents in the possession of the commission of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by all interested persons before being received in evidence; and

3. notice may be taken of judicially recognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the commission's specialized knowledge. All persons who have shown an interest therein shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The commission's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

C. Admission of Depositions. The presiding officer or any person interested in a proceeding before the commission may take the depositions of witnesses, within or without the state, in the same manner clothed with all the formalities as

provided by law for the taking of depositions. Depositions so taken shall be admissible in any proceeding affected by this Chapter. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by the presiding officer in accordance with the rules of evidence provided in this Chapter above.

D. Reopening Hearing and Rehearings. The commission may reopen any hearing for good cause shown, and may grant a rehearing in accordance with R.S. 49:959.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:955, R.S. 49:956, R.S. 49:959.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1859 (September 2007).

Subchapter E. Declaratory Orders and Rulings

§309. Declaratory Orders and Rulings

A. The commission shall consider petitions for a declaratory order or ruling as to the applicability of any statutory provision or of any rule or order of the board, submitted pursuant to R.S. 49:962, hold hearings if necessary, and submit a recommended declaratory order or ruling. A petition for a declaratory order or ruling shall contain:

1. the title of the pleading (e.g., "Petition for Declaratory Order");
2. the names of the petitioners;
3. the names of representatives and legal counselors of such petitioners (if applicable);
4. a concise statement of the issue posed, along with citations to the statute, rule or order at issue;
5. a clearly organized statement of all pertinent allegations of fact and data, and if the petitioner takes a specific position on the issue, the arguments and reasons supporting such position;
6. a statement or prayer expressing the exact action sought by the petition;
7. the signatures of all petitioners, if individual, natural persons, or the signatures of duly qualified representatives of petitioner, if a governmental agency or subdivision or an association of persons; and
8. only substantial compliance is necessary to meet the requirements of form, and to that end, the provisions of this section shall be liberally construed in favor of accepting the petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:962.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1859 (September 2007).

Chapter 5. License Requirements

§501. Applications

A. General

1. All applications must comply with the provisions of R.S. 17:3141.4, as well as any applicable provisions of these regulations. All applications concerning licenses are to be submitted to the commission at the following address or such other address in the event the commission relocates:

Louisiana Board of Regents
Proprietary Schools Section
Post Office Box 3677
Baton Rouge, LA 70821-3677

2. All applicable fees, as provided below, must be by company, institutional, certified check, or by money order and must be made payable to the "Louisiana Board of

Regents", with the exception of the Student Protection Fund which is to be made payable to the "Student Protection Fund." Except for overpayments toward the Student Protection Fund, no portion of any license fee shall be subject to refund.

B. Initial Application and License Fee. The initial license application fee shall be \$2,000. A payment of \$1,000 toward the student protection fund must be paid along with the license fee.

C. Renewal Application and Fee

1. The annual renewal application fee is based on the school's gross tuition revenues for the previous year as follows:

- a. under \$50,000—\$500;
- b. \$50,000 and up—greater of \$1,000 or 0.25 percent of gross tuition income.

2. If a complete license renewal application is not received at least 30 days prior to its expiration date, in addition to the renewal fee, there shall be a delinquent fee of \$500. In addition to the renewal application fee and any delinquent fee, a payment to the Student Protection Fund, if applicable, must be made in accordance with R.S. 17:3141.16.

D. License Fee for Solicitors. The annual license fee for each solicitor/sales representative of a school shall be \$100.

E. Reinstatement Licensure Fee. The reinstatement licensure fee for a suspended school shall be \$500.

F. Change of Ownership Application and License Fee. All changes of ownership are contingent upon approval from the board. Applications for a new license must be requested within 10 days of the change of ownership. No license shall be transferable. The application fee is \$2,000. A payment of \$1,000 toward the student protection fund must be made along with the application fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.4, R.S. 17:3141.9(A)(1).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1859 (September 2007).

§503. Student Protection Fund

A. First Payment. Initial (new) schools and change-of-ownership schools shall be required to submit their first payment of \$1,000 made payable to the "Student Protection Fund" with their application.

B. Annual Payment. The required annual payments, if applicable, to the Student Protection Fund shall be collected based on the schedule provided in R.S. 17:3141.16.

C. Collection Schedule. Annual payments shall cease when the fund accumulates to \$800,000 but shall resume when the fund drops below \$750,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.16.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1860 (September 2007).

§505. Affidavits

A. Applications and renewal applications must be accompanied by affidavits (PSC-9 Form) by each owner, director, instructor, and all office and clerical personnel, unless previously approved, and Solicitor Permit Applications (PSC-4 Form) by each solicitor containing the information prescribed by Subsection C(11) or R.S. 17:3141.1 (for solicitor renewal, see Section 703). In the case of office and clerical personnel, in lieu of the affidavits of such personnel, the owner may submit an affidavit setting

forth the information prescribed by Subsection C(11) of R.S. 17:3141.4 concerning such personnel. Such information shall be based on the owner's investigation and knowledge. For solicitor renewal, see Section 703.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.4(D).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1860 (September 2007).

§507. Surety Bond

A. Each license application must be accompanied by a surety bond in the amount of \$10,000 issued by a surety authorized to do business in Louisiana. The bond must meet the requirements set forth in R.S. 17:3141.5 and the PSC-3 Form. Bond releases and terminations shall be as provided in R.S. 17:3141.5(D) and (E), and suspension of operating license for lack of surety bond coverage is governed by R.S.17:3141.5(F). A school may be exempted from filing a surety bond if it meets all of the following requirements:

1. does not require students to pay tuition for course of study more than one month in advance;
2. has been in continuous operation for at least five years; and
3. has met all the requirements of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.5(D), R.S. 17:3141.5(E).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1860 (September 2007).

§509. Other Provisions Concerning License

A. A license shall be valid only for the school and shall not include other schools or branches operated by the owner. Each separate location or branch school shall be licensed and bonded. No new courses shall be offered by any school holding a license until it is approved by the commission staff in accordance with procedures to be established by the commission.

B. Each license must be displayed on the premises. No license shall be transferable. In the event of a change of ownership of the school, the license shall be revoked unless the new owner, within 10 days after the change of ownership, requests an application for a license to operate the school.

C. Any person who contemplates the purchase of a school may apply for a license. If the board grants such a license, it shall become a valid license only upon completion of the proposed sale.

D. All licenses shall be renewed annually, not less than 30 days prior to expiration date thereof. Updated information must contain all changes in staff, school programs, etc., including all additions and deletions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.5(B)(C).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1860 (September 2007).

§511. Denial of Recommendation of License and Commission Hearing

A. If the commission or commissioner recommends the denial of a license, the commission shall hold a hearing upon the applicant's request, as provided in R.S. 17:3141.6. The applicant may appear in person or by counsel and may present evidence in support of granting the license. The decision or order resulting from a hearing before the commission is subject to rehearing, reopening, or reconsideration by the commission within 10 days from the

date of its entry on the grounds set forth in R.S.49:959 and in accordance with the procedures therein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.6.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1860 (September 2007).

§513. Revocation of License

A. Licenses may be revoked by the board in accordance with the standards and procedures set forth in R.S.17:3141.8 and statutory and regulatory provisions applicable thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.8.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1861 (September 2007).

Chapter 7. Personnel Affidavits/Permits

§701. Completion of Affidavits by Non-Instructional Personnel/Instructional Personnel

A. Completion of Affidavit by Non-Instructional Personnel

1. An affidavit (PSC-9 Form) containing the following information must be submitted by the owner of each school (if a corporation, by each officer and by each director) and by each staff person, except solicitors:

a. full name and address of said person and the capacity in which he/she serves the school;

b. the city, parish/county, and state of said person's permanent residence and places of residence for the past five years;

c. the names and addresses of said person's employer or employers for the past five years;

d. whether or not said person has ever been convicted of a felony for a crime involving fraud or any misdemeanor other than a traffic violation; and

e. three persons who may be contacted concerning such person's good moral character.

2. In the case of office and clerical personnel, in lieu of affidavits by the office and clerical personnel, the owner may submit the information in the form of an affidavit by the owner, based on the owner's investigation and knowledge. (Refer to §505.)

B. Completion of Affidavit by Instructional Personnel

1. An affidavit (PSC-9 Form) containing the following information must be submitted by each person who will be serving as an instructor at the school:

a. full name and address of said person and the capacity in which he/she serves the school;

b. the names and addresses of said person's employer or employers for the past five years; and

c. three persons who may be contacted concerning such person's good moral character.

2. Minimum qualifications of an instructor include the following:

a. an instructor in an academically-credentialed area shall have a baccalaureate degree from a bonafide, accredited college or university, and demonstrate appropriate familiarity with the subject matter taught as evidenced by an academic transcript and/or occupational experience;

b. an instructor, in other than an academically-credentialed area, shall have a high school diploma or its equivalent; a license, diploma, certificate, or other degree from a recognized institution or organization in the area taught; and four years of documented occupational experience in the area taught;

c. as used in this Subsection, a "recognized institution or organization" shall mean any bonafide, licensed, chartered or traditionally accredited business or association legally engaged in commerce, education, training, or advocacy. Recognized institutions or organizations shall include, but not be limited to, governmental agencies, labor unions, trade and professional corporations, and retail, financial, and commercial entities. The commission shall reserve the right to use all reasonable means in verifying the validity of credentials;

d. at the board's discretion, the minimum four years experience required for instructors may be waived for those disciplines where teaching credentials are officially certified, licensed, or otherwise approved or granted by a federal agency; and

e. employees employed prior to May 30, 1989 will be exempted from occupational experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.8.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1861 (September 2007).

§703. Solicitor Application, Bonds, Renewal, Denial, and Revocation

All forms are prepared and provided by the Commission Staff.

A. Permits and Applications. No person shall sell any course of instruction or solicit students therefore in Louisiana for any school unless he has obtained a solicitor's permit from the commission. A separate permit is required for each school the solicitor represents. A separate application (PSC-4 Form) with required fee and bond must be submitted for each permit sought (i.e., for each school to be represented).

Louisiana Board of Regents
Proprietary Schools Section
Post Office Box 3677
Baton Rouge, LA 70821-3677

B. Bonds. Surety bonds for permits must be in the amount of \$1,000 for each permit issued. The bond must be continuous and must be issued by a solvent surety authorized to do business in Louisiana (see PSC-5 Form). The bond may be supplied as a blanket bond by a school covering each agent, \$1,000 in amount for each agent. This bond is set forth in PSC-6 Form. If a surety cancels a bond (as provided in R.S. 17:3141.9B) then a substitute bond (meeting all conditions for the original) must be furnished and the solicitor's permit shall be in a state of suspension for any period of time not covered by a proper bond.

C. Renewals. Each permit is valid for one year from date of issuance unless revoked and must be renewed not less than 30 days prior to expiration date. At the time of renewal, the owner/director must submit a PSC-4 Form, (unless the owner/director submits written notification of continued employment of solicitor); a \$100 renewal fee (made payable to the "Louisiana Board of Regents"); and proof of continuous bond coverage.

D. Denial of Permits. The commission may deny recommendations of issuance of a permit when proper grounds exist therefore. The procedures in such cases shall be in accordance with the applicable provision of R.S. 17:3141.1-3141.14 and R.S. 49:951-966.

E. Revocation of Permits. A permit may be revoked for any of the causes set forth in R.S. 17:3141.11. Notice of contemplated revocation must be given in writing at least

30 days prior to the effective date of revocation. At any time within 30 days prior to the revocation, upon request of the solicitor, the commission shall afford the solicitor an opportunity to be heard in person or by counsel. On or before 30 days prior to the date set for hearing, the commission shall notify the aggrieved solicitor of the date and purpose of the hearing and the grounds for the contemplated revocation of the permit. The procedure for revocation shall be in accordance with those prescribed by R.S. 49:951-966 and by R.S.17:3141.1-14 as applicable to such action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.8, R.S. 17:3141.9.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1861 (September 2007).

Chapter 9. Proprietary Schools Applications

§901. Initial License or Change of Ownership

A. Please refer to the PSC-14 Form, Proprietary Schools License Requirements Checklist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.4, R.S. 17:3141.5.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1862 (September 2007).

§903. License Renewal

A. Renewal letters are mailed to the school owners annually. A license renewal application must be received in this office 30 days prior to the license expiration. If it is not, there shall be a \$500 delinquent fee. Failure to furnish all the renewal information prior to the license expiration date will cause the license to expire. There can be no exceptions or any other extension. The following paperwork must be submitted:

1. a completed PSC-1 Form;
2. the original verification from the bonding company that the surety bonds (\$10,000 for school and \$1,000 per solicitor) are still in effect must accompany the renewal application. The premium period must coincide with the school's licensure period. For example, August 26, 2006-August 26, 2007;
3. a completed PSC-12 form;
4. the renewal fee based upon the school's previous year's gross tuition revenues. The check is to be made payable to the "Louisiana Board of Regents." Refer to the PSC-12 form;
5. financial statements:
 - a. for those schools which participate in Title IV funding, an original set of financial statements that have been audited by an independent Certified Public Accountant licensed in the state of Louisiana, including a current balance sheet and an income statement showing gross tuition receipts for the school's last fiscal year, and in the case of a corporation, signed by an officer of the corporation, sole proprietorship or partnership, signed by the owner(s) or a duly authorized agent acting on behalf of the owner(s), stating that it is true and correct; and
 - b. for those schools which do not participate in Title IV funding, an original set of financial statements that have been reviewed by a Independent Public Accountant licensed in the state of Louisiana, including a current balance sheet and an income statement showing gross tuition receipts for the school's last fiscal year, and in the case of a corporation or sole proprietorship or partnership, signed by the owner(s)

or a duly authorized agent acting on behalf of the owner(s) stating that it is true and correct;

6. an internal compilation reflecting the school's most recent quarter, if the audit/review submitted with the renewal materials, reflects a business year that ended more than 120 days prior to the submission of the renewal materials;

7. a completed PSC-18 Form reflecting the application date listed on the PSC-1 Form;

8. a completed PSC-4 Form for any new solicitor employed with the school. The initial and/or renewal fee is \$100 per solicitor is to be made payable to the "Louisiana Board of Regents";

9. a completed PSC-9 Form on all instructors and staff employed since the last school renewal, unless previously approved during the year;

10. a current school catalog;

11. a current copy of the Enrollment Agreement/Enrollment Contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.4, R.S. 17:3141.5.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1862 (September 2007).

§905. Associate in Occupational Studies (AOS) Degree Application

A. Requirements. An eligible post-secondary school may award a non-academic degree entitled "The Associate in Occupational Studies."

1. The school must be licensed by the board, domiciled in the state of Louisiana, and accredited by a regional or national accrediting agency recognized by the United States Department of Education.

B. The board shall revoke the degree-granting status of any post-secondary school that loses or withdraws its accreditation.

C. No school shall be licensed to award the Associate of Arts or Associate of Science. All advertising, recruiting, and publications shall state clearly that such occupational degree awarded by a post-secondary school is non-academic and does not imply, promise, or guarantee transferability.

D. Each student admitted to an occupational degree program in an accredited post-secondary school shall be required to:

1. have a high school diploma or equivalent; and
2. complete a minimum of two years, four semesters, or six quarters of course work for each occupational degree program.

E. Each AOS degree program shall have a minimum of 75 percent of its course of study in a specific occupational area.

F. Each course of study shall have a minimum of 96 quarter hours if using quarter hours, a minimum of 1800 clock hours if using clock hours, and a minimum of 64 semester hours if using semester hours.

G. Application Enclosures. Enclose one original and eight copies, in binders with tabs, of the following:

1. a completed PSC-1 Form, including the title of the proposed AOS degree program;
2. the completed PSC-11 Form;
3. a blank copy of the diploma that would be awarded upon successful completion of the AOS degree program;
4. a detailed program outline including subject numbers, subject titles, clock hours, quarter hours or

semester hours (whichever is used for each subject), and total clock hours, quarter hours, or semester hours (whichever is used for each program);

5. a description of each subject listed on the outline; and

6. an inventory list of equipment/supplies/furnishings available for the AOS degree program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.15.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1862 (September 2007).

Chapter 11. Student Protection Fund

§1101. Policies and Procedures

A. Student Protection Fund Policy

1. The Student Protection Fund is administered by the board and the commission; shall be subjected to audit and review by the Legislative Auditor's Office.

2. Required refunds due from the Student Protection Fund will be provided on a pro rata basis, or other means as appropriate. Prior to any funds being released from the Student Protection Funds, the school's surety bond must be exhausted.

3. For students that have loans, the administrator of the Student Protection Fund will enter into an agreement with the state guaranty agency that any refunds will be allocated as follows:

a. present holder of the loan, whether lender or LOSFA, and any remaining balance to the borrower;

b. for students without loans, appropriate tuition repayment.

4. Administration of the Student Protection Fund is subject to review by the U.S. Department of Education and the state guaranty agency:

a. the commission staff shall retain all records pertaining to the determination of payment or denial of refunds for a period of not less than one year after the final determination has been made;

b. records shall be maintained in an organized manner; and

c. records shall be readily accessible to the U.S. Department of Education and guaranty agency auditors.

B. Student Protection Fund Procedures

1. The application for tuition recovery (PSC-15 Form), may be submitted after reasonable efforts to compensate the student from the following resources have been exhausted (see PSC-15 Form for instructions):

a. provide teach-out;

b. acquire refund from the school;

c. acquire refund from any other school resources; and

d. acquire refund from U.S. Department of Education, Closed School Section;

2. lenders holding loans eligible for refunds under the Student Protection Fund may submit the claims to the commission without undertaking any additional collection activity, if the commission determines that the student has not submitted a claim. Submission of a claim by the lender will preclude the student from filing a claim at a later time;

3. refund calculations will be based upon copies of enrollment contracts, student ledger cards, and other pertinent documents submitted by the student; and

4. students and/or lenders applying for relief to the Student Protection Fund will be notified of the status of the

request within 60 days of receipt of the application by the commission staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.16.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1863 (September 2007).

Chapter 13. Advertising Rules for Proprietary Schools §1301. Advertising Rules

A. Advertising. All advertising shall forthrightly disclose the purpose of the advertising, that education or training, not a job, is offered, and that the advertiser is a school. Advertising includes any form of public notice however disseminated or utilized. Within this definition would be all publications, communications, promotional items, and efforts which could normally be expected to be seen or encountered by significant numbers of prospective students or their sponsors. Examples include catalogs and other school publications, signs, mailing pieces, radio, television, audio-visual, newspaper, internet or any other form of public notice resulting from the school's recruiting and promotional activities.

B. Solicitation. In the solicitation of students, a school shall not directly, or by implication, misrepresent the services it renders. All advertisements and promotional literature used shall be truthful, informative and constructive; and avoid conveying any false, misleading or exaggerated impressions with respect to the school, its personnel, its courses and services, or the occupational opportunities for its graduates. The true purpose and nature of a school's offerings shall be evident in all advertising. Every advertisement shall constitute to the reader a clear statement of a bonafide offer or announcement made in good faith. It shall be written to its anticipated readership, normally persons unsophisticated in the traditional word usage of the education industry. Therefore, all solicitation must be truthful and conducted with extreme care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.13, R.S. 17:3141.5(A)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1863 (September 2007).

Chapter 15. Violations

§1501. Authority, Investigation, and Sanctions

A. Violations. The following is an illustrative, but not exclusive, list of actions constituting a violation:

1. failure to provide the commission with an item of information required by R.S. 17:3141.1 et seq.;

2. misrepresentation about a school's credentials or accreditation;

3. a false claim or guaranty of employment by a school or solicitor;

4. failure to disclose to a student a necessary requirement for employment;

5. false or misleading advertising;

6. unethical behavior by a solicitor;

7. failure to disclose liability for repayment of a student loan;

8. failure to respond to student complaints as provided in the student complaint rule, R.S. 17:3141.3(D)(2)(b) and 17:3131.3(E);

9. employment of an instructor who is unqualified;

10. unsafe or unhealthy condition of a school;

11. unsafe, unhealthy, or inadequate instructional equipment;

12. failure to teach the number of hours claimed;
13. failure to maintain attendance records and to provide them for inspection;
14. failure to comply with a contractual relationship with a student;
15. failure to release the grades of a student;
16. failure to cooperate with an investigator from the commission;
17. attempting to obtain, obtaining, or renewing a license to operate a school by fraudulent misrepresentation or bribery;
18. placement of classified advertisement under "employment" or other similar categories related to employment rather than "education" or "instruction";
19. upon closure, failure to transfer student records to the board; and
20. failure to comply with the provision of R.S. 17:3141.1 et seq., or any written rule or regulation of the board.

B. Authority and Scope. The definition of "school" for the purpose of this rule shall include a licensed school and school owners, employees, operators, agents and solicitors. The commission shall use the following procedures prior to making a recommendation to the board under R.S. 17:3141.8(A) that a school license should be revoked, canceled, or suspended.

1. Any school found to be in violation of any provision of R.S. 17:3141 et seq., or any other state regulation adopted by the commission pursuant to the Administrative Procedure Act governing the administration or operation of a school may be sanctioned by one or more of the following remedies:

- a. restitution and remedial measures;
 - b. civil money penalties (fines); and
 - c. revocation, suspension, cancellation, or other restrictions on the license.
2. The commission's assessment of a sanction shall be based on the following considerations:
- a. whether the violation or substantially similar violation has previously occurred;
 - b. the duration of the violation;
 - c. the severity of the violation;
 - d. the school's history of compliance with the regulations;
 - e. what sanction is most likely to bring the school into compliance in the shortest time;
 - f. the "good faith" exercised by the school in attempting to stay in compliance with the regulations; and
 - g. such other factors as the commission deems appropriate.

C. Investigation

1. When the commission's staff becomes aware of a violation, it may conduct an onsite investigation of a school. The inspection may or may not be announced at the discretion of the staff.

2. The agent conducting the investigation shall have the authority to:
- a. privately interview administrators, teachers, solicitors, and students;
 - b. inspect school records, documents, catalogs, forms, and advertisements; and
 - c. inspect the school facilities and equipment.

3. The school shall cooperate fully with the agent.
4. Within five days of the investigation the agent shall prepare a written report which shall be furnished to the commission staff and the school. The report shall contain:
 - a. factual findings relevant to the initial violation;
 - b. factual findings of any additional violations;
 - c. recommendations of remedial measures to be taken by the school; and
 - d. recommendations of any sanctions to be taken by the commission including the commission's petition for an injunction to terminate the violation;
 - e. the procedure by which an administrative hearing may be requested.
5. Additional or follow-up visits may be made to the school to monitor violations or to monitor remedial measures taken to correct prior violations.

D. Notice of a Violation

1. When a violation of state statutes or regulations governing the administration or operation of a school has occurred, in accordance with R.S. 17:3141.8, the commission staff shall give notice of the violation to the school's director by certified mail, return receipt, and shall afford the school an opportunity to be heard in person or by counsel.

2. The written notice of the violation shall:
- a. specify the violation(s);
 - b. cite the legal authority which establishes the violation(s);
 - c. cite any sanctions assessed for each violation;
 - d. inform the school's director that the determination of the violation and imposition of the sanction are final, and no further administrative or judicial appeals may be had if a timely appeal is not filed; and
 - e. inform the school's director if the violation is regarded as a repeat or continuing violation and the manner in which the sanction will be imposed.

3. If the school requests a hearing, the commission staff shall hold a hearing and take evidence. Strict rules of evidence shall not apply. A tape recording of the hearing shall be made. The school may deny the violation, admit the violation in part and deny it in part, or admit the violation but request a reduction or modification of the sanction imposed. The school may present witnesses or documentary evidence in its defense bearing directly on the violation asserted. The school is limited to one witness to attest to its reputation or to remedial measures it has taken. The commission may consider reputation and remedial measures in mitigation of the sanction. For continued or repeat violations, reputation or remedial measures shall not be considered.

4. The commission staff shall have authority to determine for purposes of making a recommendation to the board, whether a violation is a repeat or continuing violation:

- a. a repeat violation is the recurrence of the same or a substantially similar violation within a period of 12 months;
- b. a continuing violation is one that may be reasonably expected to continue until corrective action is taken. A continuing violation may be considered as a repeat violation for each day following the day on which the initial violation is established, until such time as there is evidence

establishing a date by which the violation is corrected. A continuing violation may be subject to appropriate sanctions for repeat violations up to the number of days of the violation at the discretion of the commission staff.

5. After holding a hearing, the commission shall submit its findings to the board, and may recommend any of the penalties listed in Paragraph 1501.B.1 and Subsection 1501.F, as it deems appropriate. The commission shall also forward a copy of its findings and recommendation to the school, notify the school of the date of the board meeting when the commission's recommendation will be considered, and advise the school of the opportunity to appear at the board's meeting by person or by counsel and be heard. After due consideration of the commission's recommendation and the school's arguments (if the school presents any arguments) and upon a vote of two-thirds of the authorized membership of the board, the board may revoke, cancel, suspend or restrict the school's license, or impose fines or refunds.

6. A sanction which requires monetary payments, either fines or restitution, shall be paid within a timeframe as determined by the board following its notification.

E. Description of Sanctions

1. Restitution and Remedial Measures. The commission may impose sanctions consisting of, but not limited to, the following measures:

- a. rebate of all or a portion of the tuition to the students;
- b. modification or termination of advertising when unwarranted, false, or misleading claims are made, or placement of corrective ads;
- c. counseling of students when they have been misinformed about a material matter;
- d. the posting of a sign in a prominent position in a school correcting a false representation made to the students;
- e. the distribution of an informational leaflet to the students informing them of their rights;
- f. the inclusion or exclusion of information from the student catalog to correct a misrepresentation;
- g. repairs or modification to a physical facility when health or safety is jeopardized;
- h. repairs or modification to equipment when health or safety or delivery of quality instruction is jeopardized;
- i. an order to terminate a gross violation of the statutes or regulations;
- j. an order to cease the enrollment of new students or to limit enrollment to those students who meet more restrictive admission standards; and
- k. modification of the curricula or methods of instruction.

2. Civil Money Penalties (Fines). The commission has the authority to impose a fine up to \$500 for each violation. Repeat or continuing violations may be assessed separate fines up to \$500 for each day of violation. After a fine is imposed, the commission may allow a specified period of time for the correction of the violation. If the violation is corrected, the commission may waive the payment of the fine. The school may be given the opportunity to demonstrate compliance before the fine becomes final. A violation for which a fine is waived shall still be counted for repeat and continued violations. The right to assess civil

fines is not merged in other remedies, and the commission may impose other sanctions in addition to the fines.

3. Revocation of License. The commission may recommend the revocation of a school's license to the board.

F. Appeal Procedure. Any sanction may be administratively appealed as long as the appeal is timely filed in accordance with R.S. 17:3141.8(F).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(D)(2), R.S. 17:3141.8, R.S. 17:3141.14, R.S. 17:3141.18.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1863 (September 2007).

Chapter 17. Student Complaint Procedure

§1701. Policies, Conciliation, Conference, Hearing, and Review

A. General Policies

1. The purpose of this complaint procedure is to provide an effective and efficient method by which students may resolve their complaints with the commission staff under the jurisdiction of the board;

2. the commission staff shall prepare and provide a copy of the complaint procedure to each licensed school; and

3. each school shall include in either their catalog or enrollment agreement the following:

a. complaints relative to actions of school officials may be made and must be in writing, addressed to the Louisiana Board of Regents, Proprietary Schools Section, P.O. Box 3677, Baton Rouge, LA 70821-3677, 225/342-4253. Such complaints may be made only after the student has unsuccessfully attempted to resolve the matter with the school by having first filed a written and signed complaint with that school's officials. Any student who wishes to review the student complaint procedure may make a request for a copy of the procedure, in writing, addressed to the Louisiana Board of Regents, Proprietary Schools Section, P.O. Box 3677, Baton Rouge, LA 70821-3677, (225)342-4253.

B. Conciliation

1. Any student who believes he/she has been aggrieved by actions of school officials shall complain in writing to the commission staff at Louisiana Board of Regents, Proprietary Schools Section, Post Office Box 3677, Baton Rouge, LA 70821-3677, 225/342-4253, only after having first filed a written and signed complaint with the school officials;

2. if the complaint is not resolved, the student may submit a written request for assistance to resolve the matter with the school after having first filed a written and signed complaint with that school's officials;

3. copies of this initial notice of the complaint will be sent to the school and to the complainant. A copy must also be retained in the commission staff files;

4. the notice of complaint will request that the student and the school meet and discuss the complaint in a conciliation effort and/or communicate in writing within 10 days after receipt of the notice;

5. if after 10 days, the complaint has not been satisfactorily resolved, the student may request further assistance from the commission staff; and

6. the commission staff may, at its discretion, eliminate the conciliation procedure where a student has

already contacted the school regarding the problem and may proceed directly to the mediation conference.

C. Mediation Conference

1. If the student advises the Section that no satisfactory resolution has been achieved with the school through the conciliation procedure, at that point the commission staff may forward the complaint and all associated materials to the Louisiana Division of Administrative Law.

2. If no amicable resolution is achieved in the mediation process, either party may request, within seven days, a hearing before the commission. Within five working days following a request for a hearing, the commission staff shall send written notice to the parties containing the following:

- a. an explanation of the hearing procedures; and
- b. the date, time and place for the hearing.

D. Hearing:

1. a public hearing shall be held before the commission. The parties shall be given 15 days notice in advance of the hearing, including the time, place and nature of the hearing and a statement of the alleged complaints to be the subject of the hearing;

2. the hearing shall be conducted in accordance with the provisions of the Administrative Procedure Act; and

3. the commission shall prepare a report of its findings and recommendations and submit it to the board. The board shall render a decision accompanied by written reasons within 30 days following the conclusion of the hearing. This decision will be transmitted to all parties with a notice of the right to judicial review.

E. Judicial Review. Either party may appeal to the Nineteenth Judicial District in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.3(D)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1865 (September 2007).

Chapter 19. Student Records

§1901. General Policies

A. All schools shall maintain all student records as required under R.S. 17:3141.16(D)(3). All student records shall include, but are not limited to enrollment agreements, attendance records, financial and academic transcripts, and exit interview.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.16(D)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1866 (September 2007).

§1903. Transfer of Student Records

A. A school must make arrangements to transfer all student records to the Commissioner of Higher Education at the commission's address within 10 days of closing. If any of the records have been seized or confiscated by legal authorities, the board shall request the authorities for documentation regarding seizure of the records. However, the school remains responsible for turning over unseized records. Any closed school, that maintains student files and electronic files shall make arrangements to electronically transfer such records to the board. The records shall be prepared in the following manner:

1. they shall be filed in alphabetical order;
2. each container will be clearly marked "official records" and will show the alphabetical order within the container (e.g., aa to bc); and

3. the containers shall be sealed to prevent loss or damage and marked in succession.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.16(D)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1866 (September 2007).

§1905. Penalties

A. Failure to maintain and/or turn over student records as provided above will result in the assessment of penalties.

B. If necessary, a claim shall be made against the surety bond posted at the time of submission of the license application to satisfy any penalties for failure to maintain and/or turn over student records pursuant to R.S. 17:3141.5(D)(1)(b)(iv).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.16(D)(3).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1866 (September 2007).

Chapter 21. Exceptions

§2101. Board Authority

A. The board retains the authority to waive or make exceptions to any provision of these regulations if it deems such waiver or exception to be in the public interest. This authority shall be exercised by majority vote of the Louisiana Board of Regents pursuant to request by a school, any interested party, recommendation of the commission, or upon its own motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3141.3(E), R.S. 17:3141.3(D)(2).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Regents, LR 33:1866 (September 2007).

Larry Tremblay
Deputy Commissioner

0709#010

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

USTs Delivery Prohibition
(LAC 33:XI.401 and 403)(UT015)

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 Underground Storage Tanks regulations, LAC 33:XI.401 and 403 (Log #UT015).

The Rule establishes standards for the red tag/delivery prohibition of regulated substances for underground storage tanks (USTs). It sets forth the requirements the owner/operator of the UST must meet in order to continue to receive delivery of fuel, and for when the department may prohibit the delivery of fuel. The 2005 Underground Storage Tank Compliance Act, which amends Section 9003 in Subtitle I of the Solid Waste Disposal Act, mandates states

authorized to administer the Underground Storage Tank Program to take certain actions to reduce the incidence of leaking USTs. One such action is to establish delivery prohibition of regulated substances for USTs that have not met the required 1998 standards or are not compliant with spill prevention, overflow protection, release detection, corrosion protection, or registration requirements. This action must be implemented to maintain funding of the UST program in the state and to provide a serious consequence to those owners and operators that continue to be out of compliance with the regulations. This action will further enhance our effort to maintain protection of human health and the environment. The basis and rationale for this Rule are to prevent contamination to the environment from underground storage tanks.

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 XI. Underground Storage Tanks

Chapter 4. 2005 Federal Underground Storage Tank Compliance Act Mandated Requirements

§401. Purpose

A. This Chapter implements requirements mandated by the Underground Storage Tank Compliance Act, 42 U.S.C. 6991.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1867 (September 2007).

§403. Delivery Prohibition of Regulated Substances to Underground Storage Tank Systems

A. Underground storage tank (UST) systems, except for those systems deferred or exempted from specified Chapters and Sections of these regulations in accordance with LAC 33:XI.101.C, that do not meet any one of the following requirements, upon discovery by the department, shall be subject to the status of red tag/delivery prohibition of regulated substances:

1. installation of spill prevention equipment in accordance with LAC 33:XI.Chapter 3;
2. installation of overflow protection equipment in accordance with LAC 33:XI.Chapter 3;
3. establishment of release detection methods or installation of release detection equipment in accordance with LAC 33:XI.Chapter 7;
4. installation of corrosion protection equipment in accordance with LAC 33:XI.Chapter 3;
5. compliance with LAC 33:XI.301.C.4; or
6. upon evidence of a below-surface release from an UST system, initiation by the owner/operator of release investigation and confirmation steps in accordance with LAC 33:XI.711, or compliance with the release response and corrective action requirements in LAC 33:XI.715.

B. Noncompliance with these regulations as listed in this Subsection shall result in a red tag/delivery prohibition of regulated substances if response action is not taken by the owner/operator within 30 days of receipt of written

notification by the department to the owner/operator. Response action will be considered as taken if the owner/operator has contracted and scheduled the action to take place within those 30 days and the response action has been initiated within 60 days of receipt of the written notification. The forms of noncompliance are:

1. failure to properly operate and/or maintain release detection equipment in accordance with LAC 33:XI.Chapter 7. Failure to provide records, within 10 days of request by the department, showing proper operation and/or maintenance of release detection equipment shall be considered a failure to properly operate and/or maintain the release detection equipment;

2. failure to properly operate and/or maintain spill, overflow, or corrosion protection equipment in accordance with LAC 33:XI.Chapter 5. Failure to provide records, within 10 days of request by the department, showing the type of spill, overflow, or corrosion protection equipment installed and the proper operation and/or maintenance of spill, overflow, or corrosion protection equipment shall be considered a failure to properly operate and/or maintain the spill, overflow, or corrosion protection equipment;

3. failure to maintain financial responsibility in accordance with LAC 33:XI.Chapter 11;

4. failure to protect from corrosion buried metal piping and/or components that routinely contain regulated substances in accordance with LAC 33:XI.303.B.2 and C.4. Failure to produce records, within 10 days of request by the department, showing procedures and/or practices designed to protect from corrosion buried metal piping and/or components that routinely contain regulated substances shall be considered a failure to protect from corrosion buried metal piping and/or components that routinely contain regulated substances.

C. It shall be unlawful for any person to place, or allow the placement of, a regulated substance into an UST that the department has red tagged/prohibited from delivery of regulated substances under Subsection A or B of this Section. The department may use its discretion in determining whether a non-delivery due to a red tag/delivery prohibition of regulated substances may jeopardize the availability of, or access to, motor fuel in remote areas of the state or in cases where an emergency declaration is in effect. When the department determines that red tagging/delivery prohibition will jeopardize the availability of, or access to, regulated substances, specifically motor fuels, in remote areas or in cases of an emergency declaration, it may allow for continued delivery of regulated substances, for up to 180 days, to an UST that has failed to have equipment required under Subsection A of this Section installed or that has been deemed noncompliant by the department under Subsection B of this Section.

D. The department shall provide adequate notice to UST system owners/operators and regulated substance deliverers that an UST has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance. Placing or allowing placement of a regulated substance into an UST determined ineligible for delivery, deposit, or acceptance of a regulated substance constitutes a violation of this Section.

E. The owner/operator of an UST that has been determined to be ineligible for delivery, deposit, or

acceptance of a regulated substance must make the necessary system repairs or upgrades, or remedy any form of noncompliance, and must be cleared of the red tag/delivery prohibition in writing by the department, or a person authorized by the department, in order to be removed from the red tag listing and be deemed eligible for delivery of regulated substances. The department, or a person authorized by the department, shall remove the red tag/delivery prohibition status for an UST system within two working days after compliance and/or upgrade or repair has been demonstrated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33: 1867 (September 2007).

Herman Robinson, CPM
Executive Counsel

0709#030

RULE

Department of Health and Hospitals Board of Practical Nurse Examiners

Curriculum Requirements (LAC 46:XLVII.927, 929, 931, and 933)

The Board of Practical Nurse Examiners hereby amends LAC 46:XLVII.101 et seq., in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Practical Nursing Practice Act, R.S. 37:961-979.

The proposed Rule change is to update and clarify requirements for curriculum development and implementation in practical nursing programs. In addition, while the total number of instructional hours has been maintained, the requirement for a minimum number of hours of instruction in each course has been removed. This is to allow greater flexibility and creativity in curriculum design.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses

Subpart 1. Practical Nurses

Chapter 9. Program Projection

Subchapter E. Curriculum Requirements

§927. Development

A. The curriculum shall be developed and written by the nursing faculty and shall include the philosophy and objectives of the program. Curriculum development and revision shall consider current concepts in health care and health care delivery systems. The evolution of the role of the practical nurse shall influence the curriculum. The curriculum and all curriculum revisions shall be approved by the board prior to implementation.

B. The curriculum shall ensure that program graduates possess the knowledge, skill, ability, and clinical competency to practice safely and effectively as an entry level practical nurse in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and R.S. 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:196 (April 1977), amended LR 8:65 (February 1982), LR 10:339 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 33:1868 (September 2007).

§929. Outline and Rotation Plan

A. A copy of the current board approved curriculum and a copy of the master rotation plan shall be available to the board on request.

B. The master rotation plan for each class shall provide the starting date, course of study, clinical practice areas and scheduled rotations, class schedule, and completion date. The master rotation plan and any revisions to the plan shall be approved by the board prior to implementation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and R.S. 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:195 (April 1977), amended LR 10:339 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 33:1868 (September 2007).

§931. Length of Program

A. A program shall be of sufficient length to ensure that graduates meet the objectives of the program and are clinically competent.

B. A program shall cover a minimum of 1,500 clock hours or an equivalent number of credit hours of scheduled instruction. At least 700 clock hours or an equivalent number of credit hours shall be the minimum number of theory hours and at least 800 clock hours or an equivalent number of credit hours shall be the minimum number of clinical hours.

C. Theory and clinical experience should be concurrent or sequential, progressing from the simple to the complex.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:196 (April 1977), amended LR 8:65 (February 1982), LR 10:339 (April 1984), LR 10:915 (November 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1127 (October 1992), repromulgated LR 18:1260 (November 1992), amended LR 33:1868 (September 2007).

§933. Curriculum

A. The curriculum shall include instruction in the following basic arts and sciences.

1. Body Structure and Function—providing an understanding of the basic anatomy and physiology of the human body and deviations from the normal.

2. Introduction to Microbiology—providing a basic understanding of microbes including their role in health and illness, modes of transmission, reproduction, and methods of control or destruction, with an instructional focus on concepts essential for the safe performance of nursing procedures and for the prevention of illness and/or the transfer of disease to others.

3. Introduction to Practical Nursing—providing instruction and guidance in the identification and personal development of those qualities and personal characteristics needed to practice practical nursing safely, effectively, and with compassion, including increased and ongoing development of self awareness, sound judgment, prudence, ethical thinking and behaviors, problem solving and critical

thinking abilities. This course also provides instruction in the history, trends and the evolution of practical nursing, information related to practical nursing organizations, and an introduction to the laws and rules governing practical nursing practice in Louisiana (the Revised Statutes, Title 37, Chapter 11, Subpart II, Practical Nurses and LAC 46:XLVII, Nurses, Subpart 1, Practical Nurses).

4. Personal, Family and Community Health—providing concepts of personal and family growth and development and an understanding of the unique manner in which people build and define relationships, families, and communities. Instruction is designed to assist the student to identify and respect the unique abilities and qualities of people as they participate and function in society. The student is made aware of the rights of clients to make their own health care decisions and the student learns how to support client decisions through the utilization of local, state and national health resources. Students are guided in coursework designed to increase awareness of and respect for variations in cultural, religious, spiritual, educational, and socio-economic histories and experiences. The student begins to understand how these variations impact health, illness and client participation in the health care delivery system.

5. Nutrition and Diet Therapy—describing concepts of proper nutrition for all age groups and addressing diet modifications for therapeutic purposes.

6. Pharmacology—presenting concepts relating to drug classification, action, dosage, dosage calculation, intended effects, side effects and adverse effects, as well as concepts relating to teaching clients, family, and others about the effects of medications. Instruction provides an opportunity for the development of competence in skills needed in the preparation, administration, documentation, and safe storage of medications.

7. Principles and Practices of Nursing—presenting the application of concepts which will provide basic principles of nursing care and correlated experiences to develop competency in medical-surgical nursing, geriatric nursing, obstetrical nursing, pediatric nursing and mental health nursing. Clinical experience shall include, but not be limited to, the performance of basic and advanced nursing skills, general health and physical assessment, critical thinking and clinical problem solving, medication administration, IV therapy, patient education, health screening, health promotion, health restoration and maintenance, supervision and management, safety and infection control, communication and documentation, and working as a member of an interdisciplinary health care team.

8. Career Readiness—presenting information relating to all aspects of gaining and maintaining a license to practice practical nursing, the nurse's personal accountability to maintain and continue to acquire the knowledge, skills and abilities needed to practice safely, the qualities employers seek and the non-nursing employment skills, abilities, and personal characteristics needed to secure and maintain employment as a practical nurse. The student also develops a deeper understanding of the laws and rules governing practice, including R.S. 37, Chapter 11, Part II and LAC 46:XLVII, Subpart 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:196 (April 1977), amended LR 8:65 (February 1982), LR 10:339 (April 1984), LR 10:915 (November 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1127 (October 1992), repromulgated LR 18:1260 (November 1992), amended LR 33:1868 (September 2007).

Claire Doody Glaviano
Executive Director

0709#005

RULE

Department of Health and Hospitals Board of Practical Nurse Examiners

Faculty
(LAC 46:XLVII.901)

The Board of Practical Nurse Examiners hereby amends LAC 46:XLVII.101 et seq., in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Practical Nursing Practice Act, R.S. 37:961-979.

The purpose of the proposed Rule change is to establish new guidelines for the educational preparation and nursing experience of faculty hired to teach in practical nursing programs. These new guidelines remove language requiring faculty to attain a specific educational degree but maintain the requirements that faculty members have clinical experience providing direct patient care and be currently licensed to practice registered nursing in the state of Louisiana. The proposed Rule change also allows programs to hire faculty with specialized clinical experience. These changes give program administrators greater choice, control, and responsibility in hiring qualified faculty and in building a staff with the expertise needed to fulfill program objectives.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

PART XLVII. Nurses

Subpart 1. Practical Nurses

Chapter 9. Program Projection

Subchapter A. Faculty and Staff

§901. Faculty

A. The program shall have a faculty of sufficient size and expertise to fulfill the program objectives. At no time shall a faculty consist of less than two fulltime nurse members, one of whom shall be designated as coordinator/department head. Programs with two fulltime nurse faculty members shall admit a maximum of 36 students per class. The board may, upon application by the school administrator, permit program expansion. Expansion approval must be obtained in writing from the board.

B. Application and Qualifications

1. Application. Each applicant for a faculty position in a practical nursing program shall be approved by the Louisiana State Board of Practical Nurse Examiners prior to employment in the program.

2. Licensure. Each nurse faculty member shall hold a current, valid license to practice as a registered nurse in the state of Louisiana, which license shall be visually inspected annually by the nurse coordinator/department head of the practical nursing program and the administrator of the school. The board may deny and/or rescind approval to a faculty applicant and/or current faculty member whose license has been or is currently being disciplined in any jurisdiction.

3. Nurse Coordinator/Department Head. The coordinator/department head shall be a registered nurse with a minimum of four years experience in medical-surgical nursing or nursing education. At least one of these four years must have been as a medical-surgical hospital staff nurse providing direct patient care. An applicant for nurse coordinator must have practiced as a nurse for a minimum of six full-time months during the three years immediately preceding application.

4. Nurse Instructor. A nurse instructor shall be a registered nurse with a minimum of three years of nursing experience. At least one of these three years must have been as a medical-surgical hospital staff nurse providing direct patient care. An applicant for nurse instructor must have practiced as a nurse for a minimum of six full-time months during the three years immediately preceding application.

5. Specialty Nurse Instructor. The board may consider an applicant for a specialty nurse instructor with experience in one of the clinical specialty areas (maternity, neonatal, pediatric, mental health) provided that this instructor is hired in addition to two full time nurse faculty members who meet the qualifications for nurse coordinator and/or nurse instructor. The specialty nurse instructor must have a minimum of four years of clinical experience in the specific specialty area. The specialty nurse instructor may be utilized only for instruction in the specific specialty area for which application was made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and R.S. 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:194 (April 1977), amended LR 5:355 (November 1979), LR 10:338 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 16:133 (February 1990), LR 18:1127 (October 1992), repromulgated LR 18:1260 (November 1992), amended LR 21:1244 (November 1995), LR 26:2617 (November 2000), LR 33:1869 (September 2007).

Claire Doody Glaviano
Executive Director

0709#006

RULE

Department of Health and Hospitals Board of Nursing

Prescriptive and Distributing Authority Clinical Practice
Requirements for Licensed APRNs or APRNs
(LAC 46:XLVII.4513)

The Louisiana State Board of Nursing hereby amends LAC 46:XLVII. 4513 in accordance with R.S. 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the

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

The proposed amendments to LAC 46:XLVII.4513, Authorized Practice, revises the requirements of 500 hours of clinical practice as a licensed APRN or APRN for granting of prescriptive and distributing authority. The proposed amendments require that the applicant shall provide evidence of 500 hours of clinical practice as a licensed APRN or APRN applicant within one year in the clinical specialty for which the applicant was educationally prepared as an APRN immediately prior to applying for prescriptive and distributing authority; practice in another state as a licensed APRN may be accepted to meet this requirement; or 500 hours of clinical practice in medical management of patients in a preceptorship (student experience) in which the APRN applicant is precepted by a physician or another advanced practice registered nurse who has approval for medical management/prescriptive authority by the Board of Nursing. The student experience must occur in a formal board approved educational program preparing graduates to sit for the respective advanced practice specialty licensure exam and certification process.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses

Subpart 2. Registered Nurses

Chapter 45. Advanced Practice Registered Nurses

§4513. Authorized Practice

A. - C.8. ...

D. Prescriptive and Distributing Authority. An Advanced Practice Registered Nurse (APRN) shall practice in a manner consistent with the definition of advanced practice set forth in R.S. 37:913(3). An APRN may be granted prescriptive authority to prescribe assessment studies, including pharmaceutical diagnostic testing (e.g., dobutamine stress testing) legend and certain controlled drugs, therapeutic regimens, medical devices and appliances, receiving and distributing a therapeutic regimen of prepackaged drugs prepared and labeled by a licensed pharmacist, and free samples supplied by a drug manufacturer, and distributing drugs for administration to and use by other individuals within the scope of practice as defined by the board in R.S. 37.913(3)(b).

1. The applicant shall:

a. hold a current, unencumbered, unrestricted and valid registered nurse license in Louisiana with no pending disciplinary proceedings as stated in R.S. 37:921;

b. hold a current, unencumbered, unrestricted and valid APRN license;

c. submit a notarized application on a form provided by the board with a non-refundable fee as set forth in LAC 46:XLVII.3341;

d. provide evidence of:

i. 500 hours of clinical practice as a licensed APRN or APRN applicant within one year in the clinical specialty for which the applicant was educationally prepared as an APRN immediately prior to applying for prescriptive and distributing authority; practice in another state as a licensed APRN may be accepted to meet this requirement; or

ii. 500 hours of clinical practice in medical management of patients in a preceptorship (student

experience) in which the APRN applicant is precepted by a physician or another advanced practice registered nurse who has approval for medical management/prescriptive authority by the Board of Nursing. The student experience must occur in a formal board approved educational program preparing graduates to sit for the respective advanced practice specialty licensure exam and certification process; and

iii. successful completion of a minimum of 45 contact hours of education (3 credit hour academic course) in advanced pharmacotherapeutics obtained as a component of a formal educational program preparing registered nurses for advanced practice, approved by the board;

iv. successful completion of a minimum of 45 contact hours (3 credit hour academic course) in physiology/pathophysiology in a formal educational program approved by the board for preparation for advanced practice registered nurses;

v. any deviation from Clause 1.d.i, ii or iii shall be submitted to the board for review and approval; and

vi. a collaborative practice agreement as defined in §4513.B.1, 2 and 3, with one or more licensed collaborating physicians which shall include, but not be limited to:

(a). a plan of accountability among the parties that:

(i). defines the prescriptive authority of the APRN and the responsibilities of the collaborating physician or physicians;

(ii). delineates a plan for hospital and other healthcare institution admissions and privileges which includes a statement that the collaborating physician must have said privileges at the same institution before an APRN can receive this determination at said institution;

(iii). delineates mechanisms and arrangements for diagnostic and laboratory requests for testing; and

(iv). delineates a plan for documentation of medical records;

(b). clinical practice guidelines as required by R.S. 37:913(9)(b) shall contain documentation of the types or categories or schedules of drugs available and generic substitution for prescription and be in accordance with current standards of care and evidence-based practice for the APRN specialty and functional role and be:

(i). mutually agreed upon by the APRN and collaborating physician;

(ii). specific to the practice setting;

(iii). maintained on site; and

(iv). reviewed and signed at least annually by the APRN and physician to reflect current practice;

(c). documentation of the availability of the collaborating physician when the physician is not physically present in the practice setting. Physicians shall be available to provide consultation as needed:

(i). physician shall be available by telephone or direct telecommunications for consultation, assistance with medical emergencies, or patient referral, as delineated in the collaborative practice agreement; and

(ii). the secondary (back-up) physician or physicians shall be in good standing and approved by the Louisiana State Board of Medical Examiners and sign the collaborative practice agreement;

(iii). in the event the collaborating physician and any secondary (back-up) collaborating physician(s) are unavailable, the APRN will not prescribe;

(d). documentation shall be shown that patients are informed about how to access care when both the APRN and/or the collaborating physicians are absent from the practice setting; and

(e). an acknowledgement of the mutual obligation and responsibility of the APRN and collaborating physician to insure that all acts of prescriptive authority are properly documented.

2. - 14.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and R.S. 37:1031-1034.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 10:598 (August 1984), amended by the Department of Health and Hospitals, Board of Nursing, LR 22:283 (April 1996), amended by the Department of Health and Hospitals, Board of Nursing and Board of Medical Examiners, LR 22:981 (October 1996), LR 25:1245 (July 1999), LR), amended by the Department of Health and Hospitals, Board of Nursing, 27:727 (May 2001), amended by the Department of Health and Hospitals, Board of Nursing and Board of Medical Examiners, LR 28:487 (March 2002) repromulgated LR 28:1205 (June 2002), amended by the Department of Health and Hospitals, Board of Nursing, LR 31:2023 (August 2005), amended LR 33:1870 (September 2007).

Barbara L. Morvant
Executive Director

0709#016

RULE

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

Home and Community-Based Services Waivers
Children's Choice
Termination of Diaper Coverage
(LAC 50:XXI.11303, 11527 and 12101)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities amends LAC 50:XXI.11303, 11527 and 12101 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 XXI. Home and Community-Based Services Waivers

Subpart 9. Children's Choice

Chapter 113. Service

§11303. Service Definitions

A. - F.2. ...

G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1871 (September 2007).

Chapter 115. Providers

Subchapter B. Provider Requirements

§11527. Direct Service Providers

- A. - A.3.b. ...
- c. Repealed.
- d. ...
- 4. - 12. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1985 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1872 (September 2007).

Chapter 121. Reimbursement

§12101. Reimbursement Methodology

- A. - B.3. ...
- 4. Repealed.

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

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

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

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

0709#075

RULE

Louisiana Citizens Property Insurance Corporation

Regulation 87—Louisiana Citizens Property Insurance Corporation—Producer Binding Requirements (LAC 37:XIII.Chapter 121)

The Louisiana Citizens Property Insurance Corporation, through its Board of Directors, and pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., inter alia, R.S. 22:1430.22, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby adopts Regulation 87 titled Producer Binding Requirements for property and casualty insurance issued by the Louisiana Citizens Property Insurance Corporation through the Louisiana Joint Reinsurance Plan (FAIR Plan) and the Louisiana Insurance Underwriting Plan (Coastal Plan).

As a result of the devastation and destruction caused by Hurricane Katrina and Hurricane Rita, many Louisiana citizens have lost or could lose homeowners insurance coverage or other property and casualty insurance coverage in areas that were most affected by the impact of these two hurricanes. Many citizens have sought or may be forced to

seek coverage through other insurance companies to address their property and casualty insurance needs.

Recognizing the gravity of the impact left by Hurricane Katrina and Hurricane Rita and the immediate needs of Louisiana citizens to have property and casualty insurance coverage, the Louisiana Legislature in the 2006 Regular Session enacted Act No. 787, which provides authority for producers to bind coverage with the Louisiana Citizens Property Insurance Corporation. Regulation 87 is promulgated to accomplish the purposes required by Acts 2006, No. 787. Through the implementation of Regulation 87, qualified producers will be able to write applications of property and casualty insurance through the FAIR Plan and the Coastal Plan after satisfying certain binding authority requirements. As we enter the 2007 hurricane season, Regulation 87 establishes standards and procedures for these producers to utilize in the application process in order that these producers may provide Louisiana citizens with the property and casualty insurance coverage they need in order to avoid the peril that would result from a property loss due to a hurricane or other natural disaster.

Title 37

INSURANCE

PART XIII. Regulations

Chapter 121. Regulation 87—Louisiana Citizens Property Insurance Corporation Producer Binding Requirements

§12101. Purpose

A. The purpose of Regulation 87 is to establish standards, guidelines, and requirements for licensed and qualified insurance producers to have binding authority to write applications of property and casualty insurance for the FAIR Plan and the Coastal Plan issued by the Louisiana Citizens Property Insurance Corporation. Regulation 87 also sets forth standards and procedures regarding the application process for use by such insurance producers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1872 (September 2007).

§12103. Authority

A. Regulation 87 is promulgated by the Board of Directors of the Louisiana Citizens Property Insurance Corporation, pursuant to the authority granted under the Louisiana Insurance Code, Title 22, R.S. 22:1430.22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1872 (September 2007).

§12105. Applicability and Scope

A. Regulation 87 applies to all insurance producers who are duly licensed by the Louisiana Department of Insurance to sell property and casualty insurance, are engaged in and transact the business of insurance in the state of Louisiana, have applied to the Louisiana Citizens Property Insurance Corporation and have met the qualifications for binding authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1872 (September 2007).

§12107. Definitions

A. For the purposes of Regulation 87, the following terms shall have the meaning or definition as indicated herein.

Binding Authority—the ability of a duly licensed insurance producer, who has adequate errors and omission insurance, and has completed a training course offered by Citizens, to issue a policy of property and casualty insurance in the FAIR Plan and Coastal Plan that imposes liability upon Citizens. A licensed producer must meet all requirements for binding authority set forth in Regulation 87 and must have applied to and have been authorized by Citizens to qualify for binding authority.

Citizens (when capitalized)—the Louisiana Citizens Property Insurance Corporation, and includes the residual market insurance programs known as the "Coastal Plan" and the "FAIR Plan."

Coastal Plan—the successor to that program established by Act 35 of the 1970 Regular Session to provide a residual market for adequate insurance on property in the coastal areas of the state, now available as a program of Citizens.

Commissioner—the Commissioner of Insurance of the Louisiana Department of Insurance.

Department—the Louisiana Department of Insurance.

FAIR Plan—the successor to that program established by Act 424 of the 1992 Regular Session, and designated as the "Fair Access to Insurance Requirements Plan" to provide a residual market for adequate insurance on property in the state, now available as a program of Citizens.

Insurance Producer—a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, and includes all persons or business entities otherwise referred to in the Louisiana Insurance Code as "insurance agent" or "agent," or "insurance broker" or "broker," or "insurance solicitor" or "solicitor," or "surplus lines broker."

Louisiana Policy Management System (LPMS)—the Citizens policy management computer system or its successor.

Procedural Error—an error in an insurance application to bind property and casualty coverage with Citizens that does not materially affect the underwriting risk or rise to the level of a material misrepresentation that does not rise to the level of a substantive error.

Producer Subscriber Agreement—a contractual agreement delineating the terms, provisions and conditions permitting insurance producers and/or producer agencies to bind coverage and write property and casualty insurance issued by Citizens through the FAIR Plan and the Coastal Plan.

Substantive Error—an error in an application to bind property and casualty insurance coverage with Citizens that materially affects the underwriting risk or rises to the level of a material misrepresentation.

Unlicensed Employee—a person hired by an insurance producer who performs administrative or clerical duties authorized by such insurance producer relative to an insurance application, but does not possess an insurance producer license and is not authorized to sell, solicit, or negotiate a contract of insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1873 (September 2007).

§12109. Licensing

A. Pursuant to R.S. 22:3, no person shall be authorized to transact or shall transact the business of insurance in the state of Louisiana without complying with the provisions of the Louisiana Insurance Code.

B. Except as otherwise provided in R.S. 22:1134(B) and 22:1148(C)(1), no person shall act as or hold himself out to be an insurance producer unless licensed by the department as required by R.S. 22:1133.

C. In accordance with R.S. 22:1133(B), an insurance producer is not authorized to sell, solicit, make an application for, procure, or place for others any policies for any lines of insurance as to which the insurance producer is not qualified and duly licensed in the state of Louisiana.

D. Citizens acknowledges that the granting of an insurance producer license is within the sole province of the department and nothing in Regulation 87 shall be construed or intended to confer upon Citizens any right to the licensure of any insurance producer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1873 (September 2007).

§12111. Qualifications for Binding Authority

A. In order to bind coverage for the FAIR Plan and the Coastal Plan through Citizens, each duly licensed insurance producer must meet the following requirements:

1. maintain errors and omission insurance in the minimum amount of \$1 million per occurrence and \$1 million annual aggregate;

2. complete the initial training course and the annual training course approved and offered by Citizens, except that an insurance producer authorized by and conducting business with Citizens on the date Regulation 87 becomes final shall have until December 31, 2008 to complete the educational requirements;

3. demonstrate experience writing property and casualty insurance in Louisiana and maintain an in-force book of residential and/or commercial property insurance business in the lines of insurance offered by Citizens;

4. have a valid insurance producer license issued by the department;

5. submit to Citizens a completed application warranting compliance with applicable requirements established by Citizens;

6. submit to Citizens a properly executed producer subscriber agreement; and

7. demonstrate compliance with all terms and conditions set forth in the producer subscriber agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1873 (September 2007).

§12113. Procedures to Implement Binding Authority

A. The insurance producer shall list all unlicensed employees that shall have access to the Louisiana Policy

Management System (LPMS) in order for the insurance producer to bind property and casualty insurance coverage for their clients with Citizens.

B. If the insurance producer is an insurance agency, it shall list each unlicensed employee or insurance producer that shall have access to the Louisiana Policy Management System (LPMS) in order for the insurance producer to bind property and casualty insurance coverage for their clients with Citizens.

C. Each insurance producer, whether an individual or an agency, shall assign an administrator who shall have the responsibility and authority to add and/or delete unlicensed employees, including insurance producers, who have been authorized to access the LPMS. The administrator shall provide each unlicensed employee, including insurance producers, an LPMS access code, and the administrator and insurance producer shall select a secure password to access the LPMS. The administrator shall be responsible for managing the LPMS Interface with the insurance producer, whether an individual or an agency, and maintaining up-to-date information in the LPMS.

D. Citizens will publish and maintain technical computer system requirements for the LPMS. Instructions for using the LPMS will be available on a web site created and maintained by Citizens. Insurance producers are responsible for ensuring that their computer systems and internal resources meet the technical computer system requirements and that their unlicensed employees, including insurance producers if an insurance agency, are properly trained on the use of the LPMS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1873 (September 2007).

§12115. Procedures for Application to Bind Coverage

A. The insurance producer shall complete and submit the on-line application for property and casualty insurance coverage to Citizens and shall comply with all requirements of the application process that have been established by Citizens.

B. The insurance producer authorized to bind coverage with Citizens on the LPMS shall provide a valid Louisiana property and casualty insurance producer license number issued by the department in each application for property and casualty coverage with Citizens utilizing the LPMS. The administrator shall be responsible for maintaining an up-to-date list of insurance producers with the current insurance producer license number issued by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1874 (September 2007).

§12117. Education and Training

A. Each authorized insurance producer and each authorized employee of an insurance producer shall, within each calendar year, attend at least one certified continuing education seminar that has been previously approved by Citizens in order to maintain their binding authority. Continuing education seminars will be provided by Citizens at least twice during each calendar year in order to facilitate the fulfillment of this requirement.

B. Each new insurance producer and each employee of a new insurance producer shall attend a previously approved Citizens education seminar as a prerequisite for authorization to bind coverage.

C. Any insurance producer who is authorized by and conducting business with Citizens on the date Regulation 87 becomes final shall have until December 31, 2008 to complete the educational requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1874 (September 2007).

§12119. Errors and Omission Insurance

A. Each insurance producer, including the insurance agency if applicable, must provide documentary proof to Citizens that it has met and is carrying a required minimum of \$1 million per occurrence and \$1 million annual aggregate of professional liability coverage at the time of application for binding authority. Proof of professional liability coverage shall include, at a minimum, documentation that verifies the liability insurer, the amount of coverage and the duration of coverage. The administrator of the insurance producer shall update this proof of professional liability coverage in the LPMS each year in advance of the expiration date of the coverage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1874 (September 2007).

§12121. Underwriting Requirements

A. Each insurance producer, including a producer who is an insurance agency, who has authority to bind coverage with Citizens is responsible to ensure that each producer and unlicensed employee properly follows all of the underwriting procedures established by Citizens. Any insurance producer who attempts to bind coverage with Citizens and fails to follow the underwriting procedures that have been established by Citizens shall be subject to the action that Citizens is authorized to take, including the suspension and termination of binding authority privileges, as prescribed in Section 12125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1874 (September 2007).

§12123. Premium Payments Requirements

A. An insurance producer shall submit the entirety of the premium payment with the application within five calendar days after receipt of the premium. In order to expedite the payment of the premium, any premium money collected from a policyholder by the insurance producer may be electronically drafted from the insurance producer's trust account. The insurance producer shall complete and submit to Citizens the necessary draft forms, including the trust account information, in order to utilize this electronic process. Use of this electronic process is not required. However, each insurance producer is encouraged to utilize the electronic process as a preferred method to guarantee that payment of the premium is remitted timely to Citizens.

B. Failure to timely submit a premium to Citizens may result in suspension of binding authority privileges for one year unless reinstated before the expiration of the one year period by Citizens. Additionally, the insurance producer will be referred to the department for further action authorized under the Louisiana Insurance Code. An insurance producer who has been suspended may be authorized to service existing Citizens' business. However, such insurance producer will not be authorized or entitled to bind any new business unless and until reinstated by Citizens.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1874 (September 2007).

§12125. Suspension and Termination of Binding

Authority

A. Citizens has the authority to suspend or terminate the binding authority privileges of an insurance producer if Citizens determines that the insurance producer has failed to adhere to proper underwriting and binding procedures that have been established by Citizens.

B. An insurance producer who demonstrates a consistent practice of submitting multiple procedural errors on applications to bind coverage with Citizens may have his binding authority privileges suspended for a period of not more than 12 months and until such time as Citizens has determined that the subject insurance producer has taken the actions required by Citizens to rectify the procedural errors.

C. An insurance producer who, during a 12 month period, commits a substantive error in five or more applications to bind coverage with Citizens may have his binding authority privileges suspended for a period of not more than 12 months and until such time as Citizens has determined that the subject insurance producer has taken the actions required by Citizens to rectify the substantive errors.

D. An unlicensed employee who demonstrates a consistent pattern of submitting procedural errors or substantive errors on applications to bind coverage with Citizens may be denied the right to access the LPMS on behalf of the insurance producer until such time as Citizens has determined that the subject unlicensed employee has taken the actions required by Citizens to rectify the errors. The insurance producer, and if applicable an insurance agency, who is responsible for the unlicensed employee who has been sanctioned herein shall be subject to suspension or termination of the binding authority privileges as deemed appropriate by Citizens pursuant to the guidelines set forth in Subsections B, C, E and F.

E. An insurance agency, whose producers and/or unlicensed employees, demonstrate a consistent practice of submitting applications to bind coverage with Citizens that contain substantive errors that materially affect the underwriting risk of any contract of property and casualty insurance issued, or to be issued, by Citizens may have all binding authority privileges terminated for a period of not more than 12 months and until such time as Citizens has determined that the subject insurance producer has taken the actions required by Citizens to rectify the substantive errors. After the expiration of the termination period, the insurance producer may apply for reinstatement. Reinstatement shall be at the sole discretion of Citizens and may be subject to

any additional training or educational requirements imposed by Citizens.

F. An insurance producer who has been determined by Citizens to have knowingly or intentionally engaged in fraudulent conduct or committed an act of fraud in or relative to an application to bind coverage with Citizens shall have all binding authority privileges terminated and shall not be eligible for reinstatement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1875 (September 2007).

§12127. Appeals

A. An insurance producer aggrieved by any action taken by the chief executive officer of Citizens relative to the suspension or termination of their binding authority privileges shall have the right to file a written appeal to the board of directors of Citizens. The written appeal shall be filed within 30 days of the date of the adverse action taken by the chief executive officer of Citizens against the aggrieved party. The written appeal shall set forth, in detail, each and every reason why the aggrieved party is entitled to the relief requested, including any documents, papers and things tendered in support thereof. The board of directors of Citizens may conduct a hearing or may consider the matter as being submitted on the merits. The board of directors of Citizens shall render a decision within 90 days after the date of the lodging of a timely and complete appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1875 (September 2007).

§12129. Referral for Regulatory Action

A. Citizens reserves the right to refer any matter involving Regulation 87 to the department for any legal action authorized under the Louisiana Insurance Code, including, but not limited to, fine, probation, suspension or revocation of the insurance producer license issued by the department to the insurance producer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1875 (September 2007).

§12131. Severability

A. If any provision of Regulation 87 or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of Regulation 87 which can be given effect without the invalid provision or application, and to that end, the provisions of Regulation 87 are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Louisiana Citizens Property Insurance Corporation, LR 33:1875 (September 2007).

§12133. Effective Date

A. Regulation 87 shall become effective on the date of the publication of the final Rule in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1430.22 and the Administrative Procedure Act, R.S. 49:950 et seq.

J. William Newton
Chairman

0709#024

RULE

Department of Revenue Policy Services Division

Natural Resources—Severance Tax (LAC 61:I.2903)

Editor's Note: This Rule is being promulgated to correct a citation error. The original Rule may be viewed on pages 1614-1615 of the September 20, 2006 edition of the *Louisiana Register*.

Under the authority of R.S. 47:633 and 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.2903 to extend the time allowed for filing certifications for reduced oil and gas severance tax rates from the fifteenth day of the second month following the month of production to the twenty-fifth day of the second month, which is the same due dates as the severance tax returns. In addition, proposed amendments require the filing of continuing certification forms for gas wells, which is consistent with the oil well requirements.

Acts 2005, No. 446 amended R.S. 47:635(A) and 640(A) to extend the oil and gas severance tax return and payment due dates to the twenty-fifth day of the second month following the month to which the tax applies effective for tax periods beginning on or after October 1, 2005. Act 38 of the 2006 Regular Legislative Session amended R.S. 47:633(7)(b) and (c)(i)(aa) to extend the due date for filing the oil reduced severance tax rate certifications. The due date for filing reduced gas severance tax rate certifications is not specified by the severance tax statutes, R.S. 47:633(9)(b) and (c). These amendments make the reduced oil and gas severance tax rate certification due dates the same as the severance tax return due dates.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 29. Natural Resources—Severance Tax §2903. Severance Taxes on Oil; Distillate, Condensate or Similar Natural Resources; Natural Gasoline or Casinghead Gasoline; Liquefied Petroleum Gases and Other Natural Gas Liquids; and Gas

A. ...

B. Certification for Reduced Tax Rates. A taxpayer may qualify for the lesser tax rates levied in R.S. 47:633(7)(b) and (c), and R.S. 47:633(9) by certifying and reporting production and test data, on forms prescribed by the secretary.

1. Oil. Oil production is certified for reduced severance tax rates provided by R.S. 47:633(7)(b) or (c)(i)(aa) by individual well. To receive the reduced tax rate

on the crude oil production from an oil well, an application must be filed with the secretary on or before the twenty-fifth day of the second month following the month in which production subject to the reduced rate applies.

a. After a well has been certified for the reduced tax rate, it is necessary to file continuing certification forms on or before the twenty-fifth day of the second month following the months of production.

i. It is not necessary to include stripper wells that are certified with a "B" prefix code on the continuing certification forms.

ii. Failure to file or delinquent filing of the continuing certification forms may result in certification denial for the month's production that the report is delinquent or not filed.

b. Wells cannot be certified as both a stripper and an incapable oil well.

c. Recertification is required whenever the well operator changes.

d. All wells are subject to redetermination of their reduced rate status based on reports filed with the Department and the Office of Conservation. When a well no longer meets the qualifications for the reduced tax rate for which it was certified, the full tax rate becomes due.

2. Gas. Gas production is certified for reduced severance tax rates provided by R.S. 47:633(9)(b) and (c) by individual wells. To receive the reduced severance tax rate on natural gas or casinghead gas production, an application must be filed with the secretary on or before the twenty-fifth day of the second month following the month in which production occurs.

a. After a well has been certified for the reduced tax rate, it is necessary to file continuing certification forms on or before the twenty-fifth day of the second month following the month of production.

i. It is not necessary to include incapable gas wells that are certified with an "F" prefix code on the continuing certification forms.

ii. Failure to file or delinquent filing of the continuing certification forms may result in certification denial for the month's production that the report is delinquent or not filed.

b. The well cannot be certified as both an incapable gas well and an incapable oil well.

c. If the well changes from one tax rate status to another a new certification is required.

d. Recertification is required whenever the well operator changes.

e. All wells are subject to redetermination of their reduced rate status based on reports filed with the Department and the Office of Conservation. When a well no longer meets the qualifications for the reduced tax rate for which it was certified, the full tax rate becomes due.

C. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:633, 47:648.3, and 47:1511.

HISTORICAL NOTE: Adopted by the Department of Revenue and Taxation, Severance Tax Division, August 1974, amended LR 3:499 (December 1977), amended LR 20:1129 (October 1994), repromulgated LR 20:1299 (November 1994), amended by the Department of Revenue, Severance Tax Division, LR 23:1167 (September 1997), LR 24:2321 (December 1998), Department of

Cynthia Bridges
Secretary

0709#048

RULE

Department of Revenue Policy Services Division

Returns and Payment of Tax; Penalty for Absorption of Tax (LAC 61:I.4351)

Under the authority of R.S. 47:306, 47:337.2, 47:337.18, and 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, amends LAC 61:I.4351 to provide guidance to taxpayers concerning the filing of sales tax returns.

The department has traditionally approved applications of dealers to combine the sales tax filing data from several locations of the same legal entity into a single monthly or quarterly sales tax return, and will continue to do so. The Rule provides, however, that when a dealer operates a location within the boundaries of a tax increment financing district, the department might require that the sales tax data for the location within the district be reported on a separate return. The department might require a dealer to file a separate return in any other instance where tax data is required for an individual sales location.

The Rule also provides with respect to the filing of quarterly sales tax returns with the Louisiana Department of Revenue and for the filing with the department of returns for periods other than a calendar month or quarter. The filing of quarterly sales tax returns with political subdivisions of the state is provided for by R.S. 47:337.18(A)(1)(b)(i), and is not affected by this Rule.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4351. Returns and Payment of Tax, Penalty for Absorption of Tax

A. General. All persons and dealers who are subject to state or local sales or use tax are required to file a tax return monthly, unless otherwise provided, and to remit the amount of tax due. Forms will be provided by the collector, and failure to receive a form will not relieve the dealer of the necessity to file and remit the tax due. For the purpose of collecting and remitting state and local sales or use tax, the dealer performs as the agent of the taxing authority.

1. After a dealer is properly registered for sales and use tax purposes, a sales tax identification number is assigned and the dealer is required to file monthly sales tax returns. Failure to file returns timely will cause the collector to issue an estimated proposed assessment. For those months when the dealer has no taxable sales or amounts to report, a return must still be filed marked "no sales or taxable amounts" and signed by the dealer. Monthly returns must be

filed on or before the twentieth day of the month following the month in which the tax is due.

a. Taxpayers may request approval to file consolidated sales tax returns to report sales made from multiple locations on one consolidated monthly return.

b. The collector may require taxpayers to file separate tax returns if the taxpayer is located within a tax increment financing zone or in any other instance when tax data is required by taxpayer location.

2. - 6. ...

B. Exceptions. Not all dealers are required to file returns on a monthly basis.

1. After registration, all dealers will be required to file monthly tax returns.

2. Quarterly Filing. Solely for state sales or use tax purposes, after the dealer has filed tax returns for a few months and it is determined that their tax liability averages less than \$500 per month, the dealer will be notified and required to file returns quarterly.

a. It is not necessary to apply for quarterly filing because once a determination is made by the secretary that quarterly filing is appropriate, the dealer will be notified.

b. Quarterly returns must be filed on or before the twentieth day of the first month of the next succeeding quarter.

c. Any dealer required to file on a quarterly basis, may apply for approval to file and pay taxes on a monthly basis.

i. Requests to file monthly must include justification for the exception.

ii. Monthly filing requests must be approved before the dealer may begin filing monthly.

d. Solely for filing local sales or use tax returns, R.S. 47:337.18(A)(1)(b)(i) requires dealers to file their tax returns quarterly if their tax due averages less than \$30 per month.

3. Irregular Filing. Dealers with occasional sales or use tax purchases may apply for approval to file and pay taxes on an irregular filing basis.

a. Sales and use tax returns must be filed on or before the twentieth day of the month following the month in which the taxable transaction occurred.

b. Each line of the tax return must be completed and all nontaxable amounts should be identified.

4. Alternate Filing Periods

a. Dealers must apply for approval to file sales tax returns using an alternate method.

b. Approval will only be granted if the total filings do not exceed 12 filings in a 12-month period.

c. The number of short periods during a year must be greater than or equal to the number of long periods during that same year.

d. At the beginning of each year the dealer must, after obtaining approval for the alternate period filing method, file with the collector a calendar for the year showing the alternative filing periods for that year. Amendments to approved calendars must be submitted for approval prior to the affected periods. The taxpayer's account will be reviewed to determine if the taxpayer has correctly filed returns, according to the calendar submitted at the beginning of the year. If the taxpayer does not follow the approved alternate filing method, the returns for the year

under review will be converted to a calendar month basis and the taxpayer's request to use an alternate period filing method for the subsequent year will be denied. Alternate period returns must be filed on or before the twentieth day following the close of the alternate filing period. Failure to file on or before this date will subject the dealer to delinquency charges, loss of vendor's compensation, and other charges as prescribed by law.

C. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:306, R.S. 47:337.2, R.S. 47:337.18, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 22:852 (September 1996), amended by the Department of Revenue, Sales Tax Division, LR 23:1530 (November 1997), amended by the Department of Revenue, Policy Services Division, LR 30:2868 (December 2004), LR 31:1101 (My 2005), LR 32:111 (January 2006), LR 33:1877 (September 2007).

Raymond E. Tangney
Senior Policy Consultant

0709#025

RULE

Department of Social Services Office of Family Support

Electronic Benefits Transfer—Methods of Issuing Benefits Electronically (LAC 67:III.401-409 and 901)

The Department of Social Services, Office of Family Support, amended LAC 67:III, Subpart 1, Chapter 4, Electronic Benefits Issuance System to provide delivery of benefits through electronic disbursements. Electronic disbursement has allowed the agency to provide effective and efficient disbursement of payments to our clients while eliminating the need to print and mail checks.

The agency amended Chapter 4 Electronic Benefits Issuance System in its entirety which adds the types of electronic disbursements utilized and to address program payments by Electronic Benefits Transfer (EBT) to Family Independence Temporary Assistance Program (FITAP), Kinship Care Subsidy Program (KCSP), and Food Stamp Program Benefits. Sections in Chapter 4 have been recodified and renumbered.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 1. General Administrative Procedures

Chapter 4. Electronic Benefits Issuance System

§401. Electronic Benefits Transfer (EBT)

A. The Office of Family Support utilizes an electronic benefits issuance system referred to as Electronic Benefits Transfer (EBT) that allows eligible individuals and households to have their governmental benefits deposited into an account to pay for products purchased or to obtain authorized cash payments. Programs that utilize the EBT are Family Independence Temporary Assistance Program (FITAP), Kinship Care Subsidy Program (KCSP), and Food Stamp Program Benefits.

B. - B.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:450.1, 7 CFR 274.12 and 45 CFR 95(F). Section 404(g) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:1231 (December 1996), amended LR 23:869 (July 1997), LR 33:1878 (September 2007).

§403. Cash Benefits

A. Cash benefits and Food Stamp Program benefits shall be available through EBT in staggered cycles to on-going households beginning on the first day of each month. The last digit of the Social Security number determines the date that benefits are issued. Cash benefits will be available within the first five days of each month. Food stamp benefits will be available within the first 14 days of each month. Food stamp cases that contain elderly or disabled persons will have benefits available during the first four days of each month. Other issuance authorizations will be posted to the EBT account the day after they are authorized except in emergency circumstances in which case benefits will be available on the same day.

B. Benefits are delivered in this manner for households certified on an on-going basis. Benefits can accumulate but are accounted for according to the month of availability and will be withdrawn on a first-in-first-out basis. Each month's benefits with no activity by the client for a period of 90 days from the date of availability will be moved to dormant status. These benefits can be returned to active status at the local Office of Family Support offices upon request of the head of household or upon reapplication for assistance if the case is in inactive status. Benefits that remain in dormant status for a period of 270 days will be expunged and will not be available to the household after expungement. FITAP benefits which have been expunged may be reauthorized for availability if the recipient has good cause for not having accessed them during the original availability period.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272.3(c)(1)(ii) and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:1322 (July 1998), amended LR 33:1878 (September 2007).

§405. Participation of Retailers (Effective October 1, 1997)

A. Retail establishments which are U.S. Department of Agriculture, Food and Nutrition Service (FNS), authorized food stamp benefit redemption points must be allowed the opportunity to participate in the state EBT system. FNS approved retailer may choose to accept EBT cards for cash transactions (FITAP and KCSP). All other retail establishments must be approved by the Agency in order to participate in the cash access component of the system. Retailers approved by the Agency to participate in cash access may be charged connection fees and/or monthly lease fees for electronic and telephone equipment lines necessary to establish connection to the EBT System.

B. Retail establishments found guilty of abuse, misuse or fraud of the system by using the EBT "Louisiana Purchase" card in a manner or intent contrary to the purpose of the card, in providing benefits to eligible recipients, shall be permanently disqualified from participating as a cash redemption point and shall have all equipment provided by

the vendor disconnected and removed from the establishment after due process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:106 (January 1998), amended LR 33:1878 (September 2007).

§407. Service Fees Effective October 1, 1997

A. Recipients of cash assistance may be charged fees for accessing cash only benefits. Retailers may charge their usual and customary check cashing fee for providing cash only benefits to FITAP recipients under the following circumstances:

1. the recipient presents a valid EBT system card (known as the "Louisiana Purchase Benefit Card"); and

2. the recipient is not using the card to obtain cash in conjunction with the purchase of goods or services through the EBT system.

B. Retailers may process cash transactions through the EBT system only while the system is available. Retailers shall not dispense cash to recipients using vouchers or other means of implied payment to the retailer.

C. Retailers are prohibited from recovering losses through the EBT system due to their errors that are discovered after the transaction is completed and the recipient has left the place of business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:450.1(C)(3), R.S. 46:231.13, R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:107 (January 1998), amended LR 33:1879 (September 2007).

§409. Participation of Approved Prepared-Meal Facilities

A. Facilities providing prepared meals that are authorized by the United States Department of Agriculture, Food and Nutrition Service and, in some instances, the agency, to accept food stamp benefits for prepared meals may be authorized redemption points using the EBT card. Participating facilities are subject to all applicable regulations of this provision. If found guilty of abuse, misuse or fraud by using the EBT card or benefits in a manner or intent contrary to the purpose of the Food Stamp Program, a facility may be permanently disqualified from participation and have all equipment provided by the vendor disconnected and removed from the facility after due process.

1. A facility must maintain confidentiality in accordance with Food Stamp Program rules by requiring privacy when accepting payments or payment/contributions from recipients.

2. Settlement of funds to a facility will be made electronically as a direct deposit to the financial institution selected by the facility.

3. A facility must sign a contract with the agency's EBT vendor and be certified to the vendor's system prior to participation.

B. Types of Facilities

1. Duly authorized non-residential facilities such as communal dining facilities or Meals-on-Wheels may accept food stamp benefits for single meals.

2. Duly authorized residential facilities such as homeless shelters or battered women's shelters may accept food stamp benefits for multiple meals or on-going food maintenance. Such establishments may accept food stamp

payments or contributions not to exceed the biweekly rate of the facility. This requirement will ensure that recipients have adequate benefits remaining in their accounts upon departure from the establishment.

C. A facility with redemption of food stamp benefits of \$100 or more per month will be provided a Point-of-Sale (POS) terminal to enable acceptance of the EBT card. A facility with redemption of less than \$100 per month will utilize paper voucher authorizations for the acceptance of food stamp benefits.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 282.1(a).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:1322 (July 1998), amended LR 33:1879 (September 2007).

Chapter 9. Benefit Delivery

§901. Benefit Delivery

A. The Office of Family Support delivers benefits in the following manner:

1. Electronic Benefits Transfer; or
2. direct deposit; or
3. stored value cards; or
4. checks.

AUTHORITY NOTE: Promulgated by 7 CFR 274.12; and ACF Guidance: ACYF—IM-CC-05-03, Section 404(g) and Section 454b(b) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:1879 (September 2007).

Ann Silverberg Williamson
Secretary

0709#058

RULE

Department of Social Services Office of Family Support

TANF—Adjustment of Child Support Orders (LAC 67:III.2512)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, amended LAC 67:III.2512, which provides the formula for support obligation.

The Deficit Reduction Act of 2005 amends the provisions of the Social Security Act at Subsection 466 (a)(10) effective October 1, 2007. This amendment requires states to enact laws requiring the use of procedures under which every three years (or such shorter cycle as the state may determine), upon the request of either parent or if there is an assignment under Title IV-A of the Act, the state shall review and, if appropriate, adjust an order: using guidelines; a cost-of-living adjustment; or automated methods to identify orders to review and adjust, if appropriate.

Amendment of this Section is necessary to ensure continued compliance with federal regulations and avoid federal penalties and sanctions that could be imposed by the Administration for Children and Families, Office of Child Support Enforcement, the governing authority of the Support Enforcement Services program in Louisiana.

Title 67
SOCIAL SERVICES
Part III. Family Support

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter C. Formula for Support Obligation

§2512. Adjustment of Child Support Orders

A. SES will send a notice every three years advising both parties to the support order of the right to request a review. If either party requests a review or if there is an assignment under Temporary Assistance to Needy Families (TANF), SES will conduct the review and, if appropriate, judicially seek adjustment of the order in accordance with the guidelines if the amount of the child support in the order differs from the amount of the child support award in accordance with the guidelines.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, §351, R.S. 9:311C, and the Social Security Act [466(a)(10)].

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 19:1178 (September 1993), amended LR 23:748 (June 1997), LR 24:957 (May 1998), LR 33:1880 (September 2007).

Ann Silverberg Williamson
Secretary

0709#057

RULE

Department of State
Elections Division

Election Expense Reimbursement
(LAC 31:I.Chapter 7)

Under the authority of R.S. 18:18(A)(5) and R.S. 36:742 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Secretary of State hereby adopts uniform rules, regulations, forms, and instructions as to allowable election expenses and other expenses for clerks of court, registrars of voters, parish boards of election supervisors, and other election related expenses.

Title 31
ELECTIONS

Part I. Election Process

Chapter 7. Election Expense Reimbursement

§701. Department of State's Election Expense Manual

A. The department shall develop and adopt an Election Expense Manual that shall be utilized by clerks of court, registrars of voters, parish boards of election supervisors, and other sources (e.g., law enforcement officers) as needed to determine eligibility of reimbursement and/or payment of election expenses and other related expenses. The manual shall provide information as to the required supporting documents that must be attached to the invoice before payment can be made. In the event of an unusual expense, the manual will provide information on how to obtain approval in advance of the expense.

B. Under the provisions of the Election Code, R.S. 18:1400.3 and 1400.4, election expenses incurred by either the clerk of court, the registrar of voters, or the parish board of election supervisors will be reimbursed or paid by the

Department of State from funds appropriated for that purpose. After all election expenses have been paid and reconciled, these expenses will be allocated to the state or parish governing authorities under the prorated provisions of R.S. 18:1400.3, R.S. 18:1400.4, and R.S. 18:1400.5. Invoices will then be generated to the appropriate party.

C. The procurement of all goods and services shall be done in accordance with purchasing procedures established by the Office of State Purchasing or the parish governing authority.

D. The payment for mileage shall be based upon the mileage rate established by the Office of State Travel in General Travel Regulations (Policies and Procedure Memorandum Number 49).

E. Reimbursement for copies will be based upon the state's uniform copy rate (LAC 4:I.301) established for all state agencies. If a parish has officially adopted their own rate, a copy of the adoption of a rate must be provided to the Department of State with a request to allow the parish's copy rate.

F. The Election Expenses Manual shall be submitted to the state attorney general's office for approval. Any updates to the manual shall also receive approval by the state attorney general's office.

G. The Election Expense Manual shall be submitted to the Committee on House and Governmental Affairs and the Senate and Governmental Affairs Committee for informational purposes. Both committees shall receive any changes to the manual.

H. Copies of the final Election Expense Manual may be viewed at the Office of State Register (Claiborne Building, 1201 N. Third St., Suite 3-220, Baton Rouge, LA) or at the Department of State (Broadwing Building, Elections Division, 8549 United Plaza Blvd., Baton Rouge, LA).

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(5), R.S.18:1400.3, R.S. 18:1400.4, R.S. 18:1400.5, R.S. 36:742, and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:1880 (September 2007).

§703. Clerk of Court Expenses

A. The Election Expense Manual shall clearly set forth a listing of expenses for clerks of court which are authorized for reimbursement and/or payment, and a listing of expenses for which advance approval by the Secretary of State is required, and a listing of unauthorized expenses.

B. If a clerk of court's expense requires written approval in advance, the request should be submitted two weeks in advance of the anticipated expense to the Secretary of State, or his designee. The approval letter or request should accompany the invoice for payment.

C. Request for approval for any emergency expense may be done by telephone or email and reduced to writing thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(5), R.S.18:1400.3, R.S. 36:742, and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:1880 (September 2007).

§705. Registrar of Voters Expenses

A. The Election Expense Manual shall clearly set forth a listing of expenses for registrars of voters which are authorized for reimbursement and/or payment, and a listing of expenses for which advance approval by the Secretary of State is required, and a listing of unauthorized expenses.

B. If a registrar of voters' expense requires written approval in advance, the request should be submitted two weeks in advance of the anticipated expense to the secretary or his designee. The approval letter or request should accompany the invoice for payment.

C. Request for approval for any emergency expense may be done by telephone or email and reduced to writing thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(5), R.S.18:1400.3, R.S. 36:742, and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:1880 (September 2007).

§707. Parish Board of Election Supervisors Expenses

A. The Election Expense Manual shall clearly set forth a listing of expenses for the parish boards of election supervisors which are authorized for reimbursement and/or payment, and a listing of expenses for which advance approval by the Secretary of State is required, and a listing of unauthorized expenses.

B. If a parish board of election supervisors' expense requires written approval in advance, the request should be submitted two weeks in advance of the anticipated expense to the secretary or his designee. The approval letter or request should accompany the invoice for payment.

C. Request for approval for any emergency expense may be done by telephone or email and reduced to writing thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(5), R.S.18:1400.4, R.S. 36:742, and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:1881 (September 2007).

§709. Deadline for Submission of Expenses to Department of State

A. All requests for reimbursement or payment of expenses shall be submitted to the department no later than 60 days following an election or the transaction.

B. If the request for reimbursement or payment is not received within this 60 day period, the department may notify the appropriate party by certified mail that the request will be disapproved for payment if not made within 10 days from receipt of this notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:18(A)(5), R.S.18:1400.3, R.S. 18:1400.4, R.S. 18:1400.5, R.S. 36:742, and R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:1881 (September 2007).

Jay Dardenne
Secretary of State

0709#080

RULE

**Department of State
Elections Division**

**Election Night Transmission of Results
(LAC 31:I.Chapter 5)**

Under the authority of R.S. 18:576(B), R.S. 36:742, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Secretary of State hereby adopts uniform rules and regulations for the

transmission of election results by the clerk of court's office to the Department of State on election night.

**Title 31
ELECTIONS**

Part I. Election Process

Chapter 5. Election Night Transmission of Results

§501. Responsibility of Secretary of State

A. The Secretary of State shall provide each clerk of court's office with written instructions on the election results transmission process.

B. These written instructions shall provide specific uniform tasks that must be performed by the clerk of court's office to effectively transmit election night results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:576(B) and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:1881 (September 2007).

§503. Responsibility of Clerk of Court

A. The clerk of court shall follow proper procedures for transmitting all election results, as provided by the transmittal procedures established by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:576(B) and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:1881 (September 2007).

§505. Transmission of Election Night Returns

A. The clerk of court's office shall immediately load the contents of election results cartridges onto the Department of State's laptop as they are received by the clerk of court. Once all of the cartridges for a whole precinct are loaded onto the laptop, the clerk of court's office shall immediately transmit the election results to the Louisiana Secretary of State's Elections and Registration Information Network (ERIN) and verify that the system is properly transmitting election results. The clerk of court may verify by checking ERIN and/or the Secretary of State's website (www.GeauxVote.com) for the posting of the first transmission of election returns, or by telephoning the department's election division.

B. Once it has been verified that the first transmission was successful, the clerk of court shall transmit all remaining election results to the Department of State at least every 30 minutes or less, until all election results cartridges have been loaded and transmitted according to transmittal procedures established by the department.

C. The transmission of election results shall begin no later than 45 minutes after the polls are closed unless there is a technical or unforeseen problem which prevents the clerk of court from doing so, in which case the clerk shall contact the department to communicate such information.

D. If the clerk of court's office has its own computer system to display election results, the results shall be loaded onto that system only after the information has been properly transmitted to the department, and such results shall be displayed and clearly identified as the unofficial results of the clerk of court. However, in the event of a technical or unforeseen problem which prevents the clerk of court from transmitting election results to the department, after communicating such information to the department, the clerk may display election results on his own computer system.

E. Any election results posted in the clerk of court's office obtained or displayed from of the Department of State's webpage or ERIN shall be clearly identified as the Department of State's unofficial results.

F. The clerk of court shall check ERIN and/or the Secretary of State's website (www.GeauxVote.com) for the posting of the election returns in their parish to verify that all precincts are posted, with 100 percent reporting before closing their office for the evening. Each race must show all precincts reporting prior to ending the transmission process. The clerk of court should contact the Department of State before leaving for the night.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:576(B) and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 33:1881 (September 2007).

Jay Dardenne
Secretary of State

0709#079

RULE

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

Fur Trapping Season (LAC 76:V.129)

The Wildlife and Fisheries Commission does hereby establish a fur trapping season for the state of Louisiana.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§129. Fur Trapping Season

A. The statewide open trapping season for nongame quadrupeds shall open on November 20 and close on March 31. The secretary shall be authorized to close, extend, delay, or reopen the season as biologically justifiable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:259(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 33:1882 (September 2007).

Bryant O. Hammett, Jr.
Secretary

0709#038

RULE

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

White Lake Wetlands Conservation Area (LAC 76:III.335)

The Wildlife and Fisheries Commission does hereby revise the White Lake Wetlands Conservation Area management plan in accordance with the following Rule.

Title 76

WILDLIFE AND FISHERIES

Part III. State Game and Fish Preserves and Sanctuaries

**Chapter 3. Particular Game and Fish Preserves,
Wildlife Management Areas, Refuges and
Conservation Areas**

§335. White Lake Wetlands Conservation Area

A. The general framework for public use of consumptive resources of the White Lake Wetlands Conservation Area Management Plan is as follows.

White Lake Wetlands Conservation Area Management Plan		
Activities	Season	Cost
Alligators Wild Alligator Harvest Alligator Egg Collection	LDWF Season June & July	40% of public bid Public bid
Waterfowl Teal Lottery Hunts Youth/Physically Challenged	LDWF Season First Weekend	\$100 per gun No cost
Hunts Marsh Lottery Hunts Rice Lottery Hunts Group Hunts	LDWF Season LDWF Season LDWF Season	\$150 per gun \$150 per gun \$25,000 per group
Fishing	March 15-August 15	\$40 per permit

1. The number/quantity of alligators, eggs, hunters, groups and permits for the above activities shall be established annually based upon biological and technical data presented by the department to the board.

2. Commission members and their immediate families are prohibited from participating in any consumptive activities on the White Lake Wetlands Conservation Area, including lottery and group hunts and lottery fishing.

B. Schedule of Costs for Public Use of Facilities for Non-Consumptive Activities

1. Daily Use

a. \$300—includes one day use of lodge for meetings with nothing provided (for up to 15 people, weekdays only).

b. \$300 + \$10/person—includes one day use of lodge for meetings with coffee, cold drinks and bottled water provided.

c. \$300 + \$20/person—includes one day use of lodge for meetings with coffee, cold drinks, bottled water and lunch provided. The lunch provided will consist of a sandwich tray and chips or something similar. It will not include a hot lunch.

d. Exemptions from Cost. When a state, federal or local agency or university conducts research or educational activities in cooperation with the department, or conducts activities of benefit to White Lake or the department, the above costs shall be exempt. Costs for food and drink (\$10 per person for drinks, \$20 per person per meal) may be assessed.

2. Overnight Use

a. \$400 + \$25/person/night—includes overnight stay at lodge with nothing provided except linens. (For up to 12 people, weekdays only).

b. \$400 + \$35/person/night—includes overnight stay at lodge with coffee, cold drinks, bottled water and linens provided.

c. \$900 + \$35/person/night—includes overnight stay at lodge with coffee, cold drinks, bottled water, meals (breakfast, lunch and supper) and linens provided.

d. Exemptions from Cost. When a state, federal or local agency or university conducts research or educational activities in cooperation with the department, or conducts activities of benefit to White Lake or the department, the above costs shall be exempt. Costs for food and drink (\$10 per person for drinks, \$20 per person per meal) may be assessed.

e. Exemptions from all costs apply to all persons invited by the department to department sponsored events related to education, conservation or fish or wildlife related issues.

3. Skeet Range

a. \$10/person/25 clay pigeons.

b. \$15/person/25 clay pigeons, 25 shotgun shells provided.

c. Exemptions from all costs apply to all persons invited by the department to department sponsored events related to education, conservation or fish or wildlife related issues.

4. Boat Tours

a. \$10/person/ride. Limited to authorized function attendees.

b. Exemptions from Cost. When a state, federal or local agency or university conducts research or educational activities in cooperation with the department, or conducts activities of benefit to White Lake or the department, the above costs shall be exempt. Costs for food and drink (\$10 per person for drinks, \$20 per person per meal) may be assessed.

5. Use of facilities is subject to availability as well as staff availability and other scheduled events on the area. The facilities shall not be made available for political fundraisers.

6. The department shall determine appropriate insurance or indemnity requirements for use of the facilities.

AUTHORITY NOTE: Promulgated in accordance with Act 613 of the 2004 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 33:538 (March 2007), amended LR 33:1882 (September 2007).

Bryant O. Hammett, Jr.
Secretary

0709#037

Notices of Intent

NOTICE OF INTENT

**Department of Economic Development
Office of Business Development
Office of Entertainment Industry Development**

Sound Recording Production and Infrastructure
Tax Credit Programs
(LAC 61:I.1631-1639)

The Department of Economic Development, Office of Business Development, Office of Entertainment Industries Development pursuant to the authority of R.S. 47:6023 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to adopt the following rules of the Louisiana Entertainment Industry Tax Credit Programs, specifically the Sound Recording Production and Infrastructure Tax Credit Programs. The purpose of this proposed Rule is to establish program policies and procedures in the administration of the Sound Recording Incentive program which includes a production and infrastructure portion.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

Subchapter D. Louisiana Sound Recording Investor Tax Credit Program

§1631. Purpose and Description of Louisiana Sound Recording Investor Tax Credit Program

A. The purpose of this program is to encourage development in Louisiana of a strong capital and infrastructure base for musical recording productions in order to achieve an independent, self-supporting music industry, and to encourage investments in multiple state-certified musical production projects and infrastructure.

B. Approvals and certifications as to whether a project qualifies as a state-certified production as required for Sound Recording Investor Tax Credits are not to be considered as entitlements for sound recording production companies, and the Louisiana Department of Economic Development shall have the discretion to determine whether or not each particular sound recording or infrastructure project, meets the criteria for such qualification as provided herein, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of such status.

C. These Rules implement the Louisiana Sound Recording Investor Tax Credit pursuant to R.S. 47:6023. This credit was created by Act 485 (H.B. 631), Laws 2005 and amended by Act 368 (S.B. 70), Laws 2007 of Reg. Sess., effective July 1, 2007.

D. These provisions are in addition to and shall not limit the authority of the Secretary of the Department of Revenue to assess or to collect under any other provision of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 33:

§1633. Definitions

A. The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Base Investment—shall mean the actual investment made and expended by:

a. a state-certified production in the state as production expenditures incurred in this state that are directly used in state-certified production or productions;

b. a person or other legal entity in the development of a state-certified infrastructure project. Infrastructure Expenditures shall include, but are not limited to, expenditures for sound recording infrastructure project development, sound recording production spaces, sound production equipment, facilities, equipment for sound recording companies domiciled within Louisiana, sound processing and recording equipment, land acquisition and closing costs, construction costs, design and professional consulting fees associated with the state-certified infrastructure project, furniture, fixtures, percussion, pianos, keyboards, organs, musical and amplification equipment, and financing costs which shall remain permanently located within Louisiana for the useful life of the object. Infrastructure Expenditures shall not include indirect costs, any amounts that are later reimbursed by a third party, any costs related to the allocation of tax credits, or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the State-certified Infrastructure Project.

Department—the Louisiana Department of Economic Development, or its successor.

Expended in the State—in the case of tangible property which is acquired from a source within the state, and in the case of services, shall mean services procured and performed in the state.

Holder—the holder of a partnership interest, membership interest, or other similar ownership interest on any entity not taxed as a corporation.

Investor—any individual or entity domiciled in Louisiana and that makes an investment in a state-certified production or infrastructure project.

Secretary—Secretary of the Louisiana Department of Economic Development.

Series—more than one state-certified production being financed, or produced by or on behalf of the sound recording company or an affiliate grouped together in such a way that the group meets the minimum in-state spend of \$15,000.

Sound Recording—a recording of music, poetry, or spoken-word performance made in Louisiana, in whole or in part. The term *sound recording* shall not include the audio portions of dialogue or words spoken and recorded as part of a motion picture, video, theatrical production, television news coverage, and athletic events.

Sound Recording Production Company—a company engaged in the business of producing sound recordings as defined in this Section. *Sound recording production company* shall not mean or include any person or company, or any company owned, affiliated, or controlled, in whole or in part, by any company or person, which is in default on a loan made by the state or a loan guaranteed by the state, nor which has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy.

State-Certified Musical Recording Infrastructure Project—a musical recording capital infrastructure project and costs related to such project that are approved by the Louisiana Department of Economic Development.

State-Certified Production—a sound recording production or a series of productions occurring over the course of a 12-month period, and costs related to such production or productions that are approved by the Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 33:

§1635. Rules of Application

A. The sound recording investor tax credit authorized by R.S. 47:6023(C) may be earned and claimed as follows.

1. Until January 1, 2010, a taxpayer may claim a credit against the state income tax for investments made in state-certified productions and state-certified musical recording infrastructure projects, which credit will be earned by investors at the time expenditures are certified by the Louisiana Department of Economic Development according to the total base investment certified for the sound recording production company per calendar year. No credit shall be allowed for any expenditures for which a credit was granted under R.S. 47:6007. No sound recording production company shall earn a sound recording investor tax credit in more than three years out of any five year period.

2. An application for initial certification of a project shall be submitted to the Louisiana Department of Economic Development prior to the granting of the credit, and the granting of the credits under this rule shall be on a first-come, first-served basis. The Secretary of the Department of Economic development shall determine annually the annual aggregate maximum. If the total amount of credits earned for any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess will be treated as having been earned on the first day of the subsequent year.

3. Individuals or entities may earn sound recording investor tax credits pursuant to R.S. 47:6023(C).

4. Any individual or entity shall be allowed to claim the sound recording investor tax credit authorized by R.S. 47:6023(C) against its Louisiana income tax liability:

a. whether or not any such individual is a Louisiana resident; and

b. whether or not any such entity is domiciled in Louisiana, organized under Louisiana law, or headquartered in Louisiana.

5. The credit shall be allowed against the individual or corporate income tax for the taxable period in which the credit is earned. Any excess of the credit over the income tax

liability against which the credit can be applied shall constitute an overpayment, as defined by R.S. 47:1621(A), and the secretary of the Department of Revenue shall make a refund of such overpayment from the current collections of the taxes imposed by Chapter 1 of Subtitle II of Title 47, as amended. The right to a refund of any such overpayment shall not be subject to the requirements of R.S. 47:1621(B).

6. Individuals, estates, and trusts shall claim any credit allowed under this Section on their income tax return. Entities not taxed as corporations shall claim any credit allowed under this Section on the returns of the partners or members. Corporate partners or members shall claim their share of the credit on their corporation income tax returns. Individual partners or members shall claim their share of the credit on their individual income tax returns. Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

7. Any taxpayer applying for the credit shall be required to reimburse the department for any audits required in relation to granting the credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 33:

§1637. Certification

A. Initial Certification of State-Certified Productions

1. To obtain the approval of the department for a "state-certified production" as required by R.S. 47:6023(B)(5) and (6), the sound recording production company that will produce the sound recording production must submit a written request to the department requesting approval of the production as a "state-certified musical recording infrastructure project" or as a "state-certified production" and setting forth the following facts, when applicable:

a. working title of the sound recording production for which approval is requested;

b. name of the requesting production company;

c. telephone number of requesting production company;

d. name and telephone number of the requesting production company's contact person;

e. approximate beginning and ending date of production in Louisiana;

f. Louisiana office address of requesting production company (if available);

g. telephone number of requesting production company's Louisiana office address (if available);

h. estimated total production-related costs of the sound recording production for which approval is requested;

i. estimated total amount of production-related costs to be expended in Louisiana in connection with the sound recording production for which approval is requested;

j. estimated percentage of each of pre-production, production, and post-production work to be performed in Louisiana in connection with the production for which approval is requested;

k. estimated total payroll to be paid by the requesting production company to Louisiana residents employed by the requesting production company in connection with the production for which approval is requested;

1. facts sufficient to determine each of the following:

i. that the requesting production company is a sound recording production company as defined by R.S. 47:6023(B)(4);

m. for "state-certified productions" the application shall also include:

i. the distribution plan;

ii. a preliminary budget including estimated Louisiana payroll and estimated base investment;

iii. a description of the type of sound to be recorded;

iv. a list of the principal creative elements including performing artist(s) and producer;

v. the name and address of the recording studio or other location where the recording production will take place;

vi. a statement that the production will qualify as a state-certified production; and

vii. estimated start and completion dates;

n. for "state-certified musical recording infrastructure projects" the application shall also include:

i. a detailed description of the infrastructure project;

ii. a preliminary budget;

iii. a statement that the project meets the definition of a state-certified infrastructure project; and

iv. estimated start and completion dates;

v. a business plan for start up sound recording infrastructure.

2. The department shall submit its initial certification of a project as an "initial state-certified production" or an "initial state-certified musical recording infrastructure project" to investors and to the Secretary of the Department of Revenue, containing a unique identifying number. The department shall issue their written approval of a project as a "state-certified musical recording infrastructure project" or of a sound recording production as a "state-certified production" within 90 business days after receiving a request with respect to such production that complies with Paragraph 1 of this Section. In the alternative, if the department determines that a request for approval of a project as a "state-certified musical recording infrastructure project" or of a sound recording production as an "initial state-certified production" received from a production company is not in compliance with Paragraph 1 of this Section, then within 45 business days after receiving such request, the department shall request in writing from the requesting production company any information necessary in their determination for such request to comply with Paragraph 1 of this Section. Upon receiving all of the requested additional information in writing from the production company, and if the department determine that the request for approval with respect to such project or production complies with Paragraph 1 of this Section, the department shall issue to the requesting production company their written approval of the project as a "state-certified musical recording infrastructure project" or of a sound recording production as a "state-certified production."

3. The approval of a project as an "initial state-certified musical recording infrastructure project" or of a

sound recording production as an "initial state-certified production" issued by the department pursuant to the above Paragraph 2 of this Section shall read in its entirety as follows, and as appropriate.

a. For initial state-certified musical recording infrastructure projects:

"Based solely on our examination of the factual representations set forth in your request for state certification of ["Name of Project"] dated [Date of Request] attached hereto as Exhibit A, the Department of Economic Development does hereby certify that ["Name of the Project"] qualifies as of [Date] as a initial state-certified musical recording infrastructure project as such term is defined in Louisiana Revised Statutes 47:6023 B(6).

["Identifying Number"] is hereby assigned to ["Name of Project"] and such number shall constitute such project's identifying number as contemplated by R.S. 47: 6023 E(2)(c)."

b. For initial state-certified sound recording productions:

"Based solely on our examination of the factual representations set forth in your request for state certification of ["Name of Production"] dated [Date of Request] attached hereto as Exhibit A, the undersigned does hereby certify that ["Name of the Production"] qualifies as of [Date] as a initial sound recording state-certified production as such term is defined in Louisiana Revised Statutes 47:6023 B(5).

["Identifying Number"] is hereby assigned to ["Name of Production"] and such number shall constitute such production's identifying number as contemplated by R.S. 47: 6023 E(2)(c)."

B. Any funds expended prior to the date of notification of intent to apply for initial credit shall not qualify as part of the base investment and will not be certified for tax credits except for those funds expended by projects that applied after July 12, 2005 and before final approval of these rules. Notification of intent to apply must be in writing to the department.

C. Certification of Sound Recording Investor Tax Credits

1. Prior to any certification of the state-certified production or infrastructure project, the sound recording production company, in the case of an infrastructure project, shall submit to the department a cost report of production or project expenditures to be prepared and audited by an independent Louisiana certified public accountant. The department shall review such expenditures and shall issue a tax credit certification letter to the investors indicating the amount of tax credits certified for the state-certified production or state-certified infrastructure project. The following procedures set forth minimum standards for acceptability of the audit to be performed. The auditor is to make its certification on the basis of having performed, at a minimum, these procedures.

a. The auditor must be a Certified Public Accountant licensed in the state of Louisiana and must be an independent third party, not related to the producer.

b. The auditor's opinion must be addressed to the party which has engaged the auditor (e.g., directors of the production company, producer of the production).

c. The auditor's name, address, and telephone number must be evident on the report.

d. The auditor's opinion must be dated as the completion of the audit fieldwork.

e. The audit must be performed in accordance with auditing standards generally accepted in the United States of America and the auditor must have sufficient knowledge of accounting principles and practices generally recognized in the music and sound recording industry.

2. Within 30 business days after receiving a written request from an investor and after the meeting of all criteria, the department shall issue a letter of certification to such investor signed by the secretary reflecting the investor's name, the dollar amount of sound recording investor tax credits earned by the investor pursuant to R.S. 47:6023 C through the date of such request, the calendar year in which the sound recording investor tax credits were earned by the investor, the state-certified musical recording infrastructure project or the state-certified production with respect to which the investor earned the sound recording investor tax credits, and the identifying number assigned to such state-certified musical recording infrastructure project or state-certified production.

3. Any taxpayer claiming sound recording investor tax credits against its Louisiana income tax liability shall submit to the Louisiana Department of Revenue within 60 calendar days after filing its Louisiana tax return for the year in which the taxpayer is claiming the sound recording investor tax credits a letter of certification issued by the department pursuant to this rule evidencing the dollar amount of the sound recording investor tax credits being claimed. Within 45 business days after receipt of such request, the department shall issue the letter of certification signed by the secretary reflecting, in addition to the amount of sound recording investor tax credits, the taxpayer's name, the calendar year in which the sound recording investor tax credits were originally earned by an investor pursuant to R.S. 47:6023(C), the state-certified production or state-certified musical recording infrastructure project with respect to which such investor earned the sound recording investor tax credits, and the identifying number assigned to such state-certified production or state-certified musical recording infrastructure project. The taxpayer shall then submit to the Louisiana Department of Revenue within 60 calendar days after the filing its Louisiana tax return the letter of certification evidencing the dollar amount of the sound recording investor tax credits being claimed. The tax credits when issued and upon receipt shall not be transferred to any third party and will be held valid only to the party which was certified by the Department of Economic Development.

4. Once certification of a project has been granted under the criteria established within this provision and pursuant to 47:6023, the granting of such credit will be based upon a first come, first serve basis and shall be set for a maximum aggregate amount not to exceed \$3 million. For purposes of this Section the applicant will be considered the investor

5. If the total amount of qualifying credits in any particular year exceeds the aggregate amount of tax credits allowed for that year the excess credits will be treated as having been certified for the first day of the subsequent year.

6. The failure of the department to issue a letter of certification in accordance with this Subpart shall not:

a. void or otherwise affect, in any way, the legality or validity of any allocation of sound recording investor tax credits;

b. prohibit any Louisiana taxpayer from claiming sound recording investor tax credits against its Louisiana income tax liability if the sound recording investor tax credits are otherwise allocated or claimed in accordance with R.S. 47:6023(C) and this Subpart; or

c. result in any recapture, forfeiture or other disallowance of sound recording investor tax credits under R.S. 47:6023(G) or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 33:

§1639. Credits

A. Application of the Sound Recording Investor Tax Credits

1. Any individual or entity claiming sound recording investor tax credits may apply such sound recording investor tax credits to offset tax liabilities that:

a. accrued during a taxable year of such individual or entity, provided the sound recording investor tax credits were originally earned by an investor during that same taxable year; and

b. accrued during a taxable year of such individual or entity that is within the period for which the sound recording investor tax credits could have otherwise been carried forward by the investor originally earning such sound recording investor tax credits.

2. Any individual or entity claiming sound recording investor tax credits may not apply such sound recording investor tax credits to offset tax liabilities that accrued during a taxable year prior to the taxable year in which the sound recording investor tax credits were originally earned by an investor.

3. Any individual or entity claiming sound recording investor tax credits may claim such sound recording investor tax credits prior to other equally applicable, refundable Louisiana tax credits, and receive a refund of the refundable tax credits that such individual or entity is thereby unable to use.

4. The sound recording investor tax credit cannot be used to offset penalties and interest on any overdue taxes because although penalties and interest can be collected and accounted for in the same manner as if they were part of the tax in certain circumstances, they are not tax.

B. Recapture of Credits

1. If the Department of Economic Development and the Department of Revenue find that funds for which an investor received credits according to this program are not invested in and expended with respect to a state-certified production within 24 months of the date that such credits are earned, then the investor's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by this program.

2. Credits previously granted to a taxpayer, but later disallowed, may be recovered by the secretary of the Department of Revenue through any collection remedy

authorized by R.S. 47:1561 and initiated within three years from December 31 of the year in which the 24 month investment period specified in the above Paragraph ends.

3. The only interest that may be assessed and collected on recovered credits is interest at a rate three percentage points above the rate provided in Civil Code Article 2924(B)(1), which shall be computed from the original date of the return on which the credit was taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 33:

Family Impact Statement

The proposed Rules 61:I.Chapter 16, Subchapter D, Louisiana Sound Recording Investor Tax Credit Program should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

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

Interested persons should submit written comments on the proposed Rules to Lynn Ourso through the close of business on October 25, 2007, at P.O. Box 94185, Baton Rouge, LA 70804-9185 or 1051 North Third Street, Baton Rouge, LA 70802. Comments may also be submitted by email to ourso@la.gov or by fax to 225-342-5554. A meeting for the purpose of receiving the presentation of oral comments will be held on October 26, 2007, at the Department of Economic Development, 1301 N. Third St., Baton Rouge, LA.

Sherri McConnell
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Sound Recording Production and Infrastructure Tax Credit Programs

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

The proposed rules will impose little initial implementation costs on state government agencies and no costs to local governmental units. The Department of Economic Development has just adequate resources to monitor and administer the Sound Investor Recording Tax Credit program in its early stages but will require additional staffing as the program gathers momentum. The Department of Revenue may experience some increase in costs associated with administering these tax credits but will currently do so within existing budgetary and staffing resources. As the number of participants and projects involved in the program grows, additional resources will likely be needed by these agencies to adequately and timely administer and enforce the program.

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

Prior law authorized tax credits for state-certified sound recording productions and infrastructure projects based on the following schedule: 10 percent for \$15,000 through \$150,000 of investment, 15 percent for \$150,000 through \$1 million, or 20 percent for more than \$1 million of investment. Act 368 (SB 70) of the 2007 Regular Legislative Session and these proposed rules retain the current credit rates for any projects certified prior to July 1, 2007, but increase the credit rate to 25 percent for any project over \$15,000 of investment that is certified after July 1, 2007. Act 368 also added two additional years for the issuance of program credits, allowing such credits until January 1, 2010.

The Department of Economic Development reports that 7 applications have been received for these tax credits so far (5 for production projects and 2 for infrastructure projects). These projects report over \$1.5 million of investment and over \$382,000 of tax credits under the provisions of the program after the passage of Act 368. The Department of Economic Development anticipates substantial growth in program participation, with the program possibly doubling the number of projects each year for the next few years. However, under current law, the program is limited to a maximum issuance of \$3 million of tax credits per year through January 1, 2010.

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

Individuals and businesses involved in participating sound recording projects will receive refundable tax credits to offset portions of infrastructure and production costs for such projects. Consequently their business costs are reduced and profitability is enhanced. Individuals and businesses receiving tax credits will benefit from lower state tax liabilities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed tax credits will likely generate additional investments in sound recording projects. Expenditures on infrastructure projects will generate construction jobs, and expenditures on production projects will generate employment opportunities for individuals in the sound recording industry.

Sherri McConnell
Director
0709#078

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Education Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards
and Practices
(LAC 28:CXI.303, 305, 312, 315, 701, 1351, and 1355)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 118—Statewide Assessment Standards and Practices*: Chapter 3, Test Security; Chapter 7, Assessment Program Overview; and Chapter 13, Graduation Exit Examination. The proposed Rule makes changes to several Sections of Chapter 3, language is removed from §305 that references supplemental materials in the test security policy, new language regarding

"administrative errors" that can and do occur during the administration of statewide assessments in §312 is added, an inclusion of the new online assessment data system, Enhanced Assessment of Grade Level Expectations (EAGLE) is added to the policy along with the rules and guidelines for its correct use among educational personnel statewide, and language is updated about emergencies during testing in §315. Chapter 7, §701 chart is updated with the names of new implemented statewide assessments and Chapter 13, §1351 restructures the policy for clearer understanding of "transfer rules" for students' placement in grades as well as adds to the policy Chapter 13, §1355.A.8 for students who enroll in Louisiana schools and transfer multiple times during grades 7, 8, 9, 10, and 11. The proposed Rule change will have no implementation cost to state or local governmental units.

Title 28
EDUCATION

**Part CXI. Bulletin 118—Statewide Assessment
Standards and Practices**

Chapter 3. Test Security

§303. Definitions

Access—access to secure test materials means physically handling the materials, not reading, reviewing, or analyzing test items, either before or after testing.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:81.6 et seq., R.S. 416 et seq., and R.S. 441 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1528 (July 2005), amended by the Office of Student and School Performance, LR 33:

§305. Test Security Policy

A. - A.3.c. ...

d. at any time, copy, reproduce, record, store electronically, discuss or use in a manner inconsistent with test regulations all or part of any secure test booklet, answer document, or supplementary secure materials;

e. - g. ...

h. fail to follow security regulations for distribution and return of secure test booklets, answer documents, supplementary secure materials as well as overages as directed; or fail to account for and secure test materials before, during, or after testing;

3.i. - 4. ...

a. for the security of the test materials during testing, including test booklets, answer documents, supplementary secure materials, videotapes, and completed observation sheets;

b. - f. ...

g. procedures for the investigation of any missing test booklets, answer documents, or supplementary secure material;

4.h. - 7. ...

8. Test materials, including all test booklets, answer documents, and supplementary secure materials containing secure test questions, shall be kept secure and accounted for in accordance with the procedures specified in the test administration manuals and other communications provided by the LDE. Secure test materials include test booklets, answer documents, and any supplementary secure materials.

9. Procedures described in the test manuals shall include, but are not limited to, the following.

a. All test booklets, answer documents, and supplementary secure materials must be kept in a designated locked secure storage area prior to and after administration of any test.

i. ...

b. All test booklets, answer documents, and supplementary secure materials must be accounted for and written documentation kept by test administrators and proctors for each point at which test materials are distributed and returned.

c. Any discrepancies noted in the serial numbers of test booklets, answer documents, and any supplementary secure materials or the quantity received from contractors must be reported to the LDE, Division of Standards, Assessments, and Accountability, by the designated institutional or school district personnel prior to the administration of the test.

d. In the event that test booklets, answer documents, or supplementary secure materials are determined to be missing while in the possession of the institution or school district or in the event of any other testing irregularities or breaches of security, the designated institutional or school district personnel must immediately notify by telephone the LDE, Division of Standards, Assessments, and Accountability, and follow the detailed procedures for investigating and reporting specified in this policy.

9.e. - 10.f. ...

11. In cases in which test results are not accepted because of a breach of test security or action by the LDE, any programmatic, evaluative, or graduation criteria dependent upon the data shall be deemed not to have been met.

12. Individuals shall adhere to all procedures specified in all manuals that govern mandated testing programs.

13. - 14.a. ...

i. LEAP^{data} Query System. Principals should contact their DTC or Backup DTC for assistance in training teachers. After teaching, all school users (e.g., teachers, counselors, test coordinators) must read and sign the security agreement and return it to the principal. A new security agreement should be signed by all users each year after the new password letters for schools and districts are automatically generated in August. If a breach in security occurs, principals should immediately contact the DTC or the backup DTC for a replacement password. Principals should always contact their DTC or backup DTC for assistance and training.

b. ...

i. LEAP^{web} Reporting System. At the school level, only principals (not teachers) and their designated school personnel (test coordinators, counselors, or office staff with whom the principal shares his/her PIN) should have access to the system and must sign a security agreement. A new security agreement should be signed by all users each year after the new password letters for schools and districts are automatically generated in August. If a breach in security occurs, principals should immediately contact the DTC or the backup DTC for a replacement

password. Principals should always contact their DTC or Backup DTC for assistance and training.

ii. Security agreements must also be signed by DTCs for the LEAPweb Reporting and LEAPdata Query Systems and returned to the LDE.

c. The Louisiana Department of Education's Enhanced Assessment of Grade Level Expectations (EAGLE) System contains students' private information, including test scores and state identification numbers. This system is password protected and requires a user ID and an assigned password for access. Any student information from the system must not be disclosed to anyone other than a state, district, or school official, or parent/guardian as defined by The Family Educational Rights and Privacy Act of 1974 (FERPA). For more information on FERPA, see the U.S. Department of Education Web page at <http://www.ed.gov/offices/OM/fpc/ferpa/>. A state, district, or school official is a person employed by the state, district, or school as an administrator, supervisor, district test coordinator, school test coordinator, principal, teacher, or support staff member. This user has a legitimate educational purpose to review an educational record in order to fulfill his or her professional responsibility. Curiosity does not qualify as a right to know. All users who are granted a password to this system must abide by FERPA law. Disclosure of passwords to anyone other than those authorized is prohibited.

i. EAGLE System. Principals should contact their district designee, DTC, Backup DTC, or district curriculum supervisor for assistance in training teachers. After teaching, all users (e.g., teachers, counselors, test coordinators) must read and sign the security agreement and return it to the principal. A new security agreement should be signed by all users each year after the new password letters for schools and districts are automatically generated in August. Keep copies signed by all school users on file at the school. If a breach in security occurs, principals should immediately contact the district designee, district test coordinator, or backup district designee for a replacement password. Principals should always contact their district designee, DTC, backup DTC, or district curriculum supervisor for assistance and training.

d. All users who have access to these systems and leave their positions at a district or school site must not use or share the password.

15. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.7 (C) (G).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1528 (July 2005), amended LR 32:233 (February 2006), LR 33:255 (February 2007), LR 33:424 (March 2007), amended by the Office of Student and School Performance, LR 33:

§312. Administrative Error

A. Administrative errors that result in questions regarding the security of the test or the accuracy of the test data are considered testing irregularities. If it is deemed necessary to void the test, the district test coordinator must fax a completed void form to the LDE, Division of Standards, Assessments, and Accountability, as directed in the *District and School Test Coordinators Manual*. The

original Void Verification form, along with a copy of the account of the incident, must also be mailed to the LDE, Division of Standards, Assessments, and Accountability, as directed in the manual.

B. If tests are voided by the district due to administrative error, the LEA superintendent, on behalf of individual students, may initiate a request to the state superintendent of education for an opportunity to retest prior to the next scheduled test administration on behalf of individual students.

C. If administrative errors result in a question of the accuracy of the test data but do not require the voiding of the tests, the LEA superintendent or the parent, or legal guardian of an affected student may initiate a request for an opportunity to retest prior to the next scheduled test administration. The LEA superintendent or parent must provide the state superintendent of education with school-and student-level documentation describing the administrative error.

D. If the LDE determines that an administrative error did occur that allows for a retest, it will notify the LEA of the determination and arrangements for the retest. The LEA must provide a corrective plan of action.

E. To offset costs involved in retesting, the vendor will assess the LEA a fee for each test.

F. The LDE will provide a report to the SBESE of retests due to administrative errors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 32:390 (March 2006), amended LR 33:257 (February 2007), amended by the Office of Student and School Performance, LR 33:

§315. Emergencies during Testing

A. - A.4. ...

5. If the test booklets have been opened and test security has been compromised, testing should not be continued. The answer documents should be sent to the testing company with the responses that were completed prior to the emergency.

6. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1532 (July 2005), amended LR 32:234 (February 2006), LR 33:258 (February 2007), amended by the Office of Student and School Performance, LR 33:

Chapter 7. Assessment Program Overview

§701. Overview of Assessment Programs in Louisiana

A. ...

Name of Assessment Program	Assessment Population	Administered
Kindergarten Screening		
Kindergarten Developmental Readiness Screening Program (KDRSP)	Kindergarten	Fall 1987-
Norm-Referenced Tests (NRTs)		
California Achievement Test (CAT/F)	Grades 4, 6, and 9	Spring 1988- Spring 1992 (no longer administered)

Name of Assessment Program	Assessment Population	Administered
California Achievement Test (CAT/5)	Grades 4 and 6 Grade 8	Spring 1993– Spring 1997 Spring 1997 only (no longer administered)
Iowa Tests of Basic Skills (ITBS) (form L) and Iowa Tests of Educational Development (ITED) (form M)	Grades 4, 6, 8, 9, 10, and 11	Spring 1998 (no longer administered)
ITBS ITED (form M)	Grades 3, 5, 6, and 7 Grade 9	Spring 1999– Spring 2002 (no longer administered)
ITBS ITED (form B)	Grades 3, 5, 6, and 7 Grade 9	Spring 2003– Spring 2005 (no longer administered)
Criterion-Referenced Tests (CRTs)		
National Assessment of Educational Progress (NAEP)	Grades 4, 8, and 12	Spring 1990–
Louisiana Educational Assessment Program (LEAP)	Grades 3, 5, and 7	Spring 1989– Spring 1998 (no longer administered)
Graduation Exit Examination ("old" GEE)	Grades 10 and 11	Spring 1989– Spring 2003 (state administered) Fall 2003– (district administered)
Louisiana Educational Assessment Program (LEAP) (ELA and Mathematics)	Grades 4 and 8	Spring 1999–
LEAP (Science and Social Studies)	Grades 4 and 8	Spring 2000–
Graduation Exit Examination (GEE) (ELA and Mathematics)	Grade 10	Spring 2001–
GEE (Science and Social Studies)	Grade 11	Spring 2002–
End-Of-Course Tests (EOCT)	Algebra I	Fall 2007
EOCT	Algebra I	Spring 2008
Integrated NRT/CRT		
Integrated Louisiana Educational Assessment Program (iLEAP)	Grades 3, 5, 6, 7, and 9	Spring 2006–
Special Population Assessments		
Louisiana Alternate Assessment, Level 1 (LAA 1)	Students with Individualized Education Programs (IEPs) who meet participation criteria in grades 3–11.	Spring 2000–
LAA 1 Louisiana Alternate Assessment, Level 2 (LAA 2) ELA and Mathematics (Grades 4, 8, and 10) Science and Social Studies (Grade 11)	Grades 4, 8, 10, and 11	Revised Spring 2008 Spring 2006–
LAA 2 ELA and Mathematics	Grades 5, 6, 7, and 9	Spring 2007–

Name of Assessment Program	Assessment Population	Administered
LAA 2 Science and Social Studies	Grades 4 and 8	Spring 2008
Louisiana Alternate Assessment-B (LAA-B) ["out-of-level" test]	Students with Individualized Education Programs (IEPs) who met eligibility criteria in grades 3–11.	Spring 1999– Spring 2003 (no longer administered)
English Language Development Assessment (ELDA)	Limited English Proficient (LEP) students in grades K–12	Spring 2005–

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1534 (July 2005), amended LR 32:235 (February 2006), amended by the Office of Student and School Performance, LR 33:

Chapter 13. Graduation Exit Examination
Subchapter D. GEE Assessment Structure
§1351. GEE Administration Rules

A. - I. ...

J. If a district holds "graduation" prior to the release of spring test scores, the LEA must have in place a policy for graduation without the test scores.

K. There is no ending age limit for students to retest in GEE, nor is there a limit on the number of times the student may retake the test. Students who no longer reside in the school district where he/she completed Carnegie units may test in the current school district of residence. The DTC shall forward the passing test scores to the high school where the Carnegie units reside.

L. If a student was issued a GED diploma and subsequently meets the requirements of the GEE, the student may surrender the GED diploma and be issued a standard high school diploma.

M. If students are transferring to a public high school from a nonpublic high school that administers the GEE, the rules for nonpublic transfer students apply.

N. When administrative errors are made in testing, the state superintendent of education may determine how to remedy the error.

O. Seniors who have completed all GEE tests required for a standard high school diploma and who wish to retest for the Louisiana high school diploma endorsements may retest during the fall retest administration. If the student is unable to test during the fall retest administration, the student may retest in the February seniors only retest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1554 (July 2005), amended LR 32:237 (February 2006), LR 32:391 (March 2006), amended by the Office of Student and School Performance, LR 33:

§1355. GEE Transfer Students

A. - A.1.d. ...

2. A student who was in initial membership in Louisiana public schools as a student in grades K through 6 shall adhere to the following policy.

a. A student who returns in the seventh and/or eighth grade for a period in membership of 160 days total shall take and pass both the English Language Arts and Mathematics tests and either the Science or the Social Studies test of the GEE.

b. A student who returns in the ninth grade shall take and pass both the English Language Arts and Mathematics tests and either the Science or the Social Studies test of the GEE.

c. A student who returns and is classified as a tenth grade student shall take and pass both the English Language Arts and Mathematics tests and either the Science or the Social Studies test of the GEE.

d. A student who returns and is classified as an eleventh grade student shall take and pass either the Science or the Social Studies test of the GEE.

e. A student who returns and is classified as a twelfth grade student shall not be required to take any part of the GEE.

3. A student who was in initial membership in Louisiana public schools in the seventh and/or eighth grade for a period of 160 days total, transferred out, and subsequently returned at any grade level shall take and pass both the English Language Arts and Mathematics tests and either the Science or the Social Studies test of the GEE.

4. A student who was in initial membership in Louisiana public schools as a ninth grade student, transferred out, and subsequently returned at any grade level shall be required to take and pass both the English Language Arts and Mathematics tests and either the Science or the Social Studies test of the GEE.

5. A student who was in initial membership in Louisiana public schools as a tenth grade student, transferred out, and subsequently returned at any grade level shall take and pass both the English Language Arts and Mathematics tests and either the Science or the Social Studies test of the GEE.

6. A student who was in initial membership in Louisiana public schools as an eleventh grade student, transferred out, and subsequently returned at the eleventh- or twelfth-grade level shall take and pass either the Science or the Social Studies test of the GEE.

7. A student who was in initial membership in Louisiana public schools as a twelfth grade student, transferred out, and subsequently returned as a twelfth grader shall not be required to take any part of the GEE.

8. All membership in grades 7 through 11 must be considered when determining which test to administer to a student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1555 (July 2005), amended LR 32:238 (February 2006), amended by the Office of Student and School Performance, LR 33:

Family Impact Statement

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

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

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

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

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

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

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit written comments until 4:30 p.m., November 9, 2007, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 118—Statewide Assessment Standards and Practices

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

The proposed rule makes changes to several sections of Chapter 3: language is removed from §305 that reference supplemental materials in the test security policy, new language regarding "administrative errors" that can and do occur during the administration of statewide assessments in §312 is added, an inclusion of the new online assessment data system, Enhanced Assessment of Grade Level Expectations (EAGLE) is added to the policy along with the rules and guidelines for its correct use among educational personnel statewide, and language is updated about emergencies during testing in §315. Chapter 7, §701 chart is updated with the names of new implemented statewide assessments and Chapter 13, §1351 restructures the policy for clearer understanding of "transfer rules" for students' placement in grades as well as adds to the policy Chapter 13, §1355.A.8 for students who enroll in Louisiana schools and transfer multiple times during grades 7, 8, 9, 10, and 11. The proposed rule change will have no implementation cost to state or local governmental units.

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

There will be no effect on revenue collections at the state or local governmental levels.

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

There should be no effect on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no impact on competition and employment.

Beth Scioneaux
Deputy Superintendent
0709#011

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

Extension of Compliance Deadlines for CAFO Permits
(LAC 33:IX.2501, 2505, and 2703)(WQ073ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.2501, 2505, and 2703 (Log #WQ073ft).

This proposed Rule is identical to federal regulations found in 72 FR 40245-40250, No. 141 (July 24, 2007), 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 proposed Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule implements the July 24, 2007, revision to the Environmental Protection Agency dates established in the 2003 Concentrated Animal Feeding Operations (CAFOs) rule, issued on February 12, 2003, by which facilities newly defined as CAFOs were required to seek permit coverage and by which all CAFOs were required to have nutrient management plans (NMPs) developed and implemented. EPA extended the date by which operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, must seek National Pollutant Discharge Elimination System (NPDES) permit coverage from July 31, 2007, to February 27, 2009. EPA also amended the date by which operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them a CAFO prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage from July 31, 2007, to February 27, 2009. Finally, EPA extended the deadline by which CAFOs are required to develop and implement NMPs from July 31, 2007, to February 27, 2009.

Under authority of the Clean Water Act, which restores and maintains the chemical, physical, and biological integrity of the nation's waters, one of the core provisions of the act is to authorize and regulate the discharge of pollutants from point sources to waters of the United States. Section 502(14) of the CWA specifically includes CAFOs in the definition of the term "point source." The Department of Environmental Quality, Office of Environmental Services, became the NPDES permit issuing authority for the state of Louisiana on August 27, 1996. The Rule is necessary in order to comply with federal regulations that require the Louisiana Pollutant Discharge Elimination System (LPDES) program to be consistent with the NPDES program. The basis and rationale for this Rule are to mirror the federal regulations.

This proposed Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report

regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

Subpart 2. The Louisiana Pollutant Discharge

Elimination System (LPDES) Program

Chapter 25. Permit Application and Special LPDES Program Requirements

§2501. Application for a Permit

A. - I.1.i. ...

j. for CAFOs that must seek coverage under a permit after February 27, 2009, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

I.2. - R.5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:465 (March 2002), LR 28:1766 (August 2002), LR 29:1462 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), LR 31:425 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2509 (October 2005), LR 32:819 (May 2006), LR 33:

§2505. Concentrated Animal Feeding Operations

A. - G.1. ...

2. Operations Defined as CAFOs as of April 14, 2003, Which Were Not Defined as CAFOs Prior to That Date. For all such CAFOs, the owner or operator of the CAFO must seek to obtain coverage under an LPDES permit by a date specified by the state administrative authority, but no later than February 27, 2009.

3. - 3.b. ...

c. if an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until February 27, 2009, or 90 days after becoming defined as a CAFO, whichever is later.

G.4. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:467 (March 2002), LR 29:1463 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:819 (May 2006), LR 33:

Chapter 27. LPDES Permit Conditions

§2703. Additional Conditions Applicable to Specified Categories of LPDES Permits

The following conditions, in addition to those set forth in LAC 33:IX.2701, apply to all LPDES permits within the categories specified below.

A. - E. ...

1. Requirements to Develop and Implement a Nutrient Management Plan. At a minimum, a nutrient management plan must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented by February 27, 2009. CAFOs that seek to obtain coverage under a permit after February 27, 2009, must have a nutrient management plan developed and implemented upon the date of permit coverage. The nutrient management plan must, to the extent applicable:

1.a. - 4.g. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 29:1466 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2512 (October 2005), LR 32:819 (May 2006), LR 33:

A public hearing will be held on October 25, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ073ft. Such comments must be received no later than October 25, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ073ft. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Baratavia Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

0709#033

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

National Source Tracking System Reporting Requirements
and Agreement State Updates
(LAC 33:XV.493, 602, 2017, and 2051)(RP046ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Radiation Protection regulations, LAC 33:XV.493, 602, 2017, and 2051 (Log #RP046ft).

This proposed Rule is identical to federal regulations found in 10 CFR 20.2207, 39.15, and 39.41 and 21 CFR 1020.30, 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 proposed Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule will update the state radiation regulations to coincide with changes in the federal regulations and to mirror federal language. As part of the National Source Tracking System (NSTS), reporting requirements for nationally tracked sources are listed in 10 CFR 20.2207. This Rule adds the federal regulations in 10 CFR 20.2207 to the state radiation regulations. This Rule also makes other updates to meet Agreement State compatibility requirements and corrects a definition to mirror federal language. Requirements regarding compatibility are published under the Agreement State program. These changes are needed to comply with this program. The basis and rationale for this Rule are to mirror the federal regulations and maintain an adequate Agreement State program.

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

Title 33

ENVIRONMENTAL QUALITY

Part XV. Radiation Protection

Chapter 4. Standards for Protection against Radiation

Subchapter J. Reports

§493. Reports of Transactions Involving Nationally Tracked Sources

A. Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit a national source tracking transaction report as specified in Subsections B-F of this Section for each type of transaction.

B. Each licensee who manufactures a nationally tracked source shall complete and submit a national source tracking transaction report. The report must include the following information:

1. the name, address, and license number of the reporting licensee;
2. the name of the individual preparing the report;
3. the manufacturer, model, and serial number of the source;
4. the radioactive material in the source;
5. the initial source strength in becquerels (curies) at the time of manufacture; and
6. the manufacture date of the source.

C. Each licensee who transfers a nationally tracked source to another licensee shall complete and submit a national source tracking transaction report. The report must include the following information:

1. the name, address, and license number of the reporting licensee;
2. the name of the individual preparing the report;
3. the name and license number of the recipient licensee and the shipping address;
4. the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
5. the radioactive material in the source;
6. the initial or current source strength in becquerels (curies);
7. the date for which the source strength is reported;
8. the shipping date;
9. the estimated arrival date; and
10. for nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the identification of the container with the nationally tracked source.

D. Each licensee who receives a nationally tracked source shall complete and submit a national source tracking transaction report. The report must include the following information:

1. the name, address, and license number of the reporting licensee;
2. the name of the individual preparing the report;
3. the name, address, and license number of the licensee who provided the source;
4. the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
5. the radioactive material in the source;
6. the initial or current source strength in becquerels (curies);
7. the date for which the source strength is reported;
8. the date of receipt; and
9. for material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the identification of the container with the nationally tracked source.

E. Each licensee who disassembles a nationally tracked source shall complete and submit a national source tracking transaction report. The report must include the following information:

1. the name, address, and license number of the reporting licensee;

2. the name of the individual preparing the report;
3. the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;
4. the radioactive material in the source;
5. the initial or current source strength in becquerels (curies);
6. the date for which the source strength is reported; and
7. the disassembly date of the source.

F. Each licensee who disposes of a nationally tracked source shall complete and submit a national source tracking transaction report. The report must include the following information:

1. the name, address, and license number of the reporting licensee;
2. the name of the individual preparing the report;
3. the waste manifest number;
4. the identification of the container with the nationally tracked source;
5. the date of disposal; and
6. the method of disposal.

G. The reports specified in Subsections B-F of this Section shall be submitted by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports shall be submitted to the national source tracking system:

1. using the on-line national source tracking system;
2. electronically, using a computer-readable format;
3. by facsimile;
4. by mail, to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or
5. by telephone, with follow-up by facsimile or mail.

H. Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within five business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods, such as administrative reviews or physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the national source tracking system. The reconciliation must be conducted during the month of January in each year. The reconciliation process must include resolving any discrepancies between the national source tracking system and the actual inventory by filing the applicable reports specified in Subsections B-F of this Section. By January 31 of each year, each licensee must submit to the national source tracking system confirmation that the data in the national source tracking system is correct.

I. Each licensee who possesses Category 1 nationally tracked sources shall report the initial inventory of the licensee's Category 1 nationally tracked sources to the national source tracking system by November 15, 2007. Each licensee who possesses Category 2 nationally tracked sources shall report the initial inventory of the licensee's Category 2 nationally tracked sources to the national source tracking system by November 30, 2007. The information may be submitted by using any of the methods specified in Paragraphs G.1-4 of this Section. The initial inventory report must include the following information:

1. the name, address, and license number of the reporting licensee;
2. the name of the individual preparing the report;
3. the manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;
4. the radioactive material in the sealed source;
5. the initial or current source strength in becquerels (curies); and
6. the date for which the source strength is reported.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

Chapter 6. X-Rays in the Healing Arts

§602. Definitions

As used in this Chapter, the following definitions apply. Other definitions applicable to this Chapter may be found in LAC 33:XV.Chapters 1 and 2.

* * *

Half-Value Layer—the thickness of specified material that attenuates the beam of radiation to an extent that the exposure rate is reduced by one half. In this definition, the contribution of all scattered radiation, other than any that might be present initially in the beam concerned, is deemed to be excluded.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 23:1139 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2585 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

Chapter 20. Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies

§2017. Design, Performance, and Certification Criteria for Sealed Sources Used in Downhole and Well-Logging Operations

A. Sealed Source Used in Downhole and Well-Logging Applications

1. A licensee may use a sealed source in downhole and well-logging applications if the sealed source:

- a. is doubly encapsulated;
- b. contains licensed material whose chemical and physical forms are as insoluble and nondispersible as practical; and
- c. meets one of the following requirements:
 - i. for a sealed source manufactured on or before July 14, 1989, the requirements of USASI N5.10-1968, "Classification of Sealed Radioactive Sources," or the requirements in Clause A.1.c.ii or iii of this Section; or
 - ii. for a sealed source manufactured after July 14, 1989, the oil well-logging requirements of ANSI/HPS N43.6-1997, "Sealed Radioactive Sources—Classification"; or
 - iii. for a sealed source manufactured after July 14, 1989, the sealed source's prototype has been tested and

found to maintain its integrity after each of the following tests:

(a). Temperature Test. The test source must be held at -40°C for 20 minutes, 600°C for 1 hour, and then be subjected to a thermal shock test with a temperature drop from 600°C to 20°C within 15 seconds;

(b). Impact Test. A 5 kg steel hammer, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source;

(c). Vibration Test. The test source must be subjected to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes;

(d). Puncture Test. A 1 gram hammer and pin, 0.3 cm pin diameter, must be dropped from a height of 1 m onto the test source;

(e). Pressure Test. The test source must be subjected to an external pressure of 1.695×10^7 pascals (24,600 pounds per square inch absolute).

2. The requirements in Subparagraphs A.1.a-c of this Section do not apply to sealed sources that contain licensed material in gaseous form.

3. The requirements in Subparagraphs A.1.a-c of this Section do not apply to energy compensation sources (ECS). ECSs must be registered with the U.S. Nuclear Regulatory Commission, an agreement state, or the Office of Environmental Compliance.

B. For sealed sources, except those containing radioactive material in gaseous form, acquired after July 14, 1989, in the absence of a certificate from a transferor certifying that an individual sealed source meets the requirements of LAC 33:XV.2017.A, the sealed source shall not be put into use until such determinations and testing have been performed.

C. Each sealed source, except those containing radioactive material in gaseous form, used in downhole operations after July 14, 1989, shall be certified by the manufacturer, or other testing organization acceptable to the Office of Environmental Compliance, as meeting the sealed source performance requirements for oil well-logging as contained in the American National Standard N542, "Sealed Radioactive Sources, Classification," in effect on October 20, 1987.

D. ...

E. Energy Compensation Source. The licensee may use an energy compensation source (ECS) that is contained within a logging tool, or other tool components, only if the ECS contains quantities of licensed material not exceeding 3.7 MBq (100 microcuries).

1. For well-logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of LAC 33:XV.2014, 2015, and 2016.

2. For well-logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of Subsection G of this Section and LAC 33:XV.2004, 2014, 2015, 2016, and 2051.

F. Tritium Neutron Generator Target Source

1. Use of a tritium neutron generator target source, containing quantities not exceeding 1,110 MBq (30 curies) and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of these regulations

except Subsections A and E of this Section and LAC 33:XV.2051.

2. Use of a tritium neutron generator target source, containing quantities exceeding 1,110 MBq (30 curies) or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of these regulations except Subsections A and E of this Section.

G. Use of a Sealed Source in a Well without a Surface Casing. The licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure for reducing the probability of the source becoming lodged in the well. The procedure must be approved by the Office of Environmental Compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2605 (November 2000), LR 29:1472 (August 2003), amended by the Office of Environmental Assessment, LR 31:55 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2538 (October 2005), LR 33:

Subchapter D. Notification

§2051. Notification of Incidents, Abandonment, and

Lost Sources

A. - D.2.c. ...

d. the name of the well owner or well operator, as appropriate;

e. the well name and well identification number(s) or other designation;

f. the sealed source(s) by radionuclide and quantity of activity;

g. the source depth and the depth to the top of the plug; and

h. an appropriate warning, depending on the specific circumstances of each abandonment. Appropriate warnings may include "DO NOT DRILL BELOW PLUG BACK DEPTH"; "DO NOT ENLARGE CASING"; or "DO NOT RE-ENTER THE HOLE", followed by the words, "BEFORE CONTACTING THE OFFICE OF ENVIRONMENTAL COMPLIANCE, LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY".

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 21:555 (June 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2606 (November 2000), LR 29:1473 (August 2003), LR 30:1679 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

A public hearing will be held on October 25, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the

address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by RP046ft. Such comments must be received no later than October 25, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of RP046ft. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

0709#035

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Toxic Air Pollutant Ambient Air Standards
(LAC 33:III.5112)(AQ281)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.5112 (Log #AQ281).

This Rule revises certain ambient air standards (AAS) for toxic air pollutants (TAPs) in LAC 33:III.5112. Compliance with the AAS is intended to reduce the general population's risk of exposure to toxic air pollutants. The latest health/risk and exposure data for approximately 200 toxic air pollutant AAS were reviewed. Based upon the review, the tables in LAC 33:III.5112 have been revised to: retain methyl ethyl ketone (MEK) as a state TAP on the supplemental list of TAPs; establish more stringent AAS for 15 TAPs; establish less stringent AAS for 6 TAPs; reclassify the air toxics class for 7 TAPs; and for the first time list a short term (8-hour) average in addition to a long term (annual) average for many Class I toxic air pollutants. In accordance with LAC 33:III.5109, the administrative authority is required to periodically review and update the AAS for toxic air pollutants found in LAC 33:III.5112, Table 51.2. The basis

and rationale for this Rule are to ensure that the AAS are reviewed and revised, as appropriate, based on the most recent health and risk information. Pursuant to the family impact requirements in R.S. 49:972, it is determined that this rule should have a positive effect on family earnings and budget by the decrease in spending for medical treatment due to healthier air in the environment.

The department has submitted a report to the Legislative Fiscal Office and the Joint Legislative Committee on the Budget demonstrating that the environmental and public health benefits outweigh the social and economic costs reasonably expected to result from the proposed Rule. This report is published in the Potpourri section of this issue of the *Louisiana Register*.

**Title 33
ENVIRONMENTAL QUALITY**

Part III. Air

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter A. Applicability, Definitions, and General Provisions

§5112. Tables—51.1, 51.2, 51.3

Table 51.1 Minimum Emission Rates Toxic Air Pollutants Class I. Known and Probable Human Carcinogens			
Compounds	CAS Number	Synonyms	Minimum Emission Rate (Pounds/year)
Acrylamide	79-06-1	Acrylic amide	25.0

[See prior text in Acrylonitrile – Benzene]			
Beryllium (and compounds) [1]	7440-41-7	Glucinum	25.0
1,3-Butadiene	106-99-0	Biethylene	97.5
Cadmium (and compounds) [1]	7440-43-9		25.0

[See prior text in Chromium VI (and compounds) [1][12] – Vinyl chloride]			

Table 51.1 Minimum Emission Rates Toxic Air Pollutants Class II. Suspected Human Carcinogens and Known or Suspected Human Reproductive Toxins			
Compounds	CAS Number	Synonyms	Minimum Emission Rate (Pounds/year)
Acetaldehyde	75-07-0	Acetic aldehyde	700.0
Allyl chloride	107-05-1	3-chloropropene	25.0
Aniline	62-53-3	Aminobenzene, Phenylamine	600.0
Bis (2-chloroethyl) ether	111-44-4	Dichloroethyl ether	2,180.0
Biphenyl	92-52-4	1,1-biphenyl, Xenene	97.5
Carbon disulfide	75-15-0	Carbon bisulfide	2,400.0

[See prior text in Carbon tetrachloride – Xylene (mixed isomers) [9]]			

Table 51.1 Minimum Emission Rates Toxic Air Pollutants Class III. Acute and Chronic (Non-Carcinogenic) Toxins			
Compounds	CAS Number	Synonyms	Minimum Emission Rate (Pounds/year)
Acetonitrile	75-05-8	Cyanomethane, Methyl cyanide	5,000.0
Acrolein	107-02-8	Acrylic aldehyde	25.0
Acrylic acid	79-10-7	Acroleic acid, Propene acid	400.0
Ammonia [10]	7664-41-7		1,200.0
Antimony (and compounds) [1]	7440-36-0		37.5
Barium (and compounds) [1]	7440-39-3		37.5
[See Prior Text in n-Butyl alcohol – Hydrochloric acid]			
Hydrofluoric acid	7664-39-3	Fluoric acid, Hydrogen fluoride	63.0
Hydrogen cyanide	74-90-8	Cyclon	800.0
Hydrogen sulfide	7783-06-4		1,000.0
Maleic anhydride	108-31-6	Cis-Butenedioic anhydride	70.0
Methanol	67-56-1	Methyl alcohol	20,000.0
Methyl isobutyl ketone	108-10-1	MIBK	15,000.0

[See Prior Text in Methyl methacrylate - Zinc (and compounds) [1][12]]			

Explanatory Notes:
[1]. - [12]. ...

Table 51.2 Louisiana Toxic Air Pollutant Ambient Air Standards				
Compounds	CAS Number	Class	Ambient Air Standard [14]	
			(µg/m³*) (8 Hour Avg.)	(µg/m³**) (Annual Avg.)
Acetaldehyde	75-07-0	II		45.50 [15]
Acetaldehyde	75-07-0	II		9.00 [16]
Acetonitrile	75-05-8	III	810.00	
Acrolein	107-02-8	III	5.40	
Acrylamide	79-06-1	I	7.14 [16]	0.08
Acrylic acid	79-10-7	III	140.0	
Acrylonitrile	107-13-1	I	103.10 [16]	1.47
Allyl chloride	107-05-1	II	71.40	
Ammonia [11]	7664-41-7	III	640.00	
Aniline	62-53-3	II	181.00	
Antimony (and compounds) [1]	7440-36-0	III	11.90	
Arsenic (and compounds) [1] [13]	7440-38-2	I	0.24 [16]	0.02
Barium (and compounds) [1]	7440-39-3	III	11.90	
Benzene	71-43-2	I	71.43 [16]	30.00 [17]
Beryllium (and compounds) [1]	7440-41-7	I	0.05 [16]	0.04
Biphenyl	92-52-4	II	23.80	
Bis (2-chloroethyl) ether	111-44-4	II		0.30

Table 51.2 Louisiana Toxic Air Pollutant Ambient Air Standards				
Compounds	CAS Number	Class	Ambient Air Standard [14]	
			(µg/m ³ *) (8 Hour Avg.)	(µg/m ³ **) (Annual Avg.)
1,3-Butadiene	106-99-0	I	104.76 [16]	2.00 [17]
n-Butyl alcohol	71-36-3	III	3,620.00 [15]	
n-Butyl alcohol	71-36-3	III	1,452.00 [16]	
Cadmium (and compounds) [1]	7440-43-9	I	0.12 [16]	0.06
Carbon disulfide	75-15-0	II	71.40	
Carbon tetrachloride	56-23-5	II		6.67

[See prior text in Carbonyl sulfide – Chlorine dioxide]				
Chlorobenzene	108-90-7	II	1,100.00	
Chloroethane	75-00-3	II	6,290.00	
Chloroform	67-66-3	II		4.30
Chloromethane	74-87-3	II		90.00 [17]
Chloroprene	126-99-8	II	857.00	
Chromium VI (and compounds) [1] [13]	7440-47-3	I	2.38 [16]	0.01
Copper (and compounds) [1]	7440-50-8	II	23.80	
Cresol [4]	1319-77-3	III	300.00 [17]	
Cumene	98-82-8	III	5,860.00	
Diaminotoluene	25376-45-8	II	181.00	
1,2-Dibromoethane	106-93-4	I		0.45 [15]
1,2-Dibromoethane	106-93-4	I	3,642.86 [16]	0.17 [16]
Dibutyl phthalate	84-74-2	II	119.00	
1,4-Dichlorobenzene	106-46-7	II	1,430.00	
1,2-Dichloroethane	107-06-2	II		3.85

[See prior text in Dichloromethane - 1,2-Dichloropropane]				
1,3-Dichloropropylene	542-75-6	II	107.00	
2,4-Dinitrotoluene [5]	121-14-2	II	4.76	
2,6-Dinitrotoluene [5]	606-20-2	II	4.76	
1,4-Dioxane	123-91-1	II	2,140.00 [15]	
1,4-Dioxane	123-91-1	II	107.00 [16]	
Epichlorohydrin	106-89-8	I	452.38 [16]	1.00 [16]
Epichlorohydrin	106-89-8	I		83.00 [15]
Ethyl acrylate	140-88-5	II	476.00	
Ethyl benzene	100-41-4	II	10,300.00	
Ethylene glycol	107-21-1	III	2,380.00	
Ethylene Oxide	75-21-8	I	42.86 [16]	1.00
Formaldehyde	50-00-0	I	21.90 [16]	7.69

[See prior text in Glycol ethers [6] – Hydrazine]				
Hydrochloric acid	7647-01-0	III	180.00 [15]	
Hydrochloric acid	7647-01-0	III	71.00 [16]	
Hydrofluoric acid	7664-39-3	III	61.90 [15]	
Hydrofluoric acid	7664-39-3	III	9.80 [16]	
Hydrogen cyanide	74-90-8	III	260.00 [15]	
Hydrogen cyanide	74-90-8	III	120.00 [16]	
Hydrogen sulfide	7783-06-4	III	330.00	

Table 51.2 Louisiana Toxic Air Pollutant Ambient Air Standards				
Compounds	CAS Number	Class	Ambient Air Standard [14]	
			(µg/m ³ *) (8 Hour Avg.)	(µg/m ³ **) (Annual Avg.)
Maleic anhydride	108-31-6	III	23.80 [15]	
Maleic anhydride	108-31-6	III	9.50 [16]	
Manganese (and compounds) [1]	7439-96-5	II	4.76	
Mercury (and compounds) [1]	7439-97-6	II	1.19 [15]	
Mercury (and compounds) [1]	7439-97-6	II	0.24 [16]	

[See prior text in Methanol - Methyl isobutyl ketone]				
Methyl methacrylate	80-62-6	III	9,760.00 [15]	
Methyl methacrylate	80-62-6	III	4,881.00 [16]	
Naphthalene (and Methyl-naphthalenes) [12]	91-20-3	II	1,190.00	
Nickel (and compounds) [1]	7440-02-0	I	23.81 [16]	0.21
Nickel (refinery dust) [1]	7440-02-0	I	35.71 [16]	0.42

[See prior text in Nitric acid - Polynuclear aromatic hydrocarbons [7]]				
Propionaldehyde	123-38-6	III	4,290.00 [15]	
Propionaldehyde	123-38-6	III	1,143.00 [16]	
Propylene oxide	75-56-9	I	5,714.29 [16]	27.00
Pyridine	110-86-1	III	381.00 [15]	
Pyridine	110-86-1	III	74.00 [16]	
Selenium (and compounds) [1]	7782-49-2	II	4.76	
Styrene	100-42-5	II	5,070.00	
Sulfuric acid	7664-93-9	III	23.80 [15]	
Sulfuric acid	7664-93-9	III	4.76 [16]	

[See prior text in 1,1,2,2-Tetrachloroethane – Trichloroethylene]				
Vinyl acetate	108-05-4	III	830.00 [15]	
Vinyl acetate	108-05-4	III	446.00 [16]	
Vinyl chloride	75-01-4	I	61.90 [16]	11.36 [17]
Vinylidene chloride	75-35-4	II		200.00 [17]
Xylene (mixed isomers) [9]	1330-20-7	II	10,300.00	
Zinc (and compounds) [1] [10] [13]	7440-66-6	III	119.00	

Explanatory Notes:

* Based on one forty-second of the selected occupational exposure level, or other data determined to be superior by the administrative authority.

** Based on unit risk factors and a residual risk of one in ten thousand, or other data determined to be superior by the administrative authority.

[1] Includes any unique chemical substance that contains the listed metal as part of that chemical's infrastructure, excluding barium sulfate. Barium sulfate has been delisted as a toxic air pollutant and should not be included as part of the metals and compound emissions. Concentrations based on µg(x)/m³, where x is the elemental form of the metal.

[2]. - [11]. ...

- [12] Includes the following compounds: Naphthalene (CAS Number 91-20-3), Methylnaphthalene (CAS Number 1321-94-4), 1-Methylnaphthalene (CAS Number 90-12-0), 2-Methylnaphthalene (CAS Number 91-57-6).
- [13] Zinc chromates and zinc arsenates are Class I TAPs regulated as carcinogens under Chromium VI (and compounds) and arsenic (and compounds) TAP categories.
- [14] The AAS for acetaldehyde, acetonitrile, biphenyl, carbon disulfide, chloroethane, cresol, 1,4-dichlorobenzene, 2,4-dinitrotoluene, 2,6-dinitrotoluene, ethylene glycol, manganese (and compounds) was revised effective January 1, 2002.
- [15] Effective until <INSERT DATE 3 YEARS FROM PROMULGATION OF THIS RULE>.
- [16] Effective starting date is <INSERT DATE 3 YEARS FROM PROMULGATION OF THIS RULE>. Compliance with the revised ambient air standards is to be addressed in the permitting process after the effective date.
- [17] Effective starting date is <INSERT DATE OF PROMULGATION OF THIS RULE>. Compliance with the revised ambient air standards is to be addressed in the permitting process after the effective date.

(225) 219-3168. Check or money order is required in advance for each copy of AQ281. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

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**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Toxic Air Pollutant
Ambient Air Standards**

Table 51.3 Louisiana Toxic Air Pollutants Supplemental List*			
Compounds	CAS Number	Class	Synonyms

[See prior text in Acetamide – Methyl bromide]			
Methyl ethyl ketone [5]	78-93-3	III	MEK

[See prior text in Methyl hydrazine – Vinyl bromide]			

Explanatory Notes:

* – [4], ...

[5] Effective starting date is <INSERT DATE OF PROMULGATION OF THIS RULE>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1331 (December 1995), amended LR 22:278 (April 1996), LR 24:1277 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1237 (July 1999), LR 26:2004 (September 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

A public hearing will be held on October 25, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ281. Such comments must be received no later than October 25, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at

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

There will be no implementation costs or savings to state or local governments resulting from the promulgation of this rule.

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

Adjusting the AAS may require some facilities to install and operate additional control equipment. The additional control equipment should reduce emissions to the atmosphere. Facilities subject to this rule are billed annually on their emissions to the air. Since some emissions for which facilities are billed should be reduced, then the amount collected by the department will be less than the current collections. The amount less cannot be determined.

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

Approximately 28 facilities face the cost of installing additional control equipment in order to comply with the ambient air standards (AAS) that this proposed rule will make more stringent. However some of these facilities may not be able to comply with more than one revised AAS. The capital costs are estimated to be between \$10 and \$12.5 million, and the annual operating costs are estimated to be between \$3.8 and \$4.2 million. Since it is estimated that these costs will exceed \$1,000,000 in aggregate, a cost/benefit analysis has been developed for this proposal.

The economic benefits to people who avoid medical attention due to the revised standards cannot be estimated.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

An individual facility's cost of compliance could have a negative impact on competition and employment in that industrial sector. Facilities with lower emissions that are not subject to this rule may experience a positive impact on competition and employment.

Herman Robinson, CPM
Executive Counsel
0709#034

Robert E. Hosse
Staff Director
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NOTICE OF INTENT

Office of the Governor Board of Certified Public Accountants

Practice Privileges and Licensing
(LAC 46:XIX.1105, 1501, 1901, 1909, and 1911)

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 hereby provides notice of its intent to amend LAC 46:XIX:1105, 1501, 1901, 1909, and 1911. The objective of this action is to facilitate recognition of practice privileges for qualified CPAs in other states who seek to practice and offer services in multiple states. Another objective is to align the rules with corresponding requirements or standards of other state boards of accountancy. 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 11. Issuance and Renewal of Certificate

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

A. - D.4.c. ...

E. Practice Privileges under Substantial Equivalency

1. An individual holding a valid active CPA license issued by another state board of accountancy, who satisfies the requirements of R.S. 37:94 and Paragraph E.4 of this Section regarding substantial equivalency, shall be granted the privilege to practice as a CPA in Louisiana without the need to obtain a Louisiana certificate provided that such individual is not domiciled and does not have a principal place of business in Louisiana.

2. An individual, under the provisions of this section, who offers or renders professional services or uses the CPA title, whether in person, by mail, telephone, electronic, or other means *practices in Louisiana*, shall be granted practice privileges without the necessity of giving notice to the board or paying a fee to the board.

3. An individual granted practice privileges and his firm are subject to the requirements of R.S. 37:94(A)(3). In the event the license upon which the practice privileges are based is no longer active or valid, the practice privileges shall expire and the individual must cease using the CPA title in Louisiana and must cease offering or rendering professional services in Louisiana individually and on behalf of his firm.

4. Determination of Substantial Equivalence

(a). With respect to substantial equivalence under R.S. 37:94.A(1), the board shall have publicly available a listing of states which the board has verified to be in substantial equivalence with the original licensure requirements of the Act. Any individual holding an original valid CPA license issued by a substantially equivalent state is qualified for practice privileges.

(b). With respect to substantial equivalence under R.S. 37:94.A(2), any individual, who does not currently hold an original valid CPA license issued by a state

which the board has verified to be in substantial equivalence with the original licensure requirements of the Act, is qualified for practice privileges if he holds a valid active CPA license issued by a state board of accountancy and has passed the Uniform CPA Examination (or IQEX examination if applicable), and he:

(i). has 150 semester hours of college education and has at least one year of CPA supervised accounting related experience in the last four years, or

(ii). has four years of experience outside of Louisiana as a practicing CPA (or Chartered Accountant if applicable) within the last 10 years.

5. An individual granted practice privileges may perform the following services for a client whose home office is in Louisiana only through a firm which has obtained a permit issued under R.S. 37:77 and §1501:

(a). a financial statement audit or other engagement to be performed in accordance with Statements on Auditing Standards or Government Auditing Standards;

(b). any examination of prospective financial information to be performed in accordance with Statements on Standards for Attestation Engagements; or

(c). any engagement to be performed in accordance with PCAOB auditing standards.

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 9:208 (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), LR 33:

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

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

A. Any firm which has or establishes an office or place of business in Louisiana which provides attest services or which uses the title "CPA," "CPAs," "CPA firm," "Certified Public Accountant," "firm of Certified Public Accountants," or similar such designations and firms described in Subsection B of this Section must obtain and hold a valid and current firm permit issued by the board under R.S. 37:77(A). The use of any of the above titles or designations anywhere on firm letterhead, business cards, electronic correspondence, advertisements or publications, promotional materials, or any other publicly disseminated medium by a firm not holding a valid and current firm permit is not allowed if it implies the existence of an entity that holds a current and valid firm permit issued by the board under the provisions of R.S. 37:77(A):

1. the board may require that such firm applying for issuance, renewal or reinstatement of a firm permit to provide any and all information and/or documentation that the board deems appropriate and necessary to ensure the firm's compliance with all provisions of the Act;

2. any such CPA firm organized as and/or represented as a professional accounting corporation is considered to be using the title "firm of certified public accountants" and

therefore must hold a firm permit, pursuant to R.S. 37:77(A);

3. "active individual participants" as referred to in R.S. 37:77(C)(2)(b) means natural persons, firms, associations, partnerships, corporations, or other business organizations or entities, in which all owners of such entities must provide personal services in the CPA firm or its affiliated entities in the nature of management, performance of services for clients, performance of services which assist the certificate holders within the firm in providing professional services, or similar activities; and

4. a person or entity which makes or holds a passive investment in a CPA firm or its affiliated entities for the purposes of receiving income from the firm or its affiliated entities shall not constitute "active individual participation" as referred to in R.S. 37:77(C)(2)(b);

5. a certificate holder, or an individual granted practice privileges under R.S. 37:94, who is responsible for supervising attest services, or who signs or authorizes someone to sign accountant's reports on behalf of the firm, shall meet the experience and competency requirements for a "practitioner in charge" as set forth in AICPA Quality Control Standards;

6. all firms holding a valid registration as a certified public accounting firm June 18, 1999 shall be deemed to have met the initial firm permit requirements.

B. A firm which does not have an office or a place of business in Louisiana that offers to perform or performs services described in §1105.E.5 of this Section for a client whose home office is in Louisiana must hold a permit issued under R.S. 37:77 and Subsection A of this Section.

C. A firm which does not have an office or a place of business in Louisiana that offers to perform or performs professional services other than those cited in Paragraph E.5 of this Section for a client whose home office is in Louisiana may perform such services and use the title "CPA" or "CPA firm" without a permit only if:

1. the firm satisfies the ownership qualifications described in R.S. 37:77(C) and is subject to quality or peer review under a state board of accountancy approved program or under the AICPA Peer Review Program and has completed such a quality or peer review within the last three years,

2. the firm performs such services only through individual licensees with practice privileges under R.S. 37:94 and §1105. E or holding a license issued under R.S. 37:77, and

3. the firm can lawfully perform such services in the state where such individual licensees have their principal place of business.

4. If the firm does not satisfy one or more of the requirements cited in Paragraphs 1, 2 and 3 above, the firm must apply for a permit for a board determination as to whether the firm is qualified to practice in Louisiana.

D. Firm Permits

1. Applications by firms for initial issuance and for renewal of permits pursuant to R.S. 37:77 shall be made on a form provided by the board. Applications will not be considered filed until the applicable fee, all requested information, and the required documentation prescribed in these rules are received.

2. A firm registered pursuant to R.S. 37:77 shall file with the board a written notification of any of the following events concerning the practice of public accountancy within this state within 30 days after its occurrence:

a. change in the firm's designated licensee;

b. formation of a new firm;

c. addition of a new partner, member, manager or shareholder;

d. any change in the name of a firm;

e. termination of the firm;

f. change in the management of any office in this state;

g. establishment of a new office location or the closing or change of address of an office location in this state;

h. the occurrence of any event or events which would cause such firm not to be in conformity with the provisions of the Act or any rules or regulations adopted by the board.

3. In the event of any change in the legal form of a firm, such new firm shall within 30 days of the change file an application for an initial permit in accordance with board rules and pay the fee required by the rules.

4. Samples of original letterhead must also be included with permit and renewal applications. Names of licensed partners, shareholders, members, managers and employees, and names of non-licensee owners, may be shown on a firm's stationery letterhead. However, names of licensed partners, shareholders, members and managers shall be separated from those of licensed employees by an appropriate line. Licensees shall be clearly identified and the names of non-licensee owners shall be separated from the name of licensees by an appropriate line.

5. Any firm which falls out of compliance with the provisions of R.S. 37:77 due to changes in firm ownership or personnel after receiving, renewing, or reinstating a firm permit shall notify the board in writing within 30 days of the occurrence of changes which caused the firm to fall out of compliance with R.S. 37:77.

a. Such notification shall include an explanation as to how and why the firm is not in compliance and the date upon which the firm fell out of compliance with R.S. 37:77.

b. The firm shall also provide any additional information or documentation the board may request concerning the firm's noncompliance with R.S. 37:77.

6. Within 30 days of written notification to the board that the firm is not in compliance with R.S. 37:77, the firm shall notify the board in writing that the firm has taken corrective action to bring the firm back into compliance.

a. Such notification shall include a description of the corrective action taken, and the dates upon which the corrective action was taken.

b. The firm shall also provide any additional information or documentation the board may request concerning the corrective actions taken to ensure the firm's compliance with R.S. 37:77.

7. For good cause shown, the board may grant additional time for a firm to take corrective action to bring the firm into compliance with R.S. 37:77.

8. Any firm permit suspended or revoked for failure to bring the firm back into compliance within the time period

described above, or within the additional time granted by the board, may be reinstated by the board upon receipt of written notification from the firm that the firm has taken corrective action to bring the firm back into compliance. Such notification shall include a description of the corrective action taken, the dates upon which the corrective action was taken, and any additional information or documentation the board may request concerning the corrective actions taken.

9. The board may impose additional requirements at its discretion, including but not limited to monetary fees, on any firm as a condition for reinstatement of a firm permit suspended or revoked for failure to bring the firm into compliance with R.S. 37:77.

10. At its discretion, the board may also take action against the CPA certificate or practice privilege of the firm's designated licensee for failure to provide written notification to the board required in this Section.

E. Firm Permit Renewals

1. Firm Permit renewals shall be filed in accordance with certificate renewals, i.e., renewals are due by December 31, delinquent if not renewed prior to February 1; and, expired if not renewed prior to March 1.

2. Delinquent fees for firm permit renewals shall be \$15 per owner, partner, member or shareholder if not renewed prior to February 1; \$30 if not renewed prior to March 1.

F. An annual renewal fee to be set by the board, based on the total number of owners, partners, members and/or shareholders in the firm who are not licensed to practice in Louisiana but not to exceed \$15 per owner, partner, member or shareholder with a maximum of \$5,000 per firm if timely filed, shall be paid by each firm that files in accordance with the provisions of §1501.E-G.

G. Reinstatement of Firm Permits

1. To reinstate a firm permit which has been expired for a year or more due to non-renewal, the firm shall be required to file an initial application for a firm permit and pay the applicable application fee. The firm shall also be required to pay applicable delinquent fees.

2. For good cause shown, the board may waive in whole or in part the reinstatement fees provided for in this Section.

3. In addition to reinstatement fees, an additional fee may be assessed against those CPA firms whose firm permits expired or were cancelled pursuant to this Section three times within six years.

4. In addition to the above fees, an additional reinstatement fee may be assessed against those CPA firms which continued to practice as a CPA firm after the expiration or cancellation of the firm permit pursuant to this Section. Such fee shall be determined by the length of the period of time the firm has practiced without a permit times the annual renewal fee including additional for delinquency each year.

5. No firm permit shall be renewed or reinstated by the board if the firm applying for renewal or reinstatement has failed to remit full payment of any fees, fines, penalties, expenses, or reimbursement of costs incurred by the board, which the firm owes the board or has been ordered to pay to the board.

H. 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 1997), 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), LR 33:

Chapter 19. Investigations; Hearings; Suspension, Revocations or Restrictions; Reinstatements

§1901. Charges in Writing; Investigative Files

A. Charges against holders of CPA certificates, practice privileges, and/or firm permits shall be made in writing, signed by the persons preferring the charges and addressed or delivered to the board. The board's investigative staff may establish or open an investigative file upon receipt of such charges.

B. ...

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 by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1126 (September 1997), LR 26:1987 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 33:

§1909. Hearing

A. - U. ...

V. Any licensee whose certificate, practice privilege, or firm permit issued by the board is subsequently suspended or revoked may be required within 30 days to return such certificate, registration or firm permit.

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 by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1126 (September 1997), LR 26:1988 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 33:

§1911. Reinstatement of Licenses (After Revocation, Suspension, Refusal to Renew)

A. Upon receipt by the board of a written request for reissuance of a certificate, practice privilege, or firm permit which has been revoked by the board, or issuance of a new certificate, practice privilege, or firm permit under a new number to a person or firm whose certificate, practice privilege, or firm permit has been revoked, or for termination of a suspension of a certificate, practice privilege, or firm permit suspended by the board, the board shall specify the time period and the manner in which such application shall be considered, pursuant to R.S. 37:82.B. The application shall include any and all information the board deems appropriate.

B. The board may, at its sole discretion, impose appropriate terms and conditions for reinstatement of a

certificate, practice privilege, registration or firm permit or modification of a suspension, revocation or probation.

C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 26:1989 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 33:

Family Impact Statement

Implementation of the proposed Rule will have no known effect upon family stability, functioning, earnings, budgeting; the responsibility and behavior of children; or, upon parental rights and authority, as set forth in R.S. 49:972.

Interested persons may submit written comments. Written comments must be received by 4 p.m., October 19, 2007 at the following address: Michael A. Henderson, Executive Director, State Board of Certified Public Accountants of Louisiana, 601 Poydras Street, Suite 1770, New Orleans, LA 70130. Copies of the current rules and a draft of the rules intended for adoption are available upon request. Requests for a public hearing may be made through October 10, 2007.

Michael A. Henderson
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Practice Privileges and Licensing

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

No costs or savings to governmental units are anticipated as a result of implementation of the proposed rule changes other than one-time costs for publication and dissemination.

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

Self generated revenue to the Board of CPAs is estimated to decrease by \$25,705 per year based on the elimination of annual notice fees and permit renewal fees currently paid by certain out of state CPAs and CPA firms who will be able to practice in Louisiana provided they satisfy the qualification requirements necessary to be granted practice privileges. No other effect on revenue to governmental units is anticipated.

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

Persons directly affected are out of state CPAs who currently are required to file a notice and pay a \$75 fee annually for practice privileges. In addition, certain out of state CPA firms, which do not perform audits or examinations of prospective financial information in Louisiana, will no longer have to apply for or renew a firm permit in Louisiana. There will be a reduction in costs and less paperwork necessary to be filed annually because of the elimination of the notice and fee requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The rule changes eliminate requirements of certain out of state CPAs to complete a notice form and submit a notice fee to the Board. This is expected to facilitate responsiveness of qualified CPAs from other states and enable them to expeditiously offer services to the Louisiana public.

Competition is expected to be enhanced for Louisiana consumers, as they will have more options in selecting among qualified CPAs, who will compete for their business.

Michael A. Henderson
Executive Director
0709#043

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Office of State Purchasing

Use of Brand Name, LaMAS, and Multi-State Contracts
(LAC 34:I.1709)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and under authority of R.S. 39:1581, Office of the Governor, Division of Administration, State Purchasing, proposes to adopt the following Rule to require purchasing agents to compare contracts and seek best value procurements where multiple contracts exist for like or similar items. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part I. Purchasing

Subpart 1. Central Purchasing Procedures

Chapter 17. Types of Contracts

§1709. Use of Brand Name, LaMAS (Louisiana Multiple Award Schedule), and Multi-State Contracts

A. The state reserves the right to create and use brand name, LaMAS, and multi-state contracts (hereinafter referred to as Louisiana Price Schedules for different brands of same or similar item(s)).

B. Where Louisiana Price Schedules ("LaPS") exist for same or similar item(s) and the procurement is above \$25,000, all eligible users of these contracts will utilize the following procedures.

1. Prepare a request for responses that may include, if applicable the following: (A request for response is an informal process used to make a best value determination)

a. a performance-based statement of work that includes such things as:

- i. the work to be performed;
- ii. location of work;
- iii. period of performance;
- iv. deliverable schedule;
- v. applicable performance standards;
- vi. acceptance criteria;
- vii. any special requirements (e.g., security clearances, special knowledge, etc.);

viii. the products required using a generic description of products and functions whenever possible;

b. if necessary or applicable, a request for submittal of a project plan for performing the task and information on the contractor's experience and/or past performance performing similar tasks;

- c. a best value determination is one that considers, in addition to underlying contract pricing, such factors as:
 - i. probable life of the item selected;
 - ii. environmental and energy efficiency considerations;
 - iii. technical qualifications;
 - iv. delivery terms;
 - v. warranty;
 - vi. maintenance availability;
 - vii. administrative costs;
 - viii. compatibility of an item within the user's environment; and
 - ix. user's familiarity with the item or service;
- d. a request for submittal of a firm-fixed total price for labor and/or products which are no higher than prices in the LaPS contract.

2. Submit the request for response to at least three LaPS contract holders, whenever available, offering functionally equivalent products and/or services that will meet the agency's needs.

3. Evaluate Responses and Select the Contractor to Receive the Order

a. After responses have been evaluated, the order shall be placed with the contractor that represents the best value that meets the agency's needs. The ordering agency should give preference to small-entrepreneurships or small and emerging businesses when two or more contractors can provide the services and/or products at the same firm-fixed total price.

b. The ordering agency shall document in the procurement file the evaluation of the contractors' responses that formed the basis for the selection. The documentation shall identify the contractor from which the services and/or products were purchased, the services and/or products purchased, and the cost of the resulting purchase order.

c. Purchases shall not be artificially divided to avoid the requirements of this section when recurring requirements for same products are known.

d. Nothing herein relieves a state agency from following Office of Information Technology requirements for submission of IT 10 requests, for annual IT budget requests, or mid-year budget adjustment requests.

e. A listing of all contracts applicable to this Section will be maintained on the Office of State Purchasing's website <http://www.doa.louisiana.gov/osp/osp.htm>

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 33:

Family Impact Statement

- 1. The proposed Rule will not affect the stability of the family.
- 2. The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of children.
- 3. The proposed Rule will not affect the functioning of the family.
- 4. The proposed Rule will not affect family earnings or family budget.

5. The proposed Rule will not affect the behavior or personal responsibility of children.

6. The proposed Rule deals strictly with the state's procurement function.

All interested persons may submit written comments on the proposed Rule through October 10, 2007, to Denise Lea, Office of State Purchasing, P.O. Box 94095, Baton Rouge, LA 70804. All interested persons will be afforded an opportunity to submit data, views, or arguments in writing at the address above.

Jerry Luke LeBlanc
Commissioner

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

**RULE TITLE: Use of Brand Name, LaMAS,
and Multi-State Contracts**

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

There is a potential savings to the state because of the additional contract review and documentation processes implemented by the proposed rule. Any savings resulting from the proposed rule change is not anticipated to be significant.

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

There should be no effect on revenue collections of state or local governmental units as a result of this rule change.

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

There should be no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be a positive effect on competition because agencies will now be required to review several like-contracts to determine which contract best meets its needs.

Denise Lea
Director
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Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Motor Vehicle Commission**

Advertising (LAC 46:V.Chapter 7)

Editor's Note: This Notice of Intent is being repromulgated because of an error upon submission. The original Notice of Intent may be viewed on pages 1726-1732 of the August 2007 edition of the *Louisiana Register*.

In accordance with the provisions of the Administrative Procedure Act R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapter 6, the Office of the Governor, Louisiana Motor Vehicle Commission, notice is hereby given that the Louisiana Motor Vehicle Commission proposes to repeal Chapter 7 and replace it with new regulations and language to clarify the Rule, put into the Rule customary procedures of the commission to assist its licensees in designing their advertising programs.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part V. Automotive Industry

Subpart 1. Motor Vehicle Commission

Chapter 7. Advertising

§701. Advertising; Dealer Name

A. Dealers may advertise only under the name that appears on their franchise agreement and dealer license issued by the Motor Vehicle Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§703. General Prohibition

A. A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§705. Specific Rules

A. The violation of an advertising rule shall be considered by the commission as a prima facie violation of the Louisiana Motor Vehicle Commission Law. In addition to a violation of a specific advertising rule, any other advertising or advertising practices found by the commission to be false, deceptive, or misleading shall be deemed violations of the Louisiana Motor Vehicle Commission Law, and shall also be considered violations of the general prohibition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§707. Definitions

Abbreviations—using shortened terms for words or initials for groups of words. Commonly understood abbreviations, such as " '2DR'," " 'AM/FM'," " 'APR'," " 'WAC'," " 'DEMO'," " 'EXEC'," " 'DOC FEE'," may be used. Trade industry abbreviations which are not commonly understood, such as " 'FTB'," " 'A/R'," " 'TOP'," " 'POF'," or " 'DOC'," MAY NOT be used. This rule does not contain a list of all the abbreviations one may not use.

Advertisement—an oral, written, telecommunicated, graphic, or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, letter, flyer, price tag, window sticker, banners, billboards, handbills, or on radio, the Internet, or via on-line computer service, or on television or on-hold messaging, any medium.

Bait Advertisement—an alluring but insincere offer to sell or lease a product of which the primary purpose is to obtain leads to persons interested in buying or leasing merchandise of the type advertised and to switch consumers from buying or leasing the advertised product in order to sell some other product at a higher price or on a basis more advantageous to the advertiser.

Balloon Payment—any scheduled payment required by a consumer credit sale or consumer loan that is more than

twice as large as the average of all prior scheduled payments except the down payment.

Dealership Addendum—a form which is to be displayed on a window of a motor vehicle when the dealership installs special features, equipment, parts or accessories, or charges for services not already compensated by the manufacturer or distributor for work required to prepare a vehicle for delivery to a buyer.

1. The addendum is to disclose:

a. that it is supplemental;

b. any added feature, service, equipment, part, or accessory charged and added by the dealership and the retail price therefore;

c. any additional charge to the manufacturer's suggested retail price (MSRP) such as additional dealership markup; and

d. the total dealer retail price.

2. The dealership addendum form shall not be deceptively similar in appearance to the manufacturer's label, which is required to be affixed by every manufacturer to the windshield or side window of each new motor vehicle under the Automobile Information Disclosure Act.

Demonstrator—a new motor vehicle that is currently in the inventory of the automobile dealership and used or has been used primarily for test drives by customers and other dealership purposes and so designated by the dealership. Demonstrators may be advertised for sale as such only by an authorized dealer in the same make of motor vehicle.

Disclaimer—those words or phrases used to provide a clear understanding of any advertised statement, but not used to contradict or change the meaning of the statement.

Disclosure—a clear and conspicuous statement made in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable and understandable. The disclosure may not contradict or be inconsistent with any other information with which it is presented. If the disclosure modifies, explains, or clarifies other information with which it is presented, or states "see dealership for details," then it must be presented in proximity to the information it modifies, in a manner readily noticeable, readable, and understandable, and it must not be obscured in any manner.

1. An audio disclosure must be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it.

2. A visual disclosure for television must appear on the screen for a duration sufficient for a consumer to read and comprehend it.

3. In a print or internet advertisement or promotional material, including without limitation point of sale display or brochure materials directed to consumers, a disclosure must be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, in a print that contrasts with the background against which it appears. For purposes of these rules, qualifying terms and phrases will be considered to be clearly, conspicuously and accurately set forth if they are:

a. in bold print and type of such size that is capable of being read without unreasonable extra effort;

b. expressed in terms that are understandable to the buying public; and

c. in close proximity to the qualified representation and not separated or buried by asterisk in some other part of the advertisement.

Factory Executive/Official Vehicle—a new motor vehicle that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor or their subsidiaries.

Internet—a system that connects computers or computer network.

Licensee—any person required to obtain a license from the Louisiana Motor Vehicle Commission.

Manufacturer's Label—the label required by the Automobile Information Disclosure Act, 15 U.S.C. 1231-1233, to be affixed by the manufacturer to the windshield or side window of each new automobile delivered to the dealer.

Program Vehicle—used vehicle that is purchased at a manufacturer's closed auction or sold by or directly from the manufacturer or distributor which is current or previous year model, that has been previously tagged and/or titled, and returned to the manufacturer for disposal.

Rebate or Cash Back—a sum of money refunded to a purchaser for the benefit by the manufacturer or distributor after full payment has been rendered. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to himself or for his benefit subsequent to payment in full.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§709. Availability of Vehicles

A. A licensee may advertise a specific vehicle or line-make of vehicles for sale if:

1. the specific vehicle or line is in the possession of the licensee at the time the advertisement is placed, or the vehicle may be obtained from the manufacturer or distributor or some other source, and this information is clearly and conspicuously disclosed in the advertisement; and

2. the price advertisement sets forth the number of vehicles available at the time the advertisement is placed or a dealer can show he has available a reasonable expectable public demand based on prior experience. In addition, if an advertisement pertains to only one specific vehicle, then the advertisement must also disclose the vehicle's stock number or vehicle identification number.

B. Motor vehicle dealers may advertise a specific used vehicle or vehicles for sale if:

1. the specific used vehicle or vehicles is in the possession of the dealer at the time the advertisement is placed; and

2. the title certificate to the used vehicle has been assigned to the dealer.

C. This Section does not prohibit general advertising of vehicles by a manufacturer, dealer advertising association, or distributor and the inclusion of the names and addresses of the dealers selling such vehicles in the particular area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§711. Accuracy

A. All advertised statements shall be accurate, clear and conspicuous.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§713. Untrue Claims

A. The following statements are prohibited, list not exclusive:

1. statements such as "write your own deal," "name your own price," "name your own monthly payments," "appraise your own motor vehicle" or statements with similar meaning;

2.a. statements such as "everybody financed," "no credit rejected," "we finance anyone," "guaranteed approval," and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit;

b. statements such as "all credit applications accepted," or terms with similar meaning are deemed deceptive and shall not be used;

3. statements representing that no other person grants greater allowances for trade-ins, however stated, unless such is the case;

4. statements representing that because of its large sales volume a person is able to purchase vehicles for less than another person selling the same make of vehicles. Statements such as "big volume buying power," "manufacturer's outlet," "factory authorized outlet," and "factory wholesale outlet," shall not be used. Any term that gives the consumer the impression the dealer has a special arrangement with the manufacturer or distributor as compared to similarly situated dealers, is misleading and shall not be used;

5. "double rebates," "triple rebates" or any other amount of rebates that are not truly offered by the manufacturer are prohibited;

6. specific claims or discount offers shall not be used in connection with any motor vehicle other than new or a demonstrator and then only to show the difference between the dealer's own current selling price and the bona fide manufacturer's suggested list price, if an automobile, or manufacturer's suggested retail price, if a truck. Full explanation must be given, as for example, "save or discount \$ from manufacturer's list/retail price." Such statements as "up to," "as much as," "from"-to," etc., shall not be used in connection with savings claims;

7. any claims such as "first," "largest" and/or "biggest" may be advertised only when the licensee is the "first," "largest" and/or "biggest" in retail sales for a calendar year. The claim of "first," "largest" and/or "biggest" must be qualified as to validity (using valid source data) and the time period of the claim with all qualifying language to be in the same size print as the claim. Additionally, the advertisement of the claim may only be utilized for the following calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§715. Layout

A. The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio/TV advertisements shall not convey or permit an erroneous or misleading impression as to which vehicle or vehicles are offered for sale or lease at featured prices. No advertised offer, expression, or display of price, terms, down payment, trade-in allowance, cash difference, savings, or other such material terms shall be misleading and any necessary qualification shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§717. Manufacturer's Suggested Retail Price

A. The suggested retail price of a new motor vehicle when advertised by a manufacturer or distributor shall include all costs and charges for the vehicle advertised, except that destination and dealer preparation charges, state and local taxes, title, and license fees may be excluded from such price, provided that the advertisement clearly and conspicuously states that such costs and charges are excluded. With respect to advertisements placed with local media in Louisiana by a manufacturer or distributor which includes the names of the local dealers of the vehicles advertised, if the price of a vehicle is stated in the advertisement, such price must include all costs and charges for the vehicle advertised, including destination and dealer preparation charges and may exclude only state and local taxes, license, and title fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§719. Dealer Price Advertising

A. The featured price of a new or used motor vehicle, when advertised, must be the full cash price for which the vehicle will be sold to any and all members of the buying public. The only charges that may be excluded from the advertised price are:

1. state and local taxes;
2. license;
3. title; and
4. notarial fees, convenience fees and documentary fees.

B. A qualification may not be used when advertising the price of a vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer" or "with down payment."

C. If a price advertisement of a new motor vehicle discloses a rebate, cash back, discount savings claim, or other incentive, the full cash price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive. The following is an acceptable format for advertising a price with rebates and other deductions:

Mfg. Sugg. Retail Price	\$9,995
less rebate	\$ 500
less dealer discount	\$ 500
Sale Price	\$8,995

D. If a rebate is only available to a selected portion of the public and not the public as a whole, the price should be disclosed as in Subsection C first and then the nature of the

limitation and the amount of the limited rebate may be disclosed. The following is an acceptable format:

Mfg. Sugg. Retail Price	\$9,995
less rebate	\$ 500
less dealer discount	\$ 500
Sale Price	\$8,995
First Time Buyer's Receive	
Additional \$500 Off	

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§721. Identification

A. When the price of a vehicle is advertised, the following must be disclosed:

1. model year;
2. make;
3. model line and style or model designation; and
4. whether the vehicle is a used, demonstrator, or a factory executive/official vehicle.

B. Expressions such as "fully equipped," "factory equipped," "loaded," and other such terms shall not be used in any advertisement that contains the price of a vehicle unless the optional equipment of the vehicle is listed in the advertisement.

C. An illustration of a motor vehicle used in an advertisement must be substantially the same as that of the motor vehicle advertised.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§723. Advertising at Cost or Invoice

A. No advertisement shall be run which uses the term or terms "invoice;" "cost;" "percent over/under cost, invoice or profit;" "\$\$\$ over/under cost, invoice or profit."

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§725. Trade-In Allowances

A. No guaranteed trade-in amount or range of amounts shall be featured in advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§727. Used Vehicles

A. A used vehicle shall not be advertised in any manner that creates the impression that it is new. A used vehicle shall be identified as either "used" or "pre-owned." Terms such as program car, special purchase, factory repurchase, certified or other similar terms are not sufficient to designate a vehicle as used, and these vehicles must also be identified as "used" or "pre-owned."

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§729. Demonstrators, Factory Executive/Official Vehicles

A. If a demonstrator or factory executive/official vehicle is advertised, the advertisement must clearly and conspicuously identify the vehicle as a demonstrator or

factory executive/official vehicle. A demonstrator or factory executive/official vehicle may be sold only by a dealer franchised and licensed to sell that line-make of new motor vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§731. Auction

A. Terms such as "auction" or "auction special" and other terms of similar import shall be used only in connection with a vehicle offered or sold at a bona fide auction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§733. Free Offers

A. No merchandise or enticement may be described as "free" if the vehicle can be purchased or leased for a lesser price without the merchandise or enticement of if the price of the vehicle has been increased to cover the cost or any part of the cost of the merchandise or enticement. The advertisement shall clearly and conspicuously disclose the conditions under which the "free" offer may be obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§735. Cash Offers

A. Any cash offer or anything that is convertible to cash funded by the dealer shall not be used and is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§737. Authorized Dealer

A. The term "authorized dealer" or a similar term shall not be used unless the advertising dealer holds both a franchise and a Louisiana Motor Vehicle Commission license to sell those vehicles he is holding himself out as "authorized" to sell.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§739. Manufacturer and Distributor Rebates

A. It is unlawful for a manufacturer or distributor to advertise any offer of a rebate, refund, discount, or other financial inducement or incentive, which is either payable to or for the benefit of the purchaser or which reduces the amount to be paid for the vehicle, whether the amount is the vehicle purchase price, the interest or finance charge expense, or any other cost accruing to the purchaser if any portion of such rebate, refund, discount, or other financial incentive or inducement is paid or financed or in any manner contributed to by the dealer selling the vehicle, unless the advertisement discloses that the dealer's contribution may affect the final negotiated price of the vehicle. With respect to interest or finance charge expense programs, an advertisement shall disclose that participating dealers contribute to the reduction of the financing rate and that the dealer's contribution may affect the final negotiated price of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§741. Rebate and Financing Rate Advertising by Dealers

A. It is unlawful for a dealer to advertise an offer of a manufacturer's or distributor's rebate, discount, or other financial inducement or incentive if the dealer contributes to the manufacturer's or distributor's program unless such advertising discloses that the dealer's contribution may affect the final negotiated price of the vehicle. With respect to interest or finance charge expense programs, if a participating dealer contributes to the reduction of a financing rate, then a disclosure must state that the dealer's contribution may affect the final negotiated price of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§743. Lease Advertisements

A. Vehicle lease advertisements shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle. Statements such as "alternative financing plan," "drive away for \$_____ per month," or other terms or phrases that do not use the term "lease," do not constitute adequate disclosure of a lease. Lease advertisements shall not contain the phrase "no down payment" or words of similar import if any outlay of money is required to be paid by the customer to lease the vehicle. Lease terms that are not available to the general public shall not be included in advertisements directed at the general public, or all limitations and qualifications applicable to qualified buyers to the lease terms advertised shall be clearly and conspicuously disclosed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§745. Manufacturer Sales; Wholesale Prices

A. New vehicles shall not be advertised for sale in any manner that creates the impression that they are being offered for sale by the manufacturer or distributor of the vehicles. Advertisements by persons shall not contain terms such as "factory sale," "fleet prices," "wholesale prices," "factory approved," "factory sponsored," or any other similar terms which indicate sales other than retail sales from the dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§747. Savings Claims; Discounts

A. A savings claim or discount offer is prohibited except to advertise a new or demonstrator vehicle, and the advertisement must show the difference between the dealer's selling price and the manufacturer's, distributor's, or converter's total suggested list price or MSRP.

B. The featured savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount which is available to any and all members of the buying public.

C. If a dealer has added an option obtained from the manufacturer or distributor of the motor vehicle on which it is installed and disclosed the option and factory suggested retail price of the option on a dealership addendum sticker prior to offering the vehicle for sale at retail, the dealer may advertise a savings claim on that vehicle as long as the difference is shown between the dealer's selling price and the total selling price as disclosed on the dealership addendum sticker and discloses the factory-available options added in the advertisement. If an option that is added by a dealer is not a factory-available option, a savings claim may not be advertised on that vehicle.

D. Statements such as "up to," "as much as," "from," shall not be used in connection with savings or discount claims.

E. No person may advertise a savings claim or discount offer on used motor vehicles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§749. Sales Payment Disclosures

A.1. An advertisement that contains any one of the following messages, statements, or terms:

- a. the amount of a down payment, in either a percentage or dollar amount;
 - b. the amount of any payment, in either a percentage or dollar amount;
 - c. the number of payments;
 - d. the period of repayment; or
 - e. the amount of any finance charge;
2. must include the following:
- a. the amount or percentage of the down payment;
 - b. the terms of repayment (the number of months to make repayment and the amount per month) including the amount and due date of any balloon payment;
 - c. the annual percentage rate or APR; and
 - d. the amount of annual percentage rate, if increased, after consummation of the credit transaction.

B. An advertisement which complies with the Federal Truth-In-Leading Act (15 U.S.C. §160 et seq.) and amendments thereto, and any regulations issued or which may be issued thereunder, shall be deemed in compliance with the provisions of this Section. Any advertisement not in compliance with these federal provisions constitutes violation(s) of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§751. Payment Disclosure—Lease

A. It is an unfair or deceptive act to advertise the offer of a "consumer lease" if the advertisement contains any one of the following two "triggering terms": amount of any payment or a statement of any capitalized cost reduction or other payment required prior to or at consummation or by delivery, if delivery occurs after consummation, without clearly and conspicuously disclosing:

1. that the transaction is a lease in close proximity to and, where applicable, in the same decibel tone as, the amount of the periodic payment;

2. the total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;

3. the number, amounts, and due dates or periods of scheduled payments under the lease;

4. a statement of whether a security deposit is required; and

5. a statement that an extra charge may be imposed at the end of the lease term where the lessee's liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

B. Except for the statement of a periodic payment, any affirmative or negative reference to a charge that is part of the total amount due at lease signing shall not be more prominent than that disclosure.

C. An advertisement which complies with the Consumer Leasing Act of 1976 (15 USC 1601 et seq.), and amendments thereto, and any regulations issued or which may be issued thereunder, shall be deemed in compliance with the provisions of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§753. Bait Advertisement

A. "Bait" advertisement, as defined in §707, shall not be used by any person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§755. Lowest Price Claims

A. Representing a lowest price claim, best price claim, best deal claim, or other similar superlative claim shall not be used in advertising.

B. A person may not advertise a "meet or beat" guarantee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§757. Fleet Prices

A. Terms such as "fleet prices," "fleet sales," "suppliers prices," or other terms implying that retail individual customers will be afforded the same price and/or discount as multi-purchase commercial businesses shall not be used in advertising.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

§759. Bankruptcy/Liquidation Sale

A. No licensee may willfully misrepresent the ownership of a business for the purpose of holding a liquidation sale, auction sale, or other sale which represents that the business is going out-of-business. A person who advertises a liquidation sale, auction sale, or going out-of-business sale shall state the correct name and permanent address of the owner of the business in the advertisement. A person may not conduct a sale advertised with the phrase "going out-of-business," "closing out," "shutting doors forever,"

"bankruptcy sale," "foreclosure," or "bankruptcy," or similar phrases or words indicating that an enterprise is ceasing business unless the business is closing its operations and follows the procedures required by Chapter 1, Part II, Title 51, Trade and Commerce, Louisiana Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253 E.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Motor Vehicle Commission, LR 33:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The proposed Rule should have a positive effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

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

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. What effect will this have on the ability of the family or local government to perform the function as contained in this proposed Rule? This Rule is designed to help the family to obtain the information and help needed to own their own automobile.

Interested persons may submit written comments until 4:30 p.m., October 10, 2007, to Lessie A. House, Executive Director, Louisiana Motor Vehicle Commission, 3519 12th Street, Metairie, LA 70002.

Lessie House
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Advertising

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

The proposed rule change will have no impact on costs or savings to state or local governmental units. This rule change is merely a simplification of existing advertising rules, incorporating into the administrative rules policies and interpretations which have been standard practice for many years.

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

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

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

The proposed rule change will not effect costs and/or economic benefits to directly affected persons or nongovernmental groups. The proposed rule change updates, clarifies and provides specificity to the existing language of the advertising rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of the proposed rule change will have no impact upon competition and employment.

Lessie House
Executive Director
0709#046

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

Applications, Securities, General Provisions
(LAC 10:X1.301, XV.503, and XVII.301)

In accordance with R.S. 49:950 et seq., of the Administrative Procedure Act, the Commissioner of the Office of Financial Institutions has approved for advertisement the repeal of three Sections of the Louisiana Administrative Code, LAC 10.XI.301, regarding Supervised Loan/Insurance Premium Financing License Application; LAC 10.XV.503, regarding Defunct Collection Agencies, and LAC 10.XVII.301, regarding Enforcement of the Fair Debt Collection Practices Act. This action is being effectuated because in the case of the LAC 10.XI.301, the statute pertaining to applications has been amended to streamline the application process, and in the cases of LAC 10.XV.503 and LAC 10.XVII.301, the statutes which provided the basis and rationale for their promulgation have been repealed. Thus these Sections are rendered obsolete and no longer necessary.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part XI. Consumer Credit

Chapter 3. Supervised Loan/Insurance Premium Financing License

§301. Applications

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:3550 and 9:3554.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 17:578 (June 1991), repealed LR 33:

Part XV. Other Regulated Entities

Chapter 5. Debt Collection Agencies

Subchapter A. Defunct Collection Agencies

§503. Disbursement of Security Monies

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:3576.16 (C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 24:1083 (June 1998), repealed LR 33:

Part XVII. Miscellaneous Provisions

Chapter 3. Enforcement of Federal Fair Debt Collection Practices Act

§301. General Provisions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Act 1112 of 1992.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 19:736 (June 1993), repealed LR 33:

Family Impact Statement

The proposed amendments should not have any known or foreseeable impact on any family as defined by R.S. 49:972 or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

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

Interested persons may submit comments until 4:30 p.m., October 20, 2007, to Susan Rouprich, General Counsel, P.O. Box 94095, Baton Rouge, LA 70804-9095 or by hand delivery to 8660 United Plaza Blvd, 2nd Floor, Baton Rouge, LA 70809.

John Ducrest, CPA
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Applications, Securities, General Provisions

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

There are no implementation costs (savings) to state or local governmental units associated with this rule change. This action is being effectuated because in the case of the LAC 10:XI. 301, the statute pertaining to applications has been amended to streamline the application process, and in the case of LAC 10:XV. 503 and LAC 10:XVII. 301, the statutes which provided the basis and rationale for their promulgation have been repealed. Thus, these rules are rendered obsolete and no longer necessary.

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

There will be no impact on revenues associated with the repeal of these rules.

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

There will be no costs or economic benefits to directly affected persons or non-governmental groups associated with this rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment associated with this rule change.

John Ducrest
Commissioner
0709#022

Robert E. Hosse
Staff Director
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Hospitals Board of Dentistry

Dentistry
(LAC 46:XXXIII.120, 306, 322, 505, 706, 1505,
1506, 1507, 1703, 1705, 1709, 1711, and 1713)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry hereby amends LAC 46:XXXIII.120, 306, 505, 706, 1505, 1506, 1507, 1703, 1705, 1709, 1711, and 1713, and adopts §322. No preamble has been prepared. There will be no family impact in regard to issues set forth in R.S. 49:972.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 1. General Provisions

§120. Temporary Licenses

A. Under R.S. 37:760(6), the board is authorized to issue licenses in conformity with the Louisiana Dental Practice Act. However, under R.S. 37:752(8), dentists and dental hygienists may obtain a temporary license without satisfying all licensing requirements of the Louisiana Dental Practice Act provided the applicant applies for a full license by providing satisfactory documentation that the applicant is duly licensed in another state in good standing and applies for licensure by credentials for the nearest scheduled board meeting. In order to protect the public and to avoid abuses of this exemption, the board shall not award a temporary license to any dentist under the provisions of R.S. 37:752(8). Under no circumstances shall a temporary license awarded to a dental hygienist be in effect for any period longer than 5 months. This Section does not prohibit the awarding of temporary licenses to dentists who are seeking exemptions under R.S. 37:752(4).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1114 (June 1998), amended LR 26:1612 (August 2000), repromulgated LR 27:1893 (November 2001), amended LR 33:

Chapter 3. Dentists

§306. Requirements of Applicants for Licensure by Credentials

A. - A.10. ...

11. if deemed necessary, has appeared for a personal interview before the board;

A.12. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21:571 (June 1995), LR 22:23 (January 1996), LR

23:1528 (November 1997), LR 24:1114 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 26:1612 (August 2000), repromulgated LR 27:1893 (November 2001), amended LR 28:1777 (August 2002), LR 30:2305 (October 2004), LR 31:927 (April 2005), LR 32:243 (February 2006), LR 33:846 (May 2007), LR 33:

§322. Expungement of Disciplinary Actions

A. A dentist may apply for the expungement of a first time advertising violation provided:

1. a period of three years has elapsed from the date the consent decree was executed by the board president or order issued after a disciplinary hearing;

2. the dentist has not had any subsequent disciplinary actions of any kind taken against him by the board or any other licensing or certifying agency since the initial advertising violation in question;

3. has no disciplinary actions or investigations pending at the time of request;

4. the board will retain all records relative to the first advertising violation, and it may use same in connection with future disciplinary proceedings, if any.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 33:

Chapter 5. Dental Assistants

§505. Expanded Duty Dental Assistant Certificate Confirmation Fee and Reconfirmations; Display of Certificate

A. ...

B. All expanded duty dental assistants are required to display their certificate confirmations in a conspicuous place to be seen by all patients seen by the expanded duty dental assistant.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:206 (February 1993), amended LR 33:

Chapter 7. Dental Hygienists

§706. Requirements of Applicants for Licensure by Credentials (Hygienists)

A. - A.10. ...

11. if deemed necessary, has appeared for a personal interview before the board;

A.12. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760(8) and R. S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:737 (July 1992), amended LR 21:570 (June 1995), LR 22:23 (January 1996), LR 24:1117 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 26:1613 (August 2000), repromulgated LR 27:1894 (November 2001), amended LR 28:1778 (August 2002), LR 33:846 (May 2007), LR 33:

Chapter 15. Conscious Sedation with Parenteral Drugs

§1505. Conscious Sedation with Parenteral Drugs

A. The board shall issue two types of conscious sedation with parenteral drugs permits.

1. A "limited" permit will be issued to those dentists who qualify for such permit by meeting the minimal educational requirements specified in §1509. This permit will be limited to the administration of parenteral drugs via

intramuscular (IM), submucosal (SM), intranasal (IN), and subcutaneous (SC) routes only.

2. A "full" permit will be issued to those dentists who qualify for such permit by meeting all minimal educational requirements specified in §1509.

B. In order to receive authorization the dentist must show and produce evidence that he/she complies with the following provisions:

1. completion of an advanced training program beyond the pre-doctoral dental school level accredited by the Commission on Dental Accreditation of the American Dental Association which includes anesthesiology and related academic subjects as required in §1505 of this Chapter; or

2. utilization of the services of a trained medical doctor, doctor of osteopathy trained in conscious sedation with parenteral drugs, certified registered nurse anesthetist, a dentist who has successfully completed a program consistent with Part II of the American Dental Association Guidelines on Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, or a qualified oral and maxillofacial surgeon provided that said doctor or certified registered nurse anesthetist must remain on the premises of the dental facility until any patient given parenteral drugs is sufficiently recovered; or

3. successful completion of a board-approved continuing education course as described in Part III of the American Dental Association Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry provided the applicant has held a license to practice dentistry for a minimum of three years. The board has determined that 80 hours of clinical airway management would be a minimum to achieve competency as described in Part III of the previously mentioned guidelines.

C. In addition to the requirements of Subsection B of this Part the dentist must provide proof of current certification in cardiopulmonary resuscitation, course "Advanced Cardiac Life Support" as defined by the American Heart Association, or its equivalent.

D. Provide proof of current certification in Pediatric Advanced Life Support (PALS) when administering sedation to patients under the age of 13.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 22:1216 (December 1996), LR 33:

§1506. Conscious Sedation with Enteral Drugs

A. - D. ...

E. For adult patients, the licensee must provide proof of current certification in Advanced Cardiac Life Support as defined by the American Heart Association or is equivalent. For pediatric patients, the licensee must provide proof of current certification in Pediatric Life Support (PALS), or its equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (8) and R.S. 37:793

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 30:2306 (October 2004), amended LR 32:244 (February 2006), LR 33:847 (May 2007), LR 33:

§1507. General Anesthesia/Deep Sedation

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

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

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

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

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

c. provide proof of current certification in Pediatric Advanced Life Support (PALS) when administering sedation to patients under the age of 13.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 32:2057 (November 2006), LR 33:

Chapter 17. Licensure Examinations

§1703. Candidate's Manual for the Dental Licensure Examination of the Louisiana State Board of Dentistry

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1118 (June 1998), amended LR 32:245 (February 2006), LR 33:

§1705. Candidate's Manual for the Dental Hygiene Licensure Examination of the Louisiana State Board of Dentistry

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1118 (June 1998), amended LR 32:245 (February 2006), LR 33:

§1709. Examination of Dentists

A. Any person desiring to be licensed as a dentist shall apply to the Council of Interstate Testing Agencies and shall verify the information required on the application by oath. The application shall include two recent photographs. There shall be an application fee set by the Council of Interstate Testing Agencies. There shall also be an examination fee set by the Louisiana State University School of Dentistry.

B. - B.4. ...

C. To be licensed as a dentist in this state, an applicant must successfully complete the clinical licensing examination as administered by the Council of Interstate Testing Agencies (CITA), Central Regional Dental Testing

Service (CRDTS), Northeast Regional Board (NERB), Southern Regional Testing Agency (SRTA), American Dental Examination (ADEX), or Western Regional Examining Board (WREB).

D. The board is expressly authorized to utilize the services of other licensed dentists to facilitate the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), amended LR 28:2513 (December 2002), LR 33:

§1711. Examination of Dental Hygienists

A. Any person desiring to be licensed as a dental hygienist shall apply to the Council of Interstate Testing Agencies and shall verify the information required on the application by oath. The application shall include two recent photographs of the applicant. There shall be a nonrefundable application fee set by the Council of Interstate Testing Agencies, and a clinical fee payable to the Louisiana State University School of Dentistry which shall not exceed \$100 and which may be refundable if the applicant is found ineligible to take the examination.

B. - B.4. ...

C. To be licensed as a dental hygienist in this state, an applicant must successfully complete the following:

1. a written examination on the jurisprudence and ethics of the state regulating the practice of dental hygiene;

2. a practical or clinical examination as administered by the Council of Interstate Testing Agencies (CITA), Central Regional Dental Testing Service (CRDTS), Northeast Regional Board (NERB), Southern Regional Testing Agency (SRTA), American Dental Examination (ADEX), or Western Regional Examining Board (WREB) which shall test the competency of the applicant's ability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), amended LR 28:1779 (August 2002), LR 33:

§1713. Examination Application Deadlines

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1779 (August 2002), repealed LR 33:

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

C. Barry Ogden
Executive Director

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

RULE TITLE: Dentistry

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

There will be a one-time cost of \$500 in FY 07-08 for publication of the proposed rule in the *Louisiana Register* and in a mass mailing which is sent to all licensees every summer.

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

The proposed rules are not anticipated to increase the revenue collections of the board.

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

The proposed rule will require Dentists (approximately 100) who are not currently certified in Advanced Cardiac Life Support or Pediatric Advanced Life Support to incur a cost of approximately \$400 to become certified in those cardiopulmonary resuscitation courses in order to administer sedation to patients. There are no other associated costs for dentists and hygienists. However, the proposed rule will allow the board to replace the state clinical licensing examination with a clinical licensing examination to be administered by the Council of Interstate Testing Agencies. This will result in an increase of approximately \$450 to dentists taking the examination (from \$950 to \$1,400). Additionally, the board's operating expenses will decrease by an amount that is similar to the cost to administer the test (budget neutral). This will also ensure them greater mobility throughout the United States during their careers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

C. Barry Ogden
Executive Director
0709#004

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Continuing Education—Nursing Practice
(LAC 46:XLVII.3335)**

The Louisiana State Board of Nursing proposes to amend LAC 46:XLVII.3335, Continuing Education—Nursing Practice in accordance with R.S. 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The proposed Rule relative to Continuing Education—Nursing Practice revises the unit of measurement (contact hour) for participation in an educational activity which meets the board's continuing education criteria from 50 minute to 60 minute time period for 1 contact hour. This change is being recommended to be consistent with the American Nurses Credentialing Center's (ANCC) Commission on Accreditation's criteria which uses 60 minute unit of measurement for awarding contact hour credit effective January 1, 2007. This change is also consistent with the physician's regulatory group, the Accreditation Council for Continuing Medical Education (ACCME).

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLVII. Nurses

Subpart 2. Registered Nurses

§3335. Continuing Education—Nursing Practice

A. Authority of the Louisiana State Board of Nursing (board). The board derives its authority to establish the requirement for evidence of activities which contribute to continued competence for relicensure to practice as a registered nurse from R.S. 37:911, R.S. 37:918(4) and (12), and R.S. 37:920.E (1), (2), and (4).

B. Definitions for the Purposes of §3335

Accredited Post Secondary Institution—a degree granting institution that conducts a program preparing registered nurses and awards degrees at any or all of the following levels: associates, bachelors, masters, and doctoral, and which is accredited by a nationally recognized accrediting body.

Approved Offering—a continuing education offering provided by an approved provider.

Approved Provider—individual, partnership, corporation, association, organization, organized health care system, educational institution, or governmental agency which has been approved by the board, accredited by the American Nurses Credentialing Center's Commission on Accreditation (ANCC), or approved to provide nursing continuing education by an ANCC accredited approver.

Board-Approved Contact Hours—contact hours which have been approved by the board or through the ANCC.

Clinical Competence—the possession and use of professional knowledge and skills in relation to direct patient/client care.

Certifying Body—an agency qualified to evaluate an individual, an institution, or an educational program and attesting that certain predetermined standards for safe and ethical practice of the profession or service are met.

Competence—the possession of professional knowledge and skills necessary to practice or function at the legally qualified level.

Contact Hour—a unit of measurement that describes 60 minutes of participation in an educational activity which meets the board's continuing education criteria.

Continued Competence—the possession and maintenance of current professional knowledge and skills.

Continuing Education—a planned educational activity designed to update the knowledge and skills of the participant, beyond the entry level, or to prepare for practice in a different area of nursing.

Continuing Education Activities—

a. *Course*—an intense, planned educational activity, presented over time, which includes content related to a specific subject for which academic credit or contact hours are awarded

b. *Offering*—a continuing education activity of short duration for which a minimum of one contact hour is awarded.

c. *Program*—a series of offerings with a common theme and common overall goals. Offerings may occur consecutively or concurrently.

Criterion—a standard, rule, or test by which something can be judged, measured, or valued.

Current—occurring in the present time; contemporary.

Documentation of Nursing Practice—the presence of written evidence of nursing practice.

Examination—an exercise designed to evaluate progress, qualifications, or knowledge.

Full-Time Nursing Practice—a minimum of 1,600 hours, per year, of employment as a registered nurse or full-time equivalency requirements set forth by the employer. For self-employed, home health, and contract nurses, a minimum of 1,600 documented nursing practice hours, exclusive of travel, per calendar year, is accepted as full-time employment. Documentation of practice hours shall include paycheck stubs and a log record of actual hours worked.

Inactive Licensure Status—is recorded when the RN requests inactive licensure status rather than renew a current RN license.

Lapsed License—delinquent licensure status due to failure to renew or to request inactive licensure status.

National Council Licensure Examination for Registered Nurses (NCLEX-RN)—the examination approved by the board and administered to measure competency for initial licensure as a registered nurse.

Nursing Practice—the performance, with or without compensation, by an individual licensed by the board as a registered nurse, of functions requiring specialized knowledge and skill derived from the biological, physical, and behavioral sciences [Nurse Practice Act, R.S. 37:913 (13) and (14)], which includes, but is not limited to, direct patient care, supervision, teaching, administration, and other positions which require use of nursing knowledge, judgment, and skill.

Part-Time Nursing Practice—a minimum of 160 hours employment as a registered nurse, but less than full-time employment within the one-year audit period.

Practice Hour—60 minutes of nursing practice.

Refresher Course—instruction designed to update professional knowledge and skills to the legally qualified level.

Requirement—something needed or demanded by virtue of a law, regulation, etc.

C. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:911, R.S. 37:918(4), (12), and R.S. 37:920.E.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 16:1058 (December 1990), amended LR 21:267 (March 1995), LR 21:804 (August 1995), LR 24:1293 (July 1998), LR 25:514 (March 1999), LR 26:83 (January 2000), LR 27:729 (May 2001), LR 33:

Family Impact Statement

In compliance with R.S. 49:953 and 974, the following Family Impact Statement of the proposed amendments to rules is provided. There should be no adverse effect on the stability of the family; the authority and rights of parents regarding the education and supervision of their children; or the ability of the family or a local government to perform the function as contained in the proposed Rule amendments.

Interested persons may submit written comments on the proposed Rule until 5 p.m., October 10, 2007 to Barbara L. Morvant, Executive Director, 5207 Essen Lane, Suite 6, Baton Rouge, LA 70809.

Barbara L. Morvant
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Continuing Education—Nursing Practice

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

There is no anticipated increase or decrease in expenditures or savings due to these proposed rules except for the publication of the proposed rules estimated at \$300 in FY 07-08.

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

There is no estimated effect on revenue collections.

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

The proposed rule relative to Continuing Education for Nursing Practice revises the unit of measurement (contact hour) for participation in an educational activity which meets the board's continuing education criteria from 50 minute to 60 minute time period for 1 contact hour. The change is being recommended to be consistent with the American Nurses Credentialing Center's (ANCC) Commission on contact hour credit effective January 1, 2007. This change is also consistent with the physician's regulatory group, the Accreditation Council for Continuing Medical Education (ACCME).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Barbara L. Morvant
Executive Director
0709#017

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Embalmers and Funeral Directors

Embalmers and Funeral Directors
(LAC 46:XXXVII.111, 701, 901, 903,
1105, 1109, 1111, 1703, 2301, and 2305)

The Board of Embalmers and Funeral Directors proposes to amend LAC 46:XXXVII, Chapters 1, 7, 9, 11, 17, and 23 pursuant to the authority granted by R.S. 37:840 and in accordance with the provisions of the Administrative Procedure Act, R.S. 40:950 et seq. The board finds it necessary to revise, amend and/or add provisions of the rules, regulations and procedures relative to providing useful

guidance and information for the purpose of improving regulatory compliance and to enhance understanding of these changes.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXVII. Embalmers and Funeral Directors

Chapter 1. General Provisions

§111. Mandatory Disclosure

A. - F. ...

G. When money is made available to the funeral home over and above the amount owed for merchandise and services under no circumstances should the excess funds be utilized for any funeral home operating expenses and arrangements shall be made within a 30 day period for refund of same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, LR 5:280 (September 1979), amended by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 17:1101 (November 1991), LR 30:2818 (December 2004), LR 33:

Chapter 7. License

§701. Renewal and Reinstatement

A. - B. ...

C. When the holder of a combination or funeral director license has failed to renew his license on or before December 31 of each year, said license shall lapse and a new application and fee must be submitted. In any event, no license will be reinstated without a payment of all fees delinquent from date of lapse to date of reinstatement. Applicant may also be required to take a written Louisiana laws and regulations test.

D. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, August 1966, amended December 1970, amended LR 11:688 (July 1985), amended by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 30:2821 (December 2004), LR 33:

Chapter 9. Internship

§901. Requirements for Combination License

A. - A.7. ...

8. The internship may be registered and the intern receive up to six months credit prior to matriculation in an accredited college of mortuary science (funeral service).

9. Any internship shall be considered stale/null and void and unavailable for consideration after the passage of 10 years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, August 1966, promulgated LR 5:277 (September 1979), amended by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 15:10 (January 1989), LR 16:769 (September 1990), LR 30:2823 (December 2004), LR 33:

§903. Requirements for Funeral Director License

A. - A.9. ...

10. Any internship shall be considered stale/null and void and unavailable for consideration after the passage of 10 years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, August 1966, amended March 1974, promulgated LR 5:278 (September 1979), amended by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 15:10 (January 1980), LR 19:744 (June 1993), LR 30:2823 (December 2004), LR 33:

Chapter 11. Funeral Establishments

§1105. Charge of Establishment

A. All funeral establishments shall have a licensed funeral director designated as the manager of the facility and in charge of the day to day operations of the funeral home. The manager shall be available to perform all of the routine functions of the licensed establishment as provided within the provisions of R.S. Title 37, Chapter 10, Section 831 et seq., within normal business hours. The manager shall personally carry out his responsibilities as defined within paragraph 35 of Section 831 and/or as provided within the statute; and, to adequately serve the public, the manager shall reside within a 40 mile radius from the funeral establishment which the licensee is to manage.

B. In order to be designated as a manager, the licensee shall have a license issued by this board and have been actively engaged in the practice of funeral directing and/or the science of embalming for at least five years. (Any one with less than five years experience who changes positions is not automatically grandfathered so as to be allowed to continue as manager of another establishment.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, August 1966, promulgated LR 5:278 (September 1979), amended LR 11:946 (October 1985), amended by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 15:11 (January 1989), LR 30:2824 (December 2004), LR 33:

§1109. Closure of a Funeral Establishment

A. Upon the closure of a funeral establishment the license shall be returned to the board within a period of 15 days; any and all signs designating the building as a funeral establishment shall be removed or fully covered within 15 days; and, the telephone for the funeral establishment shall be disconnected within 15 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors LR 33:

§1111. Sign(s) on Vacant Lots

A. Within one year of the erection of a sign stating "Opening Soon," "Soon to Open," etc., there shall be on going construction or completion shall be anticipated within one year or the sign shall be removed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 33:

Chapter 17. Prepaid Funeral Services or Merchandise §1703. Instructions Need to Change Cash Deposited in a Pre-Need Account

A. In the event a funeral establishment desires to transfer cash deposited in a pre-need account through their firm the following steps shall be adhered to:

1. written notification shall be sent via certified mail to each consumer advising of the proposed change in funding for their pre-need arrangement and requesting authorization for said transfer;

2. upon receipt of written authorization for transfer from consumer transfer can take place;

3. if requested, pre-need cash deposited in a pre-need account shall be refunded to those who request same; or

4. if authorization for transfer is not given/received for any reason, the funeral establishment shall maintain funds on deposit in the bank or savings and loan where originally deposited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 33:

Chapter 23. Injunction Proceedings; Penalty; Continuance of Hearings; Release of Witness from Subpoena

§2301. Injunction Proceedings

A. ...

B. The board may also bring legal proceedings to enjoin a person or crematory violating the rules and regulations of this board from operating a crematory retort or a crematory, as may be the case, until such person and/or crematory complies with the requirements of these rules and regulations. The injunction, if granted, shall not be suspended by bond or appeal and the person or crematory enjoined shall be cast for attorney's fees and court costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, LR 5:280 (September 1979), amended by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 30:2828 (December 2004), LR 33:

§2305. Continuance of Hearings; Release of Witness from Subpoena

A. Based on circumstances presented, the president of the board shall be authorized to grant a continuance of formal hearings or informal meetings scheduled by the board and to release an individual from the obligation to appear as ordered by the subpoena authority of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 33:

Family Impact Statement

The proposed Rule of the Louisiana State Board of Embalmers and Funeral Directors should not have any

known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

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

Interested persons may submit written comments to Dawn Scardino, Executive Director, Louisiana State Board of Embalmers and Funeral Directors, P.O. Box 8757, Metairie, LA 70011-8757. Written comments must be submitted to and received by the board within 30 days of this notice. A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Dawn Scardino
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Embalmers and Funeral Directors**

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

The board will spend approximately \$9,000 in FY 08 in printing costs to implement these rule changes/additions. This will cover cost of publications in the *Louisiana Register* and the printing and mailing of revised books to all funeral establishments, crematories, and licensees.

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

The proposed rule changes/additions will have no effect on revenue collections of state or on governmental groups.

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

The proposed rule changes/additions are being made in many instances to add further protection for the consumers who do business with the funeral establishments (approximately 403) in the state. A restriction requiring embalmer/funeral director interns to complete their internship within six months of completing mortuary science classes has been removed and interns who have not obtained a license within ten years of completing the same will be required to re-serve an internship due to changes in the profession which take place over this period of time. Management requirements for funeral establishments are being clarified in order to insure that each funeral home is properly operated.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These proposed changes/additions are not expected to have a significant effect on competition and/or employment. One or two interns may be affected in a five to ten year span if these individuals have not obtained their license within ten years of completing their initial internship. This would cause them to

re-serve an internship during which they would have to submit twelve months of report forms to the board's office advising of the cases on which they have worked.

Dawn P. Scardino
Executive Director
0709#077

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Licensed Professional Counselors Board of Examiners

Definitions and Requirements for Licensure (LAC 46:LX.503 and 705)

In accordance with R.S. 49:950 et seq., of the Louisiana Administrative Procedure Act, the Licensed Professional Counselors Board of Examiners hereby proposes to amend its existing rules and regulations relative to the scope of practice by Licensed Professional Counselors, as well as the education and clinical supervision requirements for Counselor Interns. The majority of these revisions are necessary to comply with Act 206 of 2007, and the remainder are proposed to clarify existing rules.

The Licensed Professional Counselors Board proposes to revise §503 "Definitions for Licensed Professional Counselors," and §705, "Supervised Experience of Counselor Interns," relative to those changes set forth above.

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

Family Impact Statement

The proposed Rule of this board should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

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

Interested persons may submit written comments to Gloria Bockrath, Board Chair, Licensed Professional Counselors Board of Examiners, 8631 Summa Avenue, Baton Rouge, LA, 70809 from September 20, 2007, until September 30, 2007. A public hearing on this proposed Rule will be held on Thursday, October 25, 2007, at 5:30 p.m., McNeese State University, Burton Business Center, Burton Business Center Conference Room, 450 Lawton Dr, Lake Charles, LA.

Gloria Bockrath, Ph.D.
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Definitions and Requirements for Licensure

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

There will be a one time implementation cost in FY 07/08 that includes the cost of promulgating the rule (\$1,242), legal fees (\$250), forms (\$40), and staff time (\$400). The cost will be absorbed within the budget of the Licensed Professional Counselors (LPC) Board. There will be no impact to other state or local governmental units.

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

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

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

There will be no additional cost to directly affected persons or non-governmental groups. However, this rule will allow Licensed Professional Counselors to be employed in Medicare programs by adding "Psychotherapy" to the definitions of LPCs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Based on recent interpretation of Medicare rules many LPCs have become unemployed and this new rule will allow LPCs to compete with other licensed mental health professionals.

Eddye Boeneke
Executive Director
0709#026

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 69—Year 2000 Exclusions (LAC 37:XIII.Chapter 87)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to repeal Regulation 69—Year 2000 Exclusions.

The purpose of Regulation 69 was to set parameters on the use of Year 2000 (Y2K) exclusions and endorsements in order to protect the public interest and to assure the continued viability of the insurance market in this state. Although Regulation 69 was to provide precautionary measures in the event of a Y2K problem, the need for such protection to address coverage issues related to any Y2K problem no longer exists. Therefore, Regulation 69 is being repealed in its entirety.

**Title 37
INSURANCE**

Part XIII. Regulations

Chapter 87. Regulation 69—Year 2000 Exclusions

Subchapter A. General Provisions

§8701. Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1256 (July 1999), repealed LR 33:

§8703. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1256 (July 1999), repealed LR 33:

§8705. Scope and Applicability

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, R.S. 22:941, R.S. 22:1262 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 25:1256 (July 1999), amended LR 26:86 (January 2000), repealed LR 33:

§8707. Severability

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1256 (July 1999), repealed LR 33:

§8709. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1256 (July 1999), amended LR 26:86 (January 2000), repealed LR 33:

§8711. Forms Approval

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:620E.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1257 (July 1999), repealed LR 33:

Subchapter B. Admitted Insurers

§8713. Underwriting Standards

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3, R.S. 22:1211 et seq., R.S. 22:941, R.S. 22:1262 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1257 (July 1999), repromulgated LR 26:86 (January 2000), repealed LR 33:

§8715. Monitoring of Market Conduct

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3, R.S. 22:1211 et seq., R.S. 22:941, R.S. 22:1215, R.S. 22:1262, R.S. 22:1262.1. R.S. 22:1301 and R.S. 22:1404.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1257 (July 1999), amended LR 26:86 (January 2000), repealed LR 33:

§8717. Representations and Warranties

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, R.S. 22:619 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), amended LR 27:87 (January 2000), repealed LR 33:

§8719. Notice

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), amended LR 26:87 (January 2000), repealed LR 33:

§8721. Exemptions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1258 (July 1999), amended LR 26:87 (January 2000), repealed LR 33:

Subchapter C. Surplus Lines Insurers

§8723. Mandatory Policyholder Notice

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:87 (January 2000), repealed LR 33:

§8725. Claims Notice

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:87 (January 2000), repealed LR 33:

§8727. Issuance of Notices

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:87 (January 2000), repealed LR 33:

Subchapter D. Administrative Actions

§8729. Hearings

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3, R.S. 22:1211 et seq., and R.S. 22:1457.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:88 (January 2000), repealed LR 33:

§8731. Penalties

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3, R.S. 22:1211 et seq., and R.S. 22:1457.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 26:88 (January 2000), repealed LR 33:

Family Impact Statement

The proposed amendments to LAC 37:XIII.Chapter 87 regarding Year 2000 Exclusions should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

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

A public hearing on the proposed repeal of Regulation 69 will be held on Friday, October 26, 2007, at 1:30 p.m., in the Poydras Hearing Room of the Louisiana Department of Insurance (Poydras Building), 1702 North Third Street, Baton Rouge, LA. Interested persons who wish to make comments may do so at the public hearing or by writing to Carol Fowler-Guidry, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business, 4:30 p.m., October 26, 2007. No preamble concerning the proposed regulation is available.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 69—Year 2000 Exclusions

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
DOI does not expect any implementation costs as a result of the adoption of this regulation. DOI seeks to repeal existing Regulation 69.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no increase or decrease in revenue as a result of repealing Regulation 69.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs and/or economic benefits to directly affected persons or non-government groups as a result of the repeal of this regulation.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The repeal of this regulation should have no impact upon competition and employment in the state.

Chad M. Brown
Deputy Commissioner
0709#002

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 82—Insure Louisiana Incentive Program (LAC 37:XIII.Chapter 123)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to promulgate Regulation 82 regarding the Insure Louisiana Incentive Program.

Due to the catastrophic losses caused by Hurricane Katrina and Hurricane Rita, many insurers have reduced their participation in the voluntary market for residential and commercial property insurance. This reduction has led to competitive pressure on insurance rates, and unaffordable and unavailable insurance for property owners. As a result, many property owners may be forced to seek coverage through the Louisiana Citizens Property Insurance Corporation for their property insurance needs thereby increasing Citizens exposure to increased deficits and assessments.

In an effort to attract new insurers to this state and to provide adequate and affordable insurance to property owners of this state, the Insure Louisiana Incentive Program was enacted through the passage of Act 447 of the 2007 Regular Session of the Louisiana Legislature. The purpose of the Insure Louisiana Incentive Program is to encourage insurers to participate in the voluntary property insurance market for the purposes of increasing the availability of property insurance and competitive pressure on insurance rates, and reducing the volume of business written by the Louisiana Citizens Property Insurance Corporation. Regulation 82 sets forth standards and procedures relative to a property insurer's participation in the Insure Louisiana Incentive Program. Through cooperative endeavor agreements, insurers participating in the program may be awarded matching grant funds in order to achieve the requirements of Act 447. Regulation 82 further specifies these requirements and conditions thereof by qualified property insurers.

As a result of the impact of Hurricane Katrina and Hurricane Rita, it is critical that property owners have affordable and adequate insurance coverage in order to maintain the viability of this state's insurance market and to avoid any future perils that may arise from the upcoming hurricane season. Regulation 82, therefore, is being promulgated to accomplish this purpose.

Title 37

INSURANCE

PART XIII. Regulations

Chapter 123. Regulation 82—Insure Louisiana Incentive Program

§12301. Purpose

A. The purpose and intent of Regulation 82 is to exercise the authority and carry out the duties and responsibilities of

the Commissioner of Insurance for implementation and regulation of the Insure Louisiana Incentive Program, hereinafter referred to as the "Incentive Program." Regulation 82 sets forth rules and procedural requirements which the Commissioner of Insurance deems necessary for participation in the Incentive Program by qualified property insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12303. Authority

A. Regulation 82 is promulgated pursuant to the authority and responsibility delegated to the Commissioner of Insurance under R.S. 22:3301 through 3311 and pursuant to the general powers granted by law to the commissioner and the Department of Insurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12305. Applicability and Scope

A. Regulation 82 applies to all property insurers with respect to their qualification and participation in the Incentive Program.

B. Regulation 82 governs all aspects of the Incentive Program including, but not limited to, the application process for grants, the qualifications of grantees, the award of grants, the use of grant funds, the reporting requirements for grantees, the requirements for matching capital funds, the requirements for minimum capital and surplus, the requirements for earned capital and other regulation and administration of the Incentive Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12307. Definitions

A. For the purposes of Regulation 82, the following terms shall have the meaning or definition as indicated herein.

Approved Unauthorized Insurer—an insurer without a certificate of authority, or otherwise qualified under the provisions of Title 22, and which is on the list of approved unauthorized insurers under the provisions of R.S. 22:1262.1, and from which a licensed surplus lines broker may procure insurance under the provisions of R.S. 22:1257.

Commissioner—the Commissioner of Insurance of the state of Louisiana.

Department—the Department of Insurance of the state of Louisiana.

Domestic Insurer—an insurer formed under the laws of the state of Louisiana that has been authorized by the department to sell insurance products in the state of Louisiana.

Grantee—a property insurer to whom a grant is made from the Incentive Program Fund.

Incentive Program (where capitalized)—the Insure Louisiana Incentive Program as created, authorized and administered pursuant to R.S. 22:3301 et seq., and Regulation 82.

Incentive Program Fund (where capitalized)—the Insure Louisiana Incentive Program Fund established and created pursuant to R.S. 22:3311 and Regulation 82.

Net Written Premiums—the total premiums, exclusive of assessments and other charges, paid by policyholders to an insurer for policies that comply with Regulation 82, minus any return premiums or other premium credits due policyholders, as defined in R.S. 22:3309(A).

Non-Admitted Insurer—an insurer that has not been licensed by the department to sell insurance products in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12309. Matching Capital Grants

A. From funds appropriated by the legislature for the Incentive Program Fund established and created in the state treasury under R.S. 22:3311, the commissioner may grant matching capital funds to qualified property insurers in accordance with the requirements of R.S. 22:3301 through 3311 and Regulation 82.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12311. Public Invitation for Grant Applications

A. Pursuant to R.S. 22:3301 et seq., and Regulation 82, the commissioner shall issue an initial public invitation to property insurers to submit applications for grants under the Incentive Program.

B. The invitation shall be published for at least a 30-day period on the department's web site and in state and national insurance journals and publications as the commissioner deems appropriate.

C. The invitation shall describe the Incentive Program and provide general information about the grant application process.

D. The invitation shall set a deadline for receipt of grant applications. All grant applications should be submitted to the department either by certified mail, return receipt requested, or actual delivery by a commercial interstate courier. Failure to timely submit a grant application may render the insurer ineligible to participate in the Incentive Program. However, for good cause shown, the commissioner may extend the deadline and consider applications received after the deadline or give an insurer the opportunity to cure a non-substantive deficiency in the application.

E. In the event that all monies in the Incentive Program Fund are not allocated in response to the first invitation, the commissioner shall issue a second invitation for grant applications in the form and pursuant to the procedures utilized for the first invitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12313. Applications

A. The department shall prepare an application form to be fully completed by grant applicants. The application form may be revised by the department as it deems appropriate.

B. The grant application shall require the property insurer to designate a point of contact with a telephone number and physical address to represent the property insurer on all matters pertaining to the grant process and the Incentive Program.

C. The grant application shall be filed contemporaneously with the application for licensure with the department by a non-admitted insurer. The application for licensure expresses the applicant's intent to become licensed in this state and, if specifically requested in writing by the grant applicant in the application for licensure, will be processed contingent upon approval of the allocation of a grant award.

D. Only fully completed grant applications or those deemed acceptable by the commissioner shall be considered for a grant award.

E. The grant application, whether completed by an admitted or non-admitted insurer, shall be submitted to the department's Office of Financial Solvency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12315. Qualifications for Applying for Grant Funds

A. Minimum Solvency Requirements. Grants shall be made only to property insurers who initially satisfy and thereafter maintain the following minimum solvency requirements:

1. capital and surplus in an amount not less than \$25 million;
2. A.M. Best rating of B++ or better or an equivalent rating by a nationally recognized rating service;
3. risk-based capital ratio of 500 percent; and
4. sufficient reinsurance to demonstrate that its reinsurance program is sufficient for the amount of business to be written pursuant to the Incentive Program.

B. Certificate of Authority.

1. A property insurer must have an existing certificate of authority in Louisiana for the line or lines of insurance which the insurer applicant will write pursuant to the Incentive Program or documentation that an application for such licensure has been filed with the Company Licensing Division of the department contemporaneous with the filing of the grant application.

C. Satisfactory Prior Experience.

1. Grants shall be made only to property insurers with satisfactory prior experience in writing property insurance or to new property insurers whose management has satisfactory experience in property insurance. The grant application shall accurately disclose the prior experience of property insurers and their management. The commissioner may request additional information from the applicant insurer and conduct such investigation of prior experience as the commissioner deems appropriate.

2. The commissioner shall determine whether an applicant insurer has adequate or satisfactory prior experience.

D. Other Requirements

1. Applicant shall maintain premium to surplus ratio no greater than 4 to 1 pursuant to R.S. 22:891.1.A.

2. Applicant shall not insure more than 10 percent of its surplus in any one risk pursuant to R.S. 22:1470.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12317. Award and Allocation of Grants

A. Subject to the requirements of this Section, the commissioner shall award and allocate grants among qualified property insurers who have applied for grants as the commissioner deems appropriate to carry out the purpose and intent of the Incentive Program. The commissioner has the discretion to create an advisory committee to assist in the analysis of grant applications. If created, the advisory committee will be composed of up to seven members, designated to serve thereon by the commissioner.

B. The factors considered in awarding grants shall include, but are not limited to, the following:

1. the financial strength and satisfactory prior experience of the applicant;
2. the ability of the applicant to invest new capital and to comply with the other requirements of the grant;
3. the potential of the applicant for providing property insurance as required by the Incentive Program at reasonable and competitive costs, particularly for property owners in the Louisiana parishes included in the federal Gulf Opportunity Zone Act of 2005. The current 37 parishes in the Gulf Opportunity Zone are Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge, and West Feliciana. These parishes may be subject to change by subsequent legislation;
4. the marketing and claims handling capability and experience of the applicant, and particularly its ability to market property insurance in areas affected by Hurricane Katrina and Hurricane Rita and to handle future claims that may arise;

5. the applicant's longevity in the Incentive Program including a statement or plan of operation by the applicant demonstrating its intent to remain in this state following the completion of the Incentive Program;

6. the current licensure of the applicant where preference and priority will be given to those admitted insurers that are currently licensed to do business in this state for the line or lines of business that are the subject of the grant; and

7. any other factors that the commissioner deems applicable, relevant and appropriate in carrying out the purpose and intent of the Incentive Program.

C. For grant applications in response to the initial invitation, the commissioner shall not allocate individual grants less than \$2 million nor in excess of \$10 million.

D. For the initial allocation of grants only, the commissioner shall allocate at least 20 percent of the total amount available for grants to domestic insurers unless the commissioner has not received sufficient applications from qualified domestic insurers to allocate such sum.

E. If the commissioner issues a second invitation for grant application, the commissioner shall not allocate

individual grants less than \$2 million nor in excess of \$10 million. Insurers who have been allocated a grant in response to the first invitation may apply for and receive an additional grant, provided the total of the grants to an insurer does not exceed \$10 million.

F. In no event shall the total amount of the grant to an insurer exceed 20 percent of that insurer's capital and surplus as reported to and verified by the department.

G. Prior to the award of a grant, such grant shall be subject to the review and approval of the Joint Legislative Committee on the Budget. The commissioner shall provide written notice to the committee of the grant awards that have been approved. Upon written approval by the committee, the commissioner will be authorized to award the grant and deliver the amount of the grant to the grantee from monies in the Incentive Program Fund.

H. In the event that monies remain in the Incentive Program Fund after allocations pursuant to the second invitation, the commissioner shall cause all remaining monies to be returned to the state general fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12319. Authorized Insurers

A. A non-admitted insurer, including an approved unauthorized insurer, may apply for a grant, provided that the non-admitted insurer shall, contemporaneously with the grant application, file an application for licensure with the department for the line or lines of insurance for which the non-admitted insurer, including an approved unauthorized insurer, must be authorized and licensed to write for a grant award. If specifically requested in writing by the grant applicant in the application for licensure, such application will be processed contingent upon approval of a grant award.

B. A non-admitted insurer, including an approved unauthorized insurer, must become admitted and licensed to do business in Louisiana before it may actually receive grant funding.

C. If the non-admitted insurer does not apply timely to be admitted or subsequently is not approved as an admitted and licensed insurer, the non-admitted insurer shall not be entitled to receive a grant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12321. Matching Capital Requirements

A. To be eligible for a grant, the insurer shall make a commitment of capital at least equal to the amount of the grant to write property insurance in Louisiana that complies with the requirements of R.S. 22:3309 and §12323 of Regulation 82. Grants from the Incentive Program Fund must be matched by such newly allocated insurer capital at a ratio of at least one dollar of allocated insurer capital funds for each dollar of state capital grant funds.

B. Within 10 days of receipt of any Incentive Program Funds, the insurer shall provide to the commissioner written certification signed by two principal officers of the grantee that the Incentive Program Funds have been deposited in an account held in the name of the insurer applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12323. Property Insurance Requirements

A. The grantee shall write new property insurance in Louisiana of the types described in R.S. 22:3309 and this Section of Regulation 82 with net written premiums of at least a ratio of \$2 of premium for each \$1 of the total of newly allocated insurer capital combined with the grant from the Incentive Program Fund. Thus, if the insurer allocates \$2 million in capital and receives a matching state grant of \$2 million, the insurer must write property insurance in Louisiana with net written premiums of at least \$8 million.

B. To comply with the requirements of the grant, the new property insurance written by the grantee shall be residential, commercial, mono-line, or package property insurance policies in Louisiana and must include coverage for wind and hail with limits equal to the limits provided for other perils insured under such policies.

C. The net written premium requirements of this Section will be satisfied only by new property insurance coverages reported on the Annual Statement State Page filed with the department under lines 1 (Fire), 2.1 (Allied Lines), 3 (Farmowners), 4 (Homeowners), or 5.1 (Commercial Multi-peril Non-liability).

D. Grantees shall also comply with the following.

1. By the end of the second year after receipt of the grant and in each succeeding year, the grantee shall maintain at least 25 percent of the net written premiums for policyholders whose property was formerly insured by the Louisiana Citizens Property Insurance Corporation. At least 50 percent of such policyholders insured by the Louisiana Citizens Property Insurance Corporation shall be located in the parishes included in the federal Gulf Opportunity Zone Act of 2005.

2. By the end of the second year after receipt of the grant and in each succeeding year, the grantee shall write at least 50 percent of the net written premiums for policyholders whose insured property is located in Louisiana in a parish included in the federal Gulf Opportunity Zone Act of 2005.

3. The grantee must comply with the requirements of both §12323.D.1 and 2 by the end of the second year and must continue to comply with all requirements in each of the succeeding years of the grant unless an extension has been granted by the commissioner under R.S. 22:3310.B or §12331.C of Regulation 82.

4. The requirements of §12323.D.1 and 2 apply separately, but net written premiums from policyholders formerly insured by the Louisiana Citizens Property Insurance Corporation with property in the federal Gulf Opportunity Zone used to comply with D.1 may also be used to comply with D.2.

5. The net written premium ratios of §12323.D.1 and 2 apply only to the net minimum premium required under §12323.A. Thus the grantee may write additional Louisiana property coverage without regard to ratios required by §12323.D.1 and 2.

E. The requirements of the grant that must be satisfied by the grantee are illustrated by the following example assuming a grant of \$2 million.

1. Example

a. The applicant is awarded a \$2 million grant. Within 10 days of receipt of the grant of Incentive Program Funds, the applicant must match the grant with newly allocated capital funds of at least \$2 million and provide written certification of compliance to the department. By the end of the second year after receipt of the grant, the grantee must write property insurance in Louisiana with net written premiums of at least \$8 million. At least \$2 million of the \$8 million of net written premiums must be written for policyholders whose property was formerly insured by the Louisiana Citizens Property Insurance Corporation and at least \$1 million of that premium must be from policyholders whose insured property is located in Louisiana in a parish included in the federal Gulf Opportunity Zone of 2005. By the end of the second year after receipt of the grant, the grantee must write at least \$4 million of the net written premiums for policyholders whose insured property is located in Louisiana in a parish included in the federal Gulf Opportunity Zone of 2005. By the end of the second year and for each of the succeeding years of the grant, the grantee must maintain net written premiums that comply with all of the requirements set forth above. Compliance with the requirements for the second year and each succeeding year must be demonstrated on the grantee's annual reports.

F. Applicants shall also satisfy the requirements for licensing, form filings, rate filings, and any other applicable provisions contained in Title 22.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12325. Earned Capital

A. An insurer who has received a grant is entitled to earn the grant at the rate of 20 percent per year for each year in which the insurer is in compliance with the requirements of R.S. 22:3301 et seq., and Regulation 82, so that the insurer can earn the entire grant after five years of full compliance with the requirements.

B. The grantee may begin to earn the grant from the reporting period in which the grantee first demonstrates that its net written premiums have reached compliance with all requirements of both §12323.D.1 and 2. The grantee will earn 20 percent of the grant in each 12 month period thereafter in which the grantee demonstrates that it has maintained compliance with all requirements for net written premiums. Thus, if in compliance with §12323.D.1 and 2, the grantee may begin to earn the grant at the end of the first year.

C. Upon receipt of satisfactory documentation of full compliance with the net written premium requirements during the preceding 12 months, the commissioner will issue written declaration that the grantee has earned 20 percent of the grant awarded to the grantee. No funds may be earned by the grantee until it receives official notification from the commissioner certifying that the requirements of the program have been met.

D. If the grantee does not meet the grant requirements during any year but shows promise of future compliance based on good cause having been demonstrated, the commissioner may extend the period of time from five years in order for the grantor to earn the entire grant. The

extension may be granted for up to one year. Such grantee shall not be entitled to earn the Incentive Program Funds (i.e., 20 percent of the grant award) for that year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12327. Funding Schedule

A. Unless requested by the grantee and authorized by the commissioner, a grant that has been fully approved shall be funded on the next regular quarterly period thereafter, i.e., January 1, April 1, July 1, or October 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12329. Reporting Requirements

A. Grantee shall segregate and report any grants received on the line titled "Aggregate Write-In for Special Surplus Funds" in the NAIC Annual and Quarterly Statement Blanks.

B. Grantee shall report annually by March 1 of each year on a form acceptable to the commissioner the following information:

1. the amount of premium written under the program;
2. the amount of premium associated with policies for which the Louisiana Citizens Property Insurance Corporation was the immediate previous insurer;
3. the amount of premium associated with properties located in the Federal Gulf Opportunity Zone Act of 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12331. Compliance

A. The commissioner shall conduct an examination and/or investigation annually, or more often as the commissioner deems necessary to determine the grantee's compliance with the requirements of the grant, as per R.S. 22:3301 et seq., and Regulation 82. Any examination or investigation shall be performed pursuant to R.S. 22:1301 et seq. In addition to the requirements of R.S. 22:1301 et seq., the department may require such reports and/or conduct such examinations or investigations as the commissioner deems necessary to verify compliance with the property insurance requirements set forth in the Incentive Program and Regulation 82.

B. If the commissioner determines that a grantee has complied with the terms of the grant, the commissioner shall notify the grantee in writing that the grantee has earned the 20 percent portion of the grant pursuant to R.S. 22:3310.

C. If the commissioner determines that the grantee shows promise of future compliance, the commissioner may grant an extension of not more than one year to a grantee insurer who has failed to satisfy all requirements of the grant. Such grantee shall not be entitled to receipt of Incentive Program Funds for that year, until full compliance is achieved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12333. Declaration of Default

A. The commissioner may declare an insurer in default of the requirements for a grant should he find any of the following exists.

1. The insurer fails at any time to meet the specific minimum requirements of §12315.A.1-4.

2. The insurer fails to maintain a certificate of authority for the line or lines of insurance written pursuant to the grant program.

3. The insurer fails to meet the specific requirements of §12323.

4. The insurer fails to comply with any other applicable provisions of R.S. 22:3301 et seq., or Regulation 82.

B. If the commissioner determines that a grantee has failed to satisfy one or more of the requirements of the grant and that an extension will not be granted, the commissioner may declare the grantee in default. The commissioner shall notify the grantee in writing that the grantee is in default. Any grantee declared in default by the commissioner shall have 30 days from the date of the declaration of default to request reconsideration by the commissioner. The written request for reconsideration shall set forth, in detail, each and every reason why the grantee is entitled to the relief requested, including any documents tendered in support thereof. The commissioner shall have 30 days from the mailing of the request for reconsideration to review it and render a decision. The commissioner's decision upon reconsideration is final. Unless modified on reconsideration, the default is effective from the date of the original declaration.

C. The grantee in default is liable for and shall repay all grant funds that have not been earned by the grantee, plus legal interest from date of the commissioner's default declaration. If a request for reconsideration is not timely made, repayment is due upon the expiration of 30 days from the declaration of default. If a request for reconsideration is timely made and denied, repayment is due within 10 days of the denial of the reconsideration request.

D. The commissioner may institute legal action to recover all sums due by the grantee in default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12335. Cooperative Endeavor Agreements

A. In furtherance of R.S. 22:3301 et seq., and in accordance with R.S. 22:3303.A, the grantee shall execute a cooperative endeavor agreement with and in a form prescribed by the commissioner subject to approval by the Office of Contractual Review of the Division of Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12337. Severability

A. If any provision of Regulation 82 or its application to any person or circumstance is held invalid, such invalidity

shall not affect other provisions or applications of Regulation 82 which can be given effect without the invalid provision or application, and to that end, the provisions of Regulation 82 are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

§12339. Effective Date

A. Regulation 82 shall become effective on the date of the publication of the final rule in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3301 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 33:

Family Impact Statement

The proposed Regulation 82 LAC 37:XIII, Chapter 123 titled Insure Louisiana Incentive Program should not have any known or foreseeable impact on any family as defined by R.S. 49:972D or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

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

A public hearing on this proposed regulation will be held on October 29, 2007, at 9 a.m., in the Poydras Hearing Room, Poydras Building, 1702 North Third Street, Baton Rouge, LA. Interested persons who wish to make comments may do so at the public hearing or by writing to Warren Byrd, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business, 4:30 p.m., October 29, 2007. No preamble concerning the proposed regulation is available.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 82—Insure Louisiana Incentive Program

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

DOI anticipates implementation costs of \$230,355 related to Regulation 82 and the total cost of the Insure Louisiana Incentive Program of approximately \$100.2 million. The implementation costs consist of one Compliance Examiner and approximately 1,450 hours of computer programming which will cost \$230,355. Exactly \$100 million has been deposited within the Insure Louisiana Incentive Program Fund in order for the DOI to grant these monies to approved property insurance companies as outlined within Act 447 of the 2007 Regular Legislative Session.

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

There will be no increase or decrease in revenue as a result of Regulation 82.

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

Regulation 82 should provide more insurers writing property insurance in the state, and would have the positive impact to eventually lower the cost of that insurance. However, DOI is unable to quantify the benefits to Louisiana policyholders.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of Regulation 82 should bring more property insurers to the state and thereby improve competition within the insurance marketplace.

Chad M. Brown
Deputy Commissioner
0709#023

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Labor
Office of Unemployment Insurance Administration**

**Lost Wage Benefits for Domestic Violence Victims
(LAC 40:IV.Chapter 5)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Employment Security Law, R.S. 23:1471 et seq., the Office of Unemployment Insurance Administration of the Department of Labor, hereby issues notice of its intent to adopt Chapter 5 and promulgate rules of the Department of Labor. The proposed Chapter and Rules enable and apply to the provisions of the "Lost Wage Benefits for Domestic Violence Victims Act" (R.S. 23:1700-75), which was enacted by the 2007 Regular Session. The Rule promotes the public interest by ensuring that victims of domestic violence, if otherwise qualified and eligible, can receive unemployment insurance benefits even though the victims do not meet the requirements under R.S. 23:1601(1) and (2).

Title 40

LABOR AND EMPLOYMENT

Part IV. Employment Security

Subpart 1. Board of Review

Chapter 5. Lost Wage Benefits for Domestic Violence Victims

§501. Terminology pertaining to Lost Wages for Domestic Violence Victims

A. Definitions

Domestic Abuse—includes but is not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family or household member against another. Minors are not excluded. *Domestic abuse* also includes abuse of persons 60 years of age or older and any disabled person 18 years of age or older when committed by an adult child or adult grandchild.

Family Members—spouses, former spouses, parents and children stepparents, stepchildren, foster parents and foster children.

Household Members—any person of the opposite sex presently or formerly living in the same residence with the defendant as a spouse whether married or not, who is seeking protection under this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

§503. Administration of Funds

A. Benefits under the Lost Wage Benefits for Domestic Violence Victims Act are provided to individuals who have lost their employment due to domestic violence and who, otherwise, would not be eligible for unemployment insurance benefits. Towards this end, it shall be the agency's intent to apply all rules, regulations, and laws of the unemployment insurance program with the exception of those clearly excluded by the statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

§505. Manner of Distribution

A. The application for and the distribution of benefits under this program shall be in the same manner and using the same methods as those of regular unemployment insurance benefits.

B. The records shall be maintained in a manner that allows for the monitoring and auditing of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

§507. Maximum Benefit Amount

A. The total benefit amount payable under the domestic violence victims program will be reduced by any amount paid from regular unemployment benefits and shall not exceed the maximum benefit amount established in the monetary determination of the unemployment insurance claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

§509. Filing Period

A. A claimant shall be eligible to file one new claim per calendar year. The term "new claim" is the first initial claim filed to request a determination of entitlement to and eligibility for compensation which results in an agency generated document of an appealable monetary determination provided to the potential claimant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

§511. Deductions

A. The following shall not be deducted from benefits of domestic violence victims:

1. severance pay;
2. vacation pay;
3. holiday pay;
4. bonus pay;
5. WARN Act pay;
6. wages in lieu of notice;

7. separation/dismissal pay;
8. tips/gratuities;
9. Workers' Compensation;
10. military retirement pay; and
11. other periodic payment based on previous work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

§513. Availability of Claimant

A. The requirements that an individual must be able to work, available for work and making an active search for work each week will not apply if the conditions that qualified the individual for the program do not permit him/her to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1653-1654, R.S. 23:1770-1775 and R.S. 23:1471-1713.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Unemployment Insurance Administration, LR 33:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule affects the family by implementing the "Lost Wage Benefits for Domestic Violence Victims Act" which was intended to improve the stability of families who must flee a domestic violence situation.

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

3. What effect will this have on the functioning of the family? This will improve the functioning of affected families by providing income replacement.

4. What effect will this have on family earnings and family budget? This will provide additional income not otherwise available to families whose members lose work because of domestic violence.

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

6. Is the family or local government able to perform the function as contained in this proposed Rule? This is strictly a state administered program designed to help victims of domestic violence to sustain themselves and their families financially during temporary periods of unemployment.

All interested persons are invited to submit written comments on the proposed Rule to David Fitzgerald, Chief, Office of Unemployment Insurance, Department of Labor, P.O. Box 94094, Baton Rouge, LA 70804-9094 or to fax at (225) 342-2842. A public hearing on the proposed Rules will be held on Thursday, October 25, 2007, at 2 p.m. in the First Floor Annex Building Conference Room, 1001 North 23rd Street, Baton Rouge, LA 70802. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Written comments will be accepted until 4:30 p.m. on October 24, 2007. No preamble for this proposed Rule is available.

John Warner Smith
Secretary

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

**RULE TITLE: Lost Wage Benefits for
Domestic Violence Victims**

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

These rules allow the Department of Labor to implement Act 421 of the 2007 Regular Legislative Session, also known as the Lost Wages for Domestic Violence Victims Act, R.S. 23:1770-75. The Department of Labor estimates that the program will require one-half of a computer programming position at an annual cost of \$32,000 and one-half of an administrative position at an annual cost of \$33,500. This totals approximately \$33,000 per year. This program projects that it will provide benefits to at least 53 participants per year for approximately 26 weeks at an average weekly benefit amount of \$191 for a total cost of \$263,198 in direct benefits. All amounts are funded by yearly appropriation from the state's general appropriations budget pursuant to R.S. 23:1775(A). Act 421 of the 2007 Regular Legislative Session provides funding at \$300,000 per fiscal year.

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

These rules will have no effect on revenue collections of state or local governmental units.

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

This program is estimated to provide benefits to at least 53 participants per year (53 claimants x 26 weeks x \$191 per week = \$263,198). However, the number of persons served by this program might rise if the average duration of benefits is less than the 26 weeks maximum allowed under the regular unemployment insurance program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition. However, the receipt of these funds may allow affected individuals time to recover from the trauma of domestic abuse and return to a productive work life instead of seeking public assistance.

John Warner Smith
Secretary
0709#047

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Labor
Office of Workers' Compensation**

Self-Insured Employers
(LAC 40:I.1711 and 1727)

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Department of Labor, Office of Workers' Compensation, pursuant to authority vested in the Director of the Office of Workers' Compensation by R.S. 23:1168 and in accordance with applicable provisions of the Administrative Procedure Act, proposes to amend LAC 40:I.1711 and 1727 relative to the individual self-insured employers. The proposed amendments are set forth below.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 1. Fiscal Responsibility Unit

Chapter 17. Fiscal Responsibility Unit

§1711. Filing of Reports—Penalties

A. - B. ...

C.1. In addition to the above required annual reports, the Office of Workers' Compensation may require interim financial statements, summary loss data, payroll audits, or such other reports or statements upon reasonable notice.

2. Every self-insured employer shall conduct the administration of its self-insured claims program through the services of a competent administrator or administrative agency or company located in Louisiana. Upon a showing of good cause and upon proof of the competency of the person, company or agency responsible for the administration of the claims, the director may, within his or her discretion, permit such administration from locations outside Louisiana. In the event that a change in the administrative company or agency is desired, notice must be given to and approved by the director prior to the date on which the change is to occur. Failure to notify the director of the proposed change shall constitute good cause for revocation of the certificate of self-insurance.

3. Self-insured employers are required to set reserves for claims in an amount deemed to be sufficient to pay any and all claims expense which may reasonably be expected to be incurred. Those reserves are to be independently verified by an independent actuary once every three years. The actuary's report must be submitted to the office for review accompanied by a letter, signed by an officer of the company, verifying that reserves have been set up in the liabilities section of the balance sheet.

4. The actuarial report must verify the Louisiana workers' compensation claims liability, adequacy of loss reserves for incurred and IBNR claims.

5. The director may, for good cause, at any time, at his or her discretion, require an independent actuarial verification of the proper classification of workers and/or payroll to further ascertain the adequacy of the claims reserves and claims liability.

6. Failure to comply with this provision shall be grounds for revocation of the certificate of self insurance at the discretion of the director.

D. The director, or the designee of the director, or any contract designee of the director, may, for good cause, at any time, examine, review, audit, or inspect all books and records of any self-insured or self insured applicant to determine the claims liability, the workers' compensation claims paying ability, the financial condition in relation to the claims paying ability, and to ascertain the workers' compensation administrative assessment liability. Any self-insurer that refuses to allow the director, or his or her designee, to examine or audit any books or records shall be subject to revocation of the certificate of self-insurance, and to any other penalty allowed by law or regulation. Any applicant for self-insurance who refuses to provide any reports or documentation requested by the director, or who refuses to allow the director or his or her designee to examine, inspect, or audit any books or records so requested by the director shall be denied a certificate of self-insurance.

E. This rule places the responsibility on the employers, groups and service companies to perform their prescribed duties and responsibilities without prompting from the office. Failure or refusal of any self-insurer to file the required report with the office within the prescribed time period shall subject the self-insurer to a civil penalty in such amount as the office may prescribe, not to exceed \$100 per infraction per day, and may be sufficient cause for the revocation of the self-insurer privilege. Failure to pay such penalty within 30 days of the notification may be considered additional cause for revocation of the self-insurer privilege.

F. Any notice required to be given by these rules and regulations to the director shall be deemed proper if made in writing, addressed to the director. Any notice required by these rules and regulations to be given if in writing and addressed to the employer at the address shown on either the application or the last annual report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1168 of Act 938 of 1988 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:961 (October 1991), amended by the Department of Labor, Office of Workers' Compensation LR 33:

§1727. Application for Payment of Security

A. An injured worker or group of injured workers can apply to the director for the payment of benefits pursuant to R.S. 23:1168.D if a self-insured employer has failed to pay benefits for undisputed claims.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1168 of Act 938 of 1988 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:964 (October 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 33:

Inquiries concerning the proposed repeal and enactment may be directed to Karen Reiners Winfrey, Assistant Secretary, Office of Workers' Compensation Administration, Louisiana Department of Labor, P.O. Box 94040, Baton Rouge, LA 70804-9040.

Interested persons may submit data, views, arguments, information or comments on the proposed repeal and enactment in writing, to the Louisiana Department of Labor, P.O. Box 94040, Baton Rouge, LA 70804-9040, Attention: Karen Reiners Winfrey, Assistant Secretary, Office of Workers' Compensation Administration. Written comments must be submitted and received by the department within 10 days from the date of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the department within 20 days of the date of this notice.

John Warner Smith
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Self-Insured Employers**

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

There are no estimated implementation costs or saving to state agencies from the proposed rules. Local government units who are self-insured will incur a maximum cost of \$5,000

every three years to complete an actuarial study as required by the proposed rules.

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

There are no estimated effects on revenue collections of state or local governmental groups from the proposed amended rules.

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

Companies who are self-insured will incur a maximum cost of \$5,000 every three years to complete an actuarial study as required by the proposed amended rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition or employment from the proposed amended rules.

John Warner Smith
Secretary
0709#050

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Labor
Office of Workforce Development**

Workforce Training
(LAC 40:XVI.Chapter 1)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 23:1514, that the Office of Workforce Development of the Department of Labor proposes to amend Part XVI, Chapter 1 of the administrative rules of the Department of Labor. The proposed amendments will implement a new pre-employment training program and other changes to the Incumbent Worker Training Program enacted by Act 59 of the 2007 Regular Session of the Louisiana Legislature. The proposed amended Rule will promote the public interest and benefit workers and employers by funding job training tailored to meet their specific job skill needs.

Title 40

LABOR AND EMPLOYMENT

Part. XVI. Workforce Training

Chapter 1. Incumbent Worker Training Fund

§101. Purpose and Definitions

A. This program provides assistance to companies and workers by providing training for incumbent workers or prospective employees in order to upgrade their job skills to meet specific industry needs and skill requirements.

B. Definitions

Account—the Incumbent Worker Training Account.

Administrative Services—include, but are not limited to planning, scheduling and coordination with the employer and subcontractors in order to insure timely commencement and acceptable progression of training; acting as fiscal agent for the contract (i.e., receiving payments from LDOL and paying vendors, other training providers, subcontractors, and others to whom payments are owed); submission of all required reports, invoices and supporting documentation in a timely and acceptable manner; ordering, receiving, installing and maintaining equipment, materials, supplies and non-consumables; and execution of timely corrective action plans to address problems with program progress.

Applicant—the business, consortium or organization requesting training assistance from LDOL under this program including a registered joint labor and employer group-administered apprenticeship program under §103.A.2.

Award—funding approved under this program for eligible training activities.

Awardee—an applicant receiving a training award under this program.

Contract—a legally enforceable agreement between LDOL, the awardee and the primary training provider governing the terms and conditions of the training award, except that, if an awardee is to do all training with its own employees, a training provider shall not be a party to the contract.

Customized Training—training designed to meet the special needs and skill requirements of the applicant, which may include specialized curriculums, instructional materials, training delivery methods, and training locations. Customized training also may include standardized courses.

Fiscal Year—July 1 through June 30.

Incumbent Worker—a worker who is currently on the payroll of the applicant.

LDOL—the Louisiana Department of Labor.

Pre-Employment Training—customized training for non-incumbent workers.

Primary Training Provider—the training provider responsible for the administrative services of the contract.

Secretary—the Secretary of the Department of Labor.

Small Business Employee Training—off-the-shelf training available to businesses having 50 or fewer employees. This training is not customized to the needs of the individual applicant and must be offered by a training provider at the time the application is filed with LDOL. Training is to be administered in accordance with §113.

Supplant—diversion of normal training funding for other uses because training funds are awarded under the Incumbent Worker Training Program.

Training Provider—any entity providing the customized training for the awardee. Training providers may include the primary training provider and subcontractors of the primary training provider who assist in providing the customized training. An awardee that performs all or any portion of the training with its own employees is not a training provider for the purpose of interpreting these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workforce Development, LR 25:1142 (June 1999), amended LR 26:1629 (August 2000), LR 29:2497 (November 2003), amended by the Department of Labor, Office of the Secretary, LR 30:2329 (October 2004), amended by Department of Labor, Office of Workforce Development, LR 33:

§103. Eligibility

A. An applicant is eligible to obtain customized, pre-employment or small business employee training if it meets either of the following criteria.

1.a. The applicant is an individual employer or a consortium made up of two or more eligible employers who meet all of the following requirements:

i. have been operating in Louisiana for not less than three years;

ii. are contributing to the account, for which liability is incurred under this Chapter;

iii. are current on the payment of their state unemployment taxes. An awardee must maintain current status on payment of its state unemployment taxes throughout its contract.

b. In the case of a buyout, merger or succession, LDOL will rely on the Louisiana Employment Security Law, R.S. 23:1471 et seq., as applied by the Tax Operations Unit of the Office of Unemployment Insurance Administration, to determine whether, in applying this requirement, an applicant will carry over the experience-rating record of a predecessor or acquired entity.

2. The applicant is a labor or community-based organization, a registered joint labor and employer group-administered apprenticeship program, or a consortium made up of any combination of educational institutions, eligible individual employers or labor or community based organizations, that seek to provide customized or pre-employment training for workers who meet all of the following requirements:

- a. are in a demand occupation;
- b. are incumbent to an industry;
- c. were attached to a contributing employer within the last 12 months;
- d. are not receiving unemployment insurance benefits at the time of training.

B. Qualified businesses currently receiving training for their employees may, upon the expiration of contracts, be awarded new training grants for training of employees, including previously trained employees.

C.1. All applications by eligible applicants for customized and/or pre-employment training shall be submitted in conjunction with the primary training provider selected by the applicant to provide the customized training, unless all training is to be performed by the applicant's employees, in which case the application shall be submitted by the applicant.

2. Training may be provided by the awardees employees rather than by a training provider when the secretary determines that such training is in the best interest of the applicant and the trainees. Documentation shall be submitted to support the need for using the applicants employees as instructors (e.g., training requested is highly technical or specific to the company, or lack of training or resources such as instructors, equipment, flexible training schedules or curricula from local training providers). Auditing procedures that require more frequent on-site auditing reviews in order to ensure compliance with the terms and conditions of the training award contract will apply. Requirements governing training providers (e.g., accreditation, certification, licensing, training history, related parties) are not applicable to training done by an awardees employees.

3. Training providers must demonstrate a history of:

- a. successful training through participant and employer satisfaction results;
- b. collaboration with the targeted industry in the development of customized training; and
- c. use of a current industry standard as the basis for programs utilized to train students for employment in the targeted industry.

D. Nothing contained herein shall prohibit the selection of a Louisiana accredited public or private educational

institution, a public or private licensed proprietary school, an independently certified training program, or other training programs possessing similar independent sanction appropriate to the training provided, that have demonstrated a history of successful training to LDOL, as a training provider.

E. Applicants seeking a training award may not select as a training provider:

1. any entity whose principal owner is an immediate family member, as defined in the Code of Governmental Ethics, of an individual in a management position with the employer who has the authority to make decisions regarding the training program; or

2. any related business such as a parent, subsidiary, or partner business of the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workforce Development, LR 25:1142 (June 1999), amended LR 29:2498 (November 2003), amended by Department of Labor, Office of Workforce Development, LR 33:

§105. Criteria for Customized and Pre-Employment Training

A. Applicants receiving awards must provide evidence satisfactory to LDOL of their long-range commitment to employee training and that funds will be used to supplement and not supplant existing training efforts.

B. No single applicant shall receive more than 10 percent of the annual amount appropriated to the account. Additionally, no single employer or consortium shall receive more than 10 percent of the annual amount set aside for pre-employment training by the secretary. An employer with multiple operation sites and a single unemployment insurance tax identification number shall be limited to a single application which may encompass training at the various sites, so long as the amount awarded under the application does not exceed the maximum award amount. When an employer has more than one site and each site maintains a different unemployment insurance tax identification number, the employer may apply for a separate training award under each tax identification number. No applicant may receive customized and/or pre-employment training concurrently with small business employee training.

C. Applicants must request training for at least 15 employees and where applicable, the training provided must meet, at the minimum, the safety standards determined by OSHA.

D. Special emphasis shall be placed on entry level and labor demand occupation incumbent worker training programs to meet specific industry needs and skill requirements.

E. Preference will be given to applicants that have:

1. proposed to share the cost of training expenses;
2. donated materials, equipment, or instructors to public training providers, secondary and postsecondary vocational-technical schools, or community colleges within the state;
3. hired recent recipients of public assistance such as Workforce Investment Act (WIA), unemployment benefits, Family Independence Temporary Assistance Program (FITAP) and rehabilitative services;
4. hired individuals recently released from a correctional facility;

5. participated in a workplace safety consultation with employees of the Office of Workers Compensation Administration;

6. listed job openings with LDOL; and/or

7. never received a training award under this program.

F.1. The secretary may annually set aside an amount up to 10 percent of the amount appropriated to the account by the legislature for pre-employment training in any year in which the legislature appropriates funds for training equal to or exceeding those funds appropriated in the previous year to the Rapid Response Fund created by R.S. 51:2361 or the Louisiana Economic Development Fund created by R.S. 51:2315 the secretary may set aside an amount not to exceed 10 percent of the Incumbent Worker Training Programs annual appropriation for pre-employment training.

2. Pre-employment training shall only be available to an applicant that:

a. has entered into a contract with the Louisiana Department of Economic Development (LED) related to expansion of the applicants Louisiana operations;

b. agrees to stated job placement outcomes. The applicant shall agree to hire a specified number or percent of the trainees who complete training, which shall be determined on a case-by-case basis by the secretary taking into account, in consultation with the Louisiana Department of Economic Development (LED), the economic impact of the training to be provided, the general demand for the skills for which training is provided, the amount of pre-employment funds to be provided to the applicant by LDOL, the percent and amount of the employers matching contribution, and other factors the secretary deems relevant to the individual application;

c. agrees to make a matching monetary contribution as required by the secretary of up to 50 percent of the total training cost. An employer may offer to make a larger matching contribution, which the secretary may take into account in deciding required job placement outcomes;

d. agrees to pay trainees who are hired wage rates commensurate with the pre-employment training provided. Whether wage rates are commensurate shall be based upon consideration of the competitive wage rates paid to other employees in the job market having skills, training and experience comparable to that of the trainees.

3. In making award decisions, the secretary also may consider other relevant factors, including, but not by way of limitation, the employer's commitment to provide future training after the expiration of its contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, LR 25:1143 (June 1999), amended LR 26:1629 (August 2000), LR 28:2203 (October 2002), LR 29:2498 (November 2003), amended by the Department of Labor, Office of the Secretary, LR 30:2329 (October 2004), amended by Department of Labor, Office of Workforce Development, LR 33:

§107. Application Procedure for Customized and Pre-Employment Training

A. LDOL will provide a standard form which applicants will use to apply for assistance. The application form will

contain, but not be limited to, detailed descriptions of the following:

1. an overview of the company, its history, and the business climate in which it operates;

2. the company's overall training plan, including:

a. a summary of the types and amount of training currently provided by the company and a description of how the company determined its training needs; and

b. the specific training programs for which LDOL assistance is requested including descriptions of the training methods, the training providers, and the costs associated with the proposed training; and

3. any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workforce Development, LR 25:1143 (June 1999), amended LR 26:1630 (August 2000), amended by Department of Labor, Office of Workforce Development, LR 33:

§109. Submission and Review Procedure for Customized and Pre-Employment Training

A. Applicants must submit their completed application to LDOL. Submitted applications will be reviewed and evaluated by LDOL staff. All applications will be measured using a rating system as an evaluation tool that will enable LDOL staff to determine which applications should receive approval, be deferred to future funding cycles, or be denied outright. Input may be required from the applicant, other divisions of LDOL and other state agencies as needed, in order to:

1. understand the labor market conditions the proposed training is seeking to mitigate;

2. evaluate the strategic importance of the proposed training to the economic well-being of the state and local communities;

3. determine whether the employer's specific needs are best met by training;

4. identify the availability of existing training programs which could be adapted to meet the employer's needs;

5. identify the resources the business can provide to support the training, including trainers, facilities, materials and equipment;

6. identify or develop appropriate curricula; and

7. determine the most cost effective approach to meet the employers training need. The applicant may be required to submit cost justification information.

B.1. Upon determination that an application meets the eligibility criteria for this program and is beneficial to the applicant, employees and the state, LDOL staff will then make a recommendation to the secretary. The application will then be reviewed by and is subject to the approval of the secretary.

2. Copies of approved applications shall be sent to the executive director and chairperson of the Louisiana Workforce Commission quarterly.

3. The secretary will issue a letter of commitment to the applicant within five working days of approving the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, LR 25:1143 (June 1999), amended LR 26:1630 (August 2000), LR 29:2498 (November 2003), amended by the Department of Labor, Office of the Secretary, LR 30:2329 (October 2004), amended by Department of Labor, Office of Workforce Development, LR 33:

§111. General Award Provisions for Customized and Pre-Employment Training

A. Contract Procedures

1. A contract will be executed between LDOL, the awardee and the primary training provider unless all training is to be provided by the awardees employees, in which case the contract will be executed between LDOL and the awardee only. The contract will specify the performance objectives expected of the awardee and the primary training provider and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for job training.

2. LDOL will reimburse the primary training provider or, if all training is to be performed by the awardees employees, the awardee upon completion of training based on invoices and supporting documentation submitted in a manner prescribed by LDOL.

3. Customized training awards may be used for training programs extending up to one year in duration, or up to two years if sufficient justification is submitted to support the additional time requested.

4. Pre-employment training awards may be used for training programs extending up to one year.

B. Use of Funds

1. The account offers financial assistance in the form of a grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include the following:

a. tuition costs, which may include the cost of courses at a Louisiana accredited public or private educational institution, a public or private licensed proprietary school, an independently certified training program, or other training programs possessing similar independent sanction appropriate to the training provided, that have demonstrated a history of successful training to LDOL. Such costs may include the cost of courses, contracts for vendor trainers, training seminar fees, and wages, but not the cost of related benefits, for instructors employed by the awardee;

b. trainees travel costs are limited to 30 percent of the total training award and are reimbursable if provided for in the contract, but only to the extent permitted by State Travel Regulations, PPM 49;

c. materials and supplies costs for items such as training texts and manuals, audio/visual materials, skills assessment (documents or services to determine training needs), raw materials (for-training purposes only), Computer Based Training (CBT) software; and office supplies used for contract-related purposes;

d. facility rental associated with the training contract;

e. screening, skills assessment and testing costs, but said services shall be coordinated and administered through LDOL;

f. for pre-employment training only, remediation costs;

g.i. payment for administrative services performed by a training provider in a total amount not to exceed 10 percent of the amount of the grant. Administrative costs will be negotiated on a contract-by-contract basis. In determining the maximum base amount of payments for administrative services the cost of equipment shall be excluded. Where more than 25 percent of the tuition cost is outsourced by the primary training provider to one or more other training providers, LDOL may further reduce payment of the administrative services base amount;

ii. administrative services base amount payments must be earned and are payable only upon performance of the specific administrative services required by the training contract. A payment schedule for specified administrative services tasks shall be included in every contract, but, except for the additional payment permitted in Subparagraph iv, the department will not pay base amount administrative services payments that exceed 10 percent of allowable invoiced training costs, excluding the cost of equipment, and no payment for administrative services will be made until training has commenced;

iii. LDOL shall require the reporting and documentation of all base amount administrative services performed. If the primary training provider or applicant fails to perform all required administrative services, LDOL shall reduce payment for administrative services by a corresponding amount;

iv. in addition to base amount administrative services payments, LDOL will reimburse the wages, but not the cost of related benefits, of primary training provider staff related to the purchase of equipment when supported by certified source documentation of the staff time devoted to equipment purchase administrative services tasks.

3. Training costs ineligible for reimbursement include:

- a. trainee wages and fringe benefits;
- b. non-consumable tangible property (e.g., equipment, calculators, furniture, classroom fixtures, non-Computer Based Training (CBT) software), unless such property will be owned by a public training provider at the conclusion of the training contract;
- c. out-of-state schools;
- d. employee handbooks;
- e. scrap produced during training;
- f. food, and refreshments;
- g. awards and certificates; and
- h. administrative costs of training providers other than the primary training provider, and administrative costs of an awardee, even if the awardee provides some or all training with its own employees.

C. Conditions for Disbursement of Funds

1. Funds will be available for payment following submission of original invoices and supporting documentation as prescribed by LDOL to the attention of the Incumbent Worker Training Program director, Office of Workforce Development, by mail or hand delivery. Only funds spent or administrative services performed on the project after the secretary signs the contract will be considered eligible for reimbursement or payment. LDOL shall make a determination regarding an invoice within

15 working days after receipt of the invoice and will make payment within 15 working days of approval of said invoice. Certain invoices that need priority attention shall be clearly marked "priority" and LDOL shall make a good faith effort to expedite the processing of such invoices. Invoices regarding the purchase of equipment must be accompanied by documentation confirming delivery.

2. Invoices will be eligible for payment at 100 percent of the total invoice amount until the sum of disbursements under a contract are equal to 90 percent of the total grant award. After the applicant and the primary training provider have achieved 100 percent of their contracted performance objectives or have substantially complied with the terms of the contract as determined by the secretary, the remaining 10 percent of the grant award will be made available for payment.

3. All disbursements of funds shall be made to the primary training provider responsible for the administration of the contract unless all training on the grant is performed by the awardees employees, in which case payment shall be made directly to the awardee.

D. Compliance Requirements

1. Primary training providers, or if all training is performed by the awardees employees, the awardee shall be required to complete quarterly reports describing progress toward the performance objectives specified in their contract. Primary training providers shall also be responsible for providing documentation to LDOL on a quarterly basis regarding the satisfaction of the business receiving training under the contract. All quarterly reporting must be submitted in a format prescribed by LDOL.

2. In the event the applicant or primary training provider fails to meet the performance objectives specified in its contract, LDOL shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the awardee and/or primary training provider in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

3. In the event LDOL decides to withhold award funds, modify the terms and conditions of an award, or reclaim disbursed funds from the awardee and/or primary training provider, LDOL shall provide written notice of such determination to the awardee and primary training provider within three working days of such decision.

a. The awardee or primary training provider may appeal an adverse decision made by LDOL by providing written notice of objection to the program director within five working days of receipt of the adverse decision. If a request for an appeal is made, then the appellant shall submit documentation to support the appeal within 10 working days after forwarding notice of the appeal. The program director shall review the evidence submitted and render a written decision within 20 working days after receiving notice of the appeal. If no appeal is filed within the applicable time period, the decision of LDOL shall become final.

b. If after review of the appeal the program director renders a decision that is adverse to the appellant, then the matter shall be subject to review by the Commissioner of Administration pursuant to R.S. 39:1524 and 39:1525.

4. In the event an applicant, awardee or primary training provider knowingly files a false statement in its

application or in a progress report, the applicant, awardee or primary training provider shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

5. LDOL may require and/or conduct financial and performance audits of a project, including all relevant records and documents of the training provider(s) and awardee. Said records shall be preserved for the same period of time as would be required by the Louisiana Public Records Law, R.S. 44:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workforce Development, LR 25:1143 (June 1999), amended LR 26:1630 (August 2000), amended by the Department of Labor, Office of the Secretary, LR 30:2330 (October 2004), amended by Department of Labor, Office of Workforce Development, LR 33:

§113. Small Business Employee Training Program General Award Provisions

A. For purposes of this Part, small business is defined as a Louisiana based business that has 50 or fewer employees and is an eligible applicant as outlined in §103.A.1. The applicant will be reimbursed for the eligible costs associated with the training once the training has been completed and proper documentation has been submitted to LDOL.

B. An applicant cannot receive customized and/or pre-employment training and small business employee training concurrently.

C. The applicant must submit the Small Business Employee Training Program application in a format prescribed by LDOL and receive LDOL approval, in writing, prior to the start of any training.

D. The applicant must be current on all state UI tax obligations and maintain such status throughout the award period.

E. Trainees must be incumbent workers for whom the applicant incurs a state unemployment tax liability under R.S. Title 23, Chapter 11.

F. The request for training must be in a labor demand occupation as defined in the Workforce Investment Act of 1998 (WIA) or cluster based industry as defined in Vision 2020.

G. Small business training shall consist of one or more of the following:

1. taking a class, either non-credit or credit, at a Louisiana accredited public or private educational institution, a public or private licensed proprietary school, an independently certified training program, or other training programs possessing similar independent sanction appropriate to the training provided, that have demonstrated a history of successful training to LDOL. Training providers must be domiciled in Louisiana;

2. receiving training from a manufacturer or its representative within one year of the purchase of equipment valued at more than \$3,000 where the training is not otherwise incorporated into the purchase price of the equipment;

3. receiving training from a manufacturer or its representative in order to upgrade computer skills; and/or

4. receiving training from a national, regional or state trade association that offers an independently certified training curricula and testing or courses sponsored and

sanctioned by the trade association, which can demonstrate a successful training history of at least five years.

H. Training costs shall not exceed \$3,000 per trainee per fiscal year.

I. Training costs are limited to the following:

1. tuition; and
2. required textbooks and manuals.

J. Training must be completed by the end of the state fiscal year in which it was begun.

K. Upon completion of the training, the awardee must submit invoices for training expenditures along with proof of payment, proof of completion from the training provider, as well as proof of a pay increase or wages that were paid for the training hours attended, all within 30 days of the completion of the training.

L. An application shall be deemed approved by LDOL upon written approval of the Secretary of Labor or their designee. A letter of approval shall be forwarded to the applicant within five working days of approval of the application.

M. The Small Business Employee Training Program shall be funded at 2.3 percent of all funds available for training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, LR 29:2499 (November 2003), amended by the Department of Labor, Office of the Secretary, LR 30:2330 (October 2004), amended by Department of Labor, Office of Workforce Development, LR 33:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule affects the family by developing employees job skills, facilitating employment, promoting job security, and raising workers pay, which in should support family stability.

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

3. What effect will this have on the functioning of the family? This will improve the functioning of affected families by facilitating employment, promoting job security and raising workers pay.

4. What effect will this have on family earnings and family budget? This will help stabilize employment and develop job skills, which will raise workers pay.

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

6. Is the family or local government able to perform the function as contained in this proposed Rule? This program provides workers with training that they have not been able to obtain on their own.

All interested persons are invited to submit written comments on the proposed Rule to Michael L. Harris, Director, Incumbent Worker Training Program, Department of Labor, 5615 Corporate Blvd., Suite 300, Baton Rouge, LA 70808 or by fax at (225) 925-3631. A public hearing on the proposed Rule will be held on Tuesday, October 30, 2007, at 9 a.m. in the Fourth Floor Administrative Building

Auditorium, 1001 North 23rd Street, Baton Rouge, LA 70802. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Written comments will be accepted until 4:30 p.m. on Monday, October 29, 2007. No preamble for this proposed Rule is available.

John Warner Smith
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Workforce Training

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

State expenditures for the Incumbent Worker Training Program could increase or decrease each year based on the proposed rule amendments. Act 1053 of the 1997 Regular Legislative Session established the Workforce Training Account. During the 1999 Regular Session, the Louisiana Legislature increased the appropriation into this account from a fixed \$6 million per year to \$6 million, \$35, or \$50 million per year depending on the balance of the Unemployment Insurance Trust Fund as determined by the Revenue Estimating Conference each September. Act 59 of the 2007 Regular Legislative Session also changed the name of the account to the Incumbent Worker Training Account and changed the amounts appropriated to the account to \$0, \$20 million, or \$35 million per year based on the Unemployment Trust Fund balance as determined by the Revenue Estimating Conference each September. Act 59 also gave the Secretary of the Labor the discretion to annually set aside an amount up to 10 percent of the amount appropriated to the account by the legislature for pre-employment training in any year in which the legislature appropriates funds for training equal to or exceeding those funds appropriated in the previous year to the Rapid Response Fund created by R.S. 51:2361 or the Louisiana Economic Development Fund created by R.S. 51:2315.

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

Statutorily dedicated revenues for the Incumbent Worker Training Account could increase or decrease each year based on changes made by Act 59 of the 2007 Regular Legislative Session and the proposed rule amendments (see Roman numeral I above for more details on these changes). There will be no effect on revenue collections of local governmental units as a result of these proposed rule amendments.

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

Business assessments for the Incumbent Worker Training Account could increase or decrease each year based on changes made by Act 59 of the 2007 Regular Legislative Session and the proposed rule amendments (see Roman numeral I above for more details on these changes). The proposed rule amendments may economically benefit employers and employees by permitting them to receive training under the program under additional circumstances such as pre-employment training allowed by Act 59 of the 2007 Regular Legislative Session.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes should not significantly effect competition and employment among those awarded grants for customized training, pre-employment training or small business employment training. However, successful applicants who are

awarded training funds, compared to entities that do not receive the funds, may gain some advantage. Employees of organizations benefiting from awards should be better trained, more productive and more efficient.

John Warner Smith
Secretary
0709#056

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Labor Office of Workplace Development Apprenticeship Division

Apprenticeship Tax Credit (LAC 40:IX.Chapter 7)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Department of Labor proposes to adopt certain rules concerning the Apprenticeship Program.

This Rule is proposed pursuant to Act 472 of the 2007 Regular Session of the Louisiana Legislature which established an Apprenticeship Tax Credit for eligible employers.

Title 40 LABOR AND EMPLOYMENT Part IX. Apprenticeship Chapter 7. Apprenticeship Tax Credit

§701. Authority

A. Under the authority set out in Act 472 of the 2007 Regular Session of the Louisiana Legislature, a tax credit is hereby provided as an incentive for businesses to employ eligible apprentices with a goal toward providing an adequate number of Louisiana citizens in the workforce with the on-the-job training necessary to find jobs and keep those good paying jobs already present as well as those jobs that would be here if more of the workforce was of higher quality. The Secretary of Labor is required to adopt regulations for the purpose of implementing this Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, Apprenticeship Division, LR 33:

§703. Definitions

Department—the state Department of Labor, Apprenticeship Division.

Eligible Apprentice—a person who has entered into a written apprentice agreement with an employer or an association of employers pursuant to a registered apprenticeship program as provided for in Chapter 4 of Title 23 of the Louisiana Revised Statutes of 1950 (R.S. 23:381 et seq.)

Employer or Requesting Party—any person or organization employing an eligible apprentice either as a recognized program sponsor or as an obligated employer participant in an apprenticeship training program under a different program sponsor registered with the department. It may also be any person or organization employing an NCCER apprentice in accordance with this chapter.

NCCER—the National Center For Construction Education and Research.

NCCER Apprentice—a person who is enrolled in a training program accredited by the National Center for Construction Education and Research which has no less than four levels of training and no less than 500 hours of instruction.

Program Sponsor—any person or organization operating a state apprenticeship program registered by and in good standing with the state Department of Labor, Apprenticeship Division.

Revenue—the Louisiana Department of Revenue.

Secretary of Labor—the administrator of the state Department of Labor, or any person specifically designated by the Secretary of Labor, Department of Labor who with the advice of the state Director of Apprenticeship, executes apprenticeship policy and standards.

Standards of Apprenticeship—an organized, written plan embodying the terms and conditions of employment, training, and supervision of one or more apprentices in an apprenticeable occupation and in accordance with §301 of this Part.

State Apprenticeship Program—a program registered by and in good standing with the state Department of Labor, Apprenticeship Division and meeting the minimum standards of the state Apprenticeship Law.

State Director of Apprenticeship—the administrator of the state Department of Labor, Apprenticeship Division, or any person specifically designated by the state Director of Apprenticeship who is authorized to administer the provisions of Louisiana apprenticeship law and rule.

Taxpayer—any corporation, S corporation, partnership, or individual subject to income and/or franchise taxes imposed under Title 47 of the Louisiana Revised Statutes.

Taxable Period—the taxpayer's annual accounting period, whether it be a calendar year or a fiscal year or the period for which the return is made, if a return is made for a period of less than 12 months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, Apprenticeship Division, LR 33:

§705. Purpose

A. The Louisiana State Legislature has determined that a major impediment to the economy of the state is the lack of an adequate number of people in the workforce with sufficient on-the-job training to find and keep good paying jobs already present as well as those that would be here if more of the workforce was of higher quality. The purpose of this tax credit is to provide an incentive for businesses to employ apprentices with a goal toward providing such a workforce.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, Apprenticeship Division, LR 33:

§707. Eligibility

A. Any taxpayer who employs an eligible apprentice duly indentured and registered under the approved Standards of Apprenticeship terms of a state Apprenticeship program or a person who is enrolled in a training program accredited

by the National Center for Construction Education and Research which has no less than four levels of training and no less than 500 hours of instruction is entitled to a non-refundable apprentice tax credit against any Louisiana individual or corporation income tax or corporation franchise tax each tax year equal to \$1 for each hour of employment of each eligible apprentice, not to exceed 1,000 hours for each eligible apprentice provided such apprenticeships meet the following requirements.

1. A pre-apprentice shall not be considered to be an eligible apprentice, and a pre-apprentice is therefore not eligible for tax credits under this regulation.

2. For state apprenticeship training programs and for purposes of this tax credit only, the tax credit shall be limited to programs which are not less than 4,000 hours (2 years) of on the job training nor more than 10,000 hours (5 years) of on the job training according to the approved Standards of Apprenticeship.

3. Existing procedures and policies for the awarding of advanced status to apprentices for previous training or work experience will remain in effect. Time awarded in recognition of satisfactory completion of previous training or work experience shall not be eligible for a tax credit.

4. In accordance with Louisiana apprenticeship law, rule and policy, a finding that a state apprenticeship program is not in compliance with its approved standards of apprenticeship shall be sufficient cause for revocation of tax credit eligibility. Such revocation shall be applied regardless if the program sponsor is an employer, an association of employers, or an organization of employees for a period of one year or until such program has established compliance with said standards.

5. For NCCER apprentices, the state Department of Revenue shall determine, through rules, the enrollment and transcript data required from the National Center for Construction Education and Research for students enrolled in one of its accredited training programs which is sufficient for the department to determine the employer's eligibility for, and the amount of the credit, authorized by Public Act 472.

6. In order to be eligible for the tax credit, an NCCER apprentice enrolled in a training program accredited by the National Center for Construction Education and Research must have successfully completed no less than two levels of training and no less than 250 hours of instruction. Employers requesting the tax credit shall receive such tax credit only after such eligibility has been met and confirmed. The tax credit shall only apply to hours completed after the initial requirement has been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, Apprenticeship Division, LR 33:

§709. Method of Computation

A. Computing Tax Credit. To compute the tax credit allowable to an employer that has an approved state apprenticeship program, the following procedure is to be followed.

1. First, identify the calendar months during the current tax period claimed in which each eligible apprentice was employed.

2. Second, add the number of hours worked by the eligible apprentice in each calendar month in which an eligible apprentice was employed.

3. Third, add the number of eligible monthly hours within the tax period claimed.

4. Finally, multiply the result reached in the step above by \$1 to arrive at the total tax credit for the tax period, not to exceed \$1,000 for each eligible apprentice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, Apprenticeship Division, LR 33:

§711. Method of Reporting

A. The department shall provide to the state Department of Revenue an annual list of businesses which participate in state apprenticeship programs as well as the number of eligible apprentices that each employer has employed for the year.

1. For purposes of this tax credit, a state apprenticeship program in good standing shall provide to the department a list of active apprentices for each year. The state Director of Apprenticeship shall verify the registration of apprentices and shall then forward such information to the state Department of Revenue

B. The state Department of Revenue shall make a final determination on all requests for the apprenticeship tax credit.

C. All records pertaining to the apprenticeship tax credit shall be retained by the employer requesting the tax credit for a period not less than five calendar years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, Apprenticeship Division, LR 33:

§713. Limitations

A. The tax credit shall be allowed against income tax or corporate franchise tax for the taxable period in which the credit is earned. If the tax credit exceeds the amount of such taxes due, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed 10 years.

1. The credit for taxes paid by or on behalf of a corporation shall be applied against Louisiana corporate income and corporation franchise taxes of such corporation.

2. The credit for taxes paid by an individual shall be applied against Louisiana personal income taxes.

3. The credit for taxes paid by or on behalf of a corporation classified under Subchapter S of the Internal Revenue Code of 1954, as amended, as an S corporation shall be applied first against any Louisiana corporate income and corporation franchise taxes due by such S corporation, and the remainder of any such credit shall be allocated to the shareholder or shareholders of such S corporation in accordance with their respective interests and applied against the Louisiana income tax of such shareholder or shareholders of the S corporation.

4. The credit for taxes paid by or on behalf of a partnership shall be allocated to the partners according to their distributive shares of partnership gross income and

applied against any Louisiana income tax and corporation franchise tax liability of such partners.

5. The character of the credit for taxes paid by or on behalf of a partnership or S corporation and allocated to the partners or shareholders, respectively, of such partnership or S corporation, shall be determined as if such credit were incurred by such partners or shareholders, as the case may be in the same manner as incurred by the partnership or S corporation, as the case may be.

6. The credit for taxes paid by an estate or trust shall be applied against the Louisiana income tax imposed on estates and trusts.

B. The apprenticeship tax credit shall have an effective period beginning January 1, 2008, and shall not extend beyond December 31, 2011. All requests for the tax credit for hours worked by eligible apprentices and NCCER apprentices outside of this period shall be invalid and denied.

C. Nothing in this Chapter or in any apprentice agreement approved under this Chapter shall operate to invalidate any apprenticeship provision in any collective agreement between employers and employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6026.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workforce Development, Apprenticeship Division, LR 33:

Family Impact Statement

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

A public hearing will be held on Thursday, October 25, 2007 at 9:30 a.m. in the Third Floor Conference Room of the Louisiana Department of Labor Annex Building. Interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than October 24, 2007, at 4 p.m. to Lonnie Rogers, P.O. Box 94094, Baton Rouge, LA 70804-9094.

John Warner Smith
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Apprenticeship Tax Credit**

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

There are no significant estimated costs to the Louisiana Department of Labor to implement the proposed rule changes. There are no estimated costs or savings to local government units from the proposed rule changes.

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

State general funds will decline by at least \$3.5 million per year beginning in Fiscal Year 2008-09 due to a projected 3,500 registered apprentices participating in the program. Most employers of participating apprenticeships are likely to receive the maximum allowable credit of \$1000 each year for each apprentice. As such, state general fund revenue losses will be at least \$3.5 million per year (3,500 estimated apprentices x

\$1,000 tax credit per apprentice = \$3,500,000). However, the credit is nonrefundable and some employers may not have sufficient tax liabilities in a particular year to realize all of that year's credit. The bill provides a 10-year carry-forward for unused credit amounts. Thus, realized revenue losses are likely to be erratic from year to year.

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

Employers participating in the program will receive tax credits up to \$1,000 per year per apprentice to offset the cost of training such apprentices. The Department of Labor is unaware of any factors which might cause additional costs for employers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The amendments to the rules will provide an incentive for businesses to employ eligible apprentices with a goal toward providing an adequate number of Louisiana citizens in the workforce with the on-the-job training necessary to find jobs and keep those good paying jobs.

John Warner Smith
Secretary
0709#049

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
State Uniform Construction Code Council**

State Uniform Construction Code
(LAC 55:VI.707 and 1301-1307)

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730:22(C) and (D), R.S. 40:1730.34(B), R.S. 40:1730.37 and R.S. 40:1730.38 relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Code Council hereby proposes to enact rules under Chapter 7 to provide for continuing education units for those individuals holding certificates of registration and enact rules under Chapter 13 relating to code enforcement violations.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 7. Certificates of Registration

§707. Continuing Education Requirements

A. Prior to annual renewal of the Certificate of Registration as required by this Chapter, all building code enforcement officers and third-party providers, except Louisiana licensed architects or engineers as allowed by R.S. 40:1730.24(B), shall be registered with the International Code Council and obtain the continuing education units required for that registry.

B. Building code enforcement officers holding provisional certificates of registration and prior to certification and registration with the International Code Council shall provide evidence of one continuing education unit relating to construction code enforcement for the preceding year.

C. Prior to annual renewal of the certificate of registration, Louisiana licensed architects and engineers

exempted by R.S. 40:1730.24(B) shall provide evidence of one continuing education unit in construction code enforcement relating to Act 12 and which is acceptable to their respective organizations, for the preceding year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and R.S. 40:1730.38

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

Chapter 13. Code Enforcement Violations

§1301. General

A. If the council has reason to believe that a person or authority having jurisdiction is violating or intends to violate a provision of this Part, it may order the person or authority having jurisdiction immediately to refrain from the conduct or to immediately start performing some specific act. The council may apply to the district court of the parish for an injunction restraining the person or authority having jurisdiction from the conduct or for a mandamus to compel the performance of a duty. The court may issue a temporary injunction ex parte not to exceed 10 days and upon notice a full hearing may issue other orders in the matter it considers proper. No bond is required of the council by the court as a condition to the issuance of an injunction or other order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and R.S. 40:1730.37

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§1303. Informal Proceedings

A. If the council receives written information indicating that a person or authority having jurisdiction is violating or has violated any provision of R.S. 40:1730.21 et seq., or this Part, the council, after an investigation, may, in writing, order the person or authority having jurisdiction to immediately refrain from the conduct or violation or to immediately start performing some specific act.

B. Response. The person or authority having jurisdiction shall respond in writing to the council's informal notice within 10 days of receipt by providing the council with a written statement containing any information related to the allegations of the informal notice which would show compliance with state law or this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§1305. Investigation Procedures

A. In investigating a complaint, the following measures shall be observed by the council.

1. Complainant must file a written complaint with the council. The complaint shall be made on the form provided by the council.

2. The completed complaint form shall be mailed, faxed or hand delivered to the council administrator.

3. Once the complaint is filed with the council administrator, a file on the matter shall be opened and maintained by the administrator. A separate complaint file shall be kept on each complaint.

4. The council administrator shall oversee the investigation. The investigation may be conducted by the council administrator or his designee.

5. Upon completion of the investigation, the council administrator shall prepare a report to the council's Code Enforcement Advisory Committee.

6. The Code Enforcement Advisory Committee shall review the file and make a determination as to a course of action.

7. Once the Code Enforcement Advisory Committee makes their determination then they send their recommendation to the council to be heard at the earliest available council meeting.

8. The council shall consider the Code Enforcement Advisory Committee's recommendation then vote on a course of action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

§1307. Judicial Proceedings

A. Injunction or Mandamus. In the event that the matter is not resolved during the informal proceedings, the council may file a petition for injunction or seek a writ of mandamus with the district court having jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and R.S. 40:1730.37.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

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

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

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

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

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

Interested persons may submit written comments or requests for public hearing on this proposed rule change to Paeton Burkett, Attorney, Louisiana State Uniform Construction Code Council, 7979 Independence Boulevard, Suite 307Q, Baton Rouge, LA 70806. Comments will be accepted through close of business October 10, 2007

Jill Boudreaux
Acting Undersecretary

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

RULE TITLE: State Uniform Construction Code

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

These rules will not result in an increase in implementation costs or savings to state or local governmental units. State law (La. R.S. 40:1730.38) mandates that the Council develop regulations setting forth continuing education requirements for code enforcement officers holding a certificate of registration. This rule merely requires code enforcement officers, when renewing their certificates of registration, to provide proof that they obtained the required continuing education credits. The credits that are being required by the Council are credits that code enforcement officers would have already obtained through their other occupational licenses or certifications. Furthermore, state law (La. R.S. 40:1730.37) provides judicial remedies for those that may be violating the provisions set forth in La. R.S. 40:1730.21 et seq. These rules merely provide for investigation and judicial proceedings procedures.

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

The proposed rule will have no effect on revenue collections of state or local governmental units since these rules only relate to code enforcement officer certificates of registration and enforcement procedures of the Council.

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

Those holding a certificate of registration with the Council will be directly affected by §707 as this rule requires them to provide proof of continuing education requirements upon renewal of their certificate. The rule will not have any effect on cost nor require a workload adjustment. The rule merely requires them to show proof of obtaining the continuing education requirements that they would have already obtained through their other occupational licenses or certifications. The Chapter 13 rules will directly affect persons or authorities having jurisdiction who may violate La. R.S. 40:1730.21 et seq.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment as the proposed rule applies to all code enforcement officers and to all persons and authorities having jurisdiction.

Jill Boudreaux
Acting Undersecretary
0709#018

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division
and
Department of Social Services
Office of the Secretary**

School Readiness Tax Credits
(LAC 61:I.1903)

In accordance with R.S. 36:474, R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6103, which allow the departments to make reasonable rules and regulations, the

Secretary of the Department of Revenue and the Secretary of the Department of Social Services propose to adopt 61:I.1903 relative to the administration of the school readiness tax credits.

The purpose of this regulation is to explain the procedure that will be employed for the administration of the school readiness tax credits and the documentation that will be required to claim one of the school readiness tax credits as set out in R.S. 47:6101 through 6109 as enacted by Act 394 of the 2007 Regular Session of the Louisiana Legislature.

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

Family Impact Statement

As required by Act 1183 of the Regular Session of the Louisiana Legislature, the following Family Impact Statement is submitted for publishing with the Notice of Intent in the Louisiana Register. A copy of this statement will also be provided to the legislative oversight committees.

1. **The Stability of the Family.** This Rule establishes the procedures for the implementation and administration of the school readiness tax credits. High quality early care and education supports strong families and successful children.

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

3. **The Functioning of the Family.** These credits encourage facilities to provide quality child care and also encourage the placement of children in quality child care facilities. Having access to quality child care allows parents to enter the workforce and become successful and productive employees. Quality child care helps parents maintain the dual role of strong parents and productive employees.

4. **Family Earnings and Family Budget.** Implementation of this proposed Rule will have no effect on family earnings and family budget.

5. **The Behavior and Personal Responsibility of Children.** High quality and stable child care help parents to work and is essential for workforce stability. Quality care costs more money but research from states with a quality rating system shows that it has not raised market prices in a significant way. Additionally, parents who place their children in qualifying child care facilities will receive a tax credit which will leave more money in the family.

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

Any interested person may submit written data, views, arguments or comments regarding this proposed Rule to Michael D. Pearson, Senior Policy Consultant, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 5:30 p.m., October 25, 2007. A public hearing will be held on October 26, 2007, at 10 a.m. in the River Room, on the seventh floor of the

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

Cynthia Bridges
Secretary, Department of Revenue

Child Care Quality Rating System (LAC 67:III.5115-5123)

and

Ann S. Williamson
Secretary, Department of Social Services

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support proposes to adopt LAC 67:III.5115-5123, Subchapter C, Child Care Quality Rating System (QRS).

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: School Readiness Tax Credits**

Adoption of Subchapter C, Quality Rating System (QRS), is pursuant to the authority granted to the department by the Child Care and Development Fund (CCDF). As a result of the devastation resulting from Hurricanes Katrina and Rita, child care centers in Louisiana have struggled to rebuild in affected areas. In other parts of the state, the centers have expanded their capacity to serve these displaced families. In an effort to guide child care centers as they restore critically needed child care services, the agency has established a quality rating system which uses licensing as the foundation and sets a continuum of quality indicators focused in the social-emotional needs of children. The Quality Rating System will provide a mechanism by which child care centers can be assessed regarding the level of quality care given. The QRS will also provide a guide for parents to choose higher settings of child care beyond basic licensure and will offer a structure for child care centers to communicate the level of quality provided in their facility.

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

This Notice of Intent is preceded by a Declaration of Emergency effected May 1, 2007, and published in the May 2007 issue of the *Louisiana Register*; and also, a second Declaration of Emergency promulgated and issued August 17, 2007.

Any agency costs associated with the implementation of the rule will come from the current operating budget of the Department of Revenue. In the fiscal note for Act 160 (SB 361), the Department of Revenue requested appropriations totaling \$257,000 for FY 2008-2009 for seven new positions and \$100,000 for one-time computer system modifications. The Department was not allocated any additional positions to administer and implement the school readiness tax credits so current staff will divert time from other assignments to administer these credits. The department will also divert funds already in its budget away from other projects to make the necessary computer system changes. This diversion will delay long-term modifications and improvements to the department's computer systems. The implementation of this proposed regulation will have no impact upon any local governmental units.

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

There will be a significant effect on the revenue collections of state government. If the numbers for all credits are added together the fiscal impact on state revenue collections will be as follows: Fiscal Year 2008-2009 \$7,100,000; Fiscal Year 2009-2010 \$10,600,000 and Fiscal Year 2010-2011 24,700,000. There will be no effect on the revenue collections of local governmental units.

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

Individuals with children five or under in child care, child care facilities, child care directors and staff, and businesses who contribute to and help improve child care facilities will all receive an economic benefit in the form of a tax credit. Child care facilities may incur very minor costs associated with providing tax credit certificates to the individuals who are claiming the child care expense portion of the credit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

While there will be no direct effect on competition and employment, the effective subsidy of child care costs will make it economically feasible for some individuals to take jobs when they could not afford to do so without the subsidy. Additionally, the credit may create competition amongst child care providers to reach the higher levels so that they can receive a greater benefit in the form a higher tax credit.

Cynthia Bridges
Secretary
0709#055

Robert E. Hosse
Staff Director
Legislative Fiscal Officer

**Title 67
SOCIAL SERVICES
Part III. Office of Family Support
Subpart 12. Child Care Assistance
Chapter 51. Child Care Assistance Program
Subchapter C. Child Care Quality Rating System
§5115. Authority**

A. The Child Care Quality Rating System is established and administered under the authority of state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5117. Definitions

Approved Courses—courses that are deemed approved by the department.

Assistant Directors—must be on site for a minimum of 20 hours per week for centers with an enrollment of 101 or more.

Assistant Teachers—any staff who cares for children at least 16 or more hours per week and is not a lead teacher and meets the assistant teacher criteria.

Child Care Center—a licensed day care center.

Child Care Resource and Referral (CCR&R)—a state and/or local organizations with whom the department has

contracted to provide services to families, early childhood professionals, and communities statewide.

Child Development Associate (CDA) Credential—a nationally recognized credential which can be used to meet staff qualification requirements.

Director—an administrator who meets the director qualifications and is on-site a minimum of 30 hours per week. This requirement can be met by having one or more persons on site who meet these qualifications.

Early Childhood Environment Rating Scale—Revised (ECERS-R)—a research-based assessment tool that measures environmental indicators of quality in preschool classrooms with children ages 2.5-5 years of age.

Environment Rating Scales (ERS)—the assessment tools developed at Frank Porter Graham Child Development Institute at the University North Carolina that measure environmental indicators of quality. They include the Infant Toddler Environment Rating Scale-Revised (ITERS-R) and the Early Childhood Environment Rating Scale-Revised (ECERS-R), as well as the School Age Care Environment Rating Scale (SACERS) for school age programs, and the Family Child Care Environment Rating Scale, Revised (FCCERS-R) for family child care homes.

Group—those children who are assigned for most of the day to a specific teacher and who occupy an individual classroom or well defined space that prevents intermingling of children from different groups within a larger group or area.

Infant Toddler Environment Rating Scale-Revised (ITERS-R)—a research-based assessment tool that measures environmental indicators of quality in preschool classrooms with children 0-2.5 years of age.

Lead Teacher—a teacher who has primary responsibility for a designated classroom including, planning and supervision and spends at least 25 hours a week in that classroom. All classrooms must have a lead teacher.

Louisiana Pathways Child Care Career Development System—the state practitioner registry maintained by the Department of Social Services and/or its contractor. LA Pathways registers child care directors and staff according to requirements based on training and education, experience, and professional activities, as approved by the Department of Social Services. Categories are established for child care staff, child care assistant teacher, child care teacher, child care assistant director and child care director. Information on LA Pathways can be found at <http://pathways.louisiana.gov/> or www.dss.state.la.us.

Quality Rating System (QRS) Points—points given in the Program, Staff Qualifications, Administrative Practices, and Family and Community Involvement areas. All items within a point must be verified to receive credit. The total points earned determine the star award at star rating 3, 4, and 5.

Service Period—the months within the calendar quarter for which a child received care.

Social Emotional Subscales of the Environment Rating Scales—a subscale of the ECERS-R and ITERS-R generated by the scores earned on the Language-Reasoning, Interaction and Program Structure subscales of the ECERS-R and the Listening and Talking, Interaction and Program Structure subscales of the ITERS-R. This new subscale score will be used to determine the ERS score for Program Points 1-4.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5119. Quality Rating System Requirements

A. The Child Care Quality Rating System (QRS) is designed to assess levels of child care, support improvements of child care centers, and communicate the level of quality in early care and education programs. The QRS consists of five star ratings that can be earned by a licensed child care center, uses licensing as the foundation, and has four star ratings above Louisiana's licensing standards. The system components (Administrative Practices, Family and Community Involvement, Program, and Staff Qualifications) have indicators that must be achieved to earn the star rating.

1. Foundation One Star—to participate at the one-star level, a child care center shall have a license to operate and comply with standards as defined in LAC 48:I.5301-5354.

2. Foundation Two Star—to earn a two-star award, a child care center must meet all the standards for a Foundation One Star, have been in operation for six months, and meet the following.

- a. Administrative Practices
 - i. Written personnel policies including:
 - (a). operational hours;
 - (b). dress code;
 - (c). use of telephone; and
 - (d). schedule.
 - ii. Job descriptions that include list of qualifications on file and provided to all staff.
 - iii. Provide one staff benefit from the list of options below for all full-time staff. Staff benefit options:
 - (a). employee health insurance or comparable health benefits;
 - (b). paid annual leave;
 - (c). paid sick leave;
 - (d). paid holidays;
 - (e). child care benefit/discount;
 - (f). bonus based on merit/achievement or education;
 - (g). retirement compensation;
 - (h). annual increments based on merit;
 - (i). tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes;
 - (j). differential shift pay;
 - (k). flextime;
 - (l). pay professional association membership fee.
- b. Family and Community Involvement
 - i. Parent provided pre-enrollment visit and center tour.
 - ii. Give every parent enrolling a child a list of community resources including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, food stamps and information on a child's medical home.
- c. Program
 - i. Make four of the following activity areas available daily:
 - (a). art and creative play;
 - (b). children's books;

- (c). blocks and block building;
- (d). manipulatives; and
- (e). family living and dramatic play.
- ii. Complete a self assessment of program and develop an improvement plan.
- d. Staff Qualifications
 - i. Directors and teachers must join and maintain a current record with the Louisiana Pathways Child Care Career Development System Registry. A director must complete three hours of Environment Rating Scales training.
 - ii. Director (on-site)—
 - (a). three semester hour credits in care of young children or child development¹; and
 - (b). three semester hour credits in administration²; and
 - (c). one year experience in teaching young children in an early childhood program.
 - iii. Assistant Director—
 - (a). three semester hour credits in care of young children or child development.¹

iv. Teacher—75 percent of lead teachers must meet one of the following:

(a). complete three semester hour credits course in care of young children or child development¹ from a list of approved courses or enroll in the course and complete within one year of employment.

3. Point Standards for child care centers seeking three star rating, four star rating, and five star ratings. To achieve a higher rating, a child care center must meet all requirements of the foundation two star and earn points in the program and staff qualifications by meeting the requirements listed below. At least one point must be earned in each program and staff qualifications. The quality point referenced in Subparagraph 3.c. may also be earned. The total number of points will determine the star rating awarded to the center.

Total Number of Points	Star Rating
3-5 points	Three Stars
6-9 points	Four Stars
10-11 points	Five Stars

a. Program

Points	Criteria								
1	An average of 3.75 on the designated social-emotional subscale of the Environment Rating Scales (ERS) ³ , with no one classroom score lower than 3.0 on the subscale.								
2	An average of 4.0 on the designated social-emotional subscale of the ERS ³ with no one classroom score lower than 3.0 on the subscale.								
3	<ol style="list-style-type: none"> 1. An average of 4.25 on the designated social-emotional subscale of the ERS³ with no one classroom score lower than 3.25 on the subscale. 2. Staff: Child Ratio and Group Size <table border="1" style="margin-left: 20px;"> <tr> <td>0-12 months 1:4,8</td> <td>25-36 months 1:8, 16</td> <td>4 yrs 1:12, 24</td> <td>6 yrs & up 1:20, 30</td> </tr> <tr> <td>13-24 months 1:6,12</td> <td>3 yrs 1:10, 20</td> <td>5 yrs 1:15, 30</td> <td></td> </tr> </table> 3. Written transition procedures for children moving within a program or to other programs or beginning school. 	0-12 months 1:4,8	25-36 months 1:8, 16	4 yrs 1:12, 24	6 yrs & up 1:20, 30	13-24 months 1:6,12	3 yrs 1:10, 20	5 yrs 1:15, 30	
0-12 months 1:4,8	25-36 months 1:8, 16	4 yrs 1:12, 24	6 yrs & up 1:20, 30						
13-24 months 1:6,12	3 yrs 1:10, 20	5 yrs 1:15, 30							
4	<ol style="list-style-type: none"> 1. An average of 4.5 on the designated social-emotional subscale of the ERS with no one classroom score lower than 3.5 on the overall ERS. 2. Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources. 3. Staff: Child Ratio and Group Size <table border="1" style="margin-left: 20px;"> <tr> <td>0-12 months 1:4, 8</td> <td>25-36 months 1:8, 16</td> <td>4 yrs 1:12, 24</td> <td>6 yrs & up 1:20, 30</td> </tr> <tr> <td>13-24 months 1:6, 12</td> <td>3 yrs 1:10, 20</td> <td>5 yrs 1:15, 30</td> <td></td> </tr> </table> 4. Written transition procedures for children moving within a program or to other programs or beginning school. 	0-12 months 1:4, 8	25-36 months 1:8, 16	4 yrs 1:12, 24	6 yrs & up 1:20, 30	13-24 months 1:6, 12	3 yrs 1:10, 20	5 yrs 1:15, 30	
0-12 months 1:4, 8	25-36 months 1:8, 16	4 yrs 1:12, 24	6 yrs & up 1:20, 30						
13-24 months 1:6, 12	3 yrs 1:10, 20	5 yrs 1:15, 30							
5	<ol style="list-style-type: none"> 1. An average of 5.0 on the overall ERS, with no one classroom score lower than 4.0. 2. Complete screening for social-emotional development with instrument from recommended list for all children (0-5 yrs.) within 45 calendar days of enrollment and annually thereafter. Conference with parents to review results and provide a list of community resources. 3. Provide a plan for continuity of care for all children 0-36 months of age. 4. Implementation of Louisiana's Early Learning Guidelines and Program Standards; Birth through Three, (DSS October 2006)and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003). 5. Staff: Child Ratio and Group Size: <ul style="list-style-type: none"> 0-24 months 1:4, 8 2 yrs 1:6, 12 3 yrs 1:8, 16 4 yrs 1:10, 20 5 yrs 1:10, 20 6 yrs and up 1:12, 24 								

b. Staff Qualifications

Points	Criteria
1	<p>All teachers and directors complete three hours of ERS training.</p> <p>Director (on-site)</p> <ol style="list-style-type: none"> 1. Six semester hour credits in care of young children or child development¹, and 2. Three semester hour credits in administrative coursework², and 3. One year experience teaching young children in an early childhood program. <p>Assistant Director</p> <p>Three semester hour credits in care of young children or child development.¹</p> <p>Lead Teacher</p> <p>All of Lead Teachers must complete three semester hour credits in care of young children or child development from a list of approved courses¹ or enroll in the course and complete within one year of employment.</p> <p>Assistant Teacher</p> <p>50% of Assistant Teachers must have completed or be enrolled in three semester hour credits in the care of young children or child development¹ and complete the course within one year of employment.</p>
2	<p>All teachers and directors complete three hours of ERS training.</p> <p>Director</p> <ol style="list-style-type: none"> 1. Nine semester hour credits in care of young children or child development¹, and 2. Three semester hour credits in administrative coursework², and 3. One year of teaching experience and one year teaching or administrative experience in an early childhood program. <p>Assistant Director</p> <ol style="list-style-type: none"> 1. Three semester hour credits in care of young children or child development¹, and 2. Three semester hour credits in administrative coursework², and 3. One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> 1. 75% of Lead Teachers must have completed six semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed three semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete within one year of employment, and 2. One year full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>50% of Assistant Teachers must have completed or be enrolled in three semester hour credits in the care of young children or child development¹ and complete the course within one year of employment.</p>
3	<p>Directors and all teachers complete six hours of ERS training. Directors and lead teachers complete training in social-emotional screening of children. Director completes training in Louisiana's Early Learning Guidelines and Program Standards Birth Through Three (DSS October 2005) and the LA Content Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> 1. Twelve semester hours in care of young children or child development¹, and 2. Six semester hours of administrative coursework², and 3. One year teaching experience and 1 year administrative experience and one year teaching or administrative experience in an early childhood setting for a total of three years experience. <p>Assistant Director</p> <ol style="list-style-type: none"> 1. Three semester hour credits in care of young children or child development¹, and 2. Three semester hour credits in administrative coursework², and 3. One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> 1. 75% of Lead Teachers must have completed nine semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed six semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete within one year of employment, and 2. One year full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>50% Assistant Teachers must have completed three semester hour credits in the care of young children or child development¹.</p>

Points	Criteria
4	<p>Directors and all teachers complete 6 hours of ERS training. Directors and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs. Directors and lead teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth Through Three, (DSS October 2005) and the LA Content Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> 1. Fifteen semester hour credits in the care of young children or child development¹, and 2. Six semester hour credits of administrative coursework², and 3. One year teaching experience and one year administrative experience and two years teaching and/or administrative experience in an early childhood setting for a total of four years experience. <p>Assistant Director</p> <ol style="list-style-type: none"> 1. Three semester hour credits in care of young children or child development¹, and 2. Three semester hour credits in administrative coursework², and 3. One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> 1. 75% of Lead Teachers must have completed 12 semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed nine semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete within one year of employment, and 2. Two years full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>All Assistant Teachers must have completed three semester hour credits in the care of young children or child development¹.</p>
5	<p>Directors and all teachers complete six hours of ERS training. Directors and all teachers complete training in social-emotional screening of children and developing individual instructional plans for children based on specific developmental needs. Directors and all teachers complete training in Louisiana's Early Learning Guidelines and Program Standards Birth Through Three, (DSS October 2005) and the LA Content Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> 1. Associate's degree in the care of young children, child development or related field, with specific coursework in infant-toddler care, care of exceptional children and care of school age children or equivalent such as Director III LA Pathways and/or including, 2. Six semester hour credits or 75 hrs of administrative training², and 3. One year teaching experience and one year administrative experience and three years teaching and/or administrative experience in an early childhood setting for a total of five years experience. <p>Assistant Director</p> <ol style="list-style-type: none"> 1. Six semester hour credits in care of young children or child development¹, and 2. Three semester hour credits in administration², and 3. One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> 1. All Lead Teachers must have six semester hour credits in the care of young children or child development¹ from a list of approved courses, and 2. 75% of Lead Teachers must have completed 15 semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed 12 semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete within a year of employment, and 3. Two years full-time experience in an early childhood setting for all teachers. <p>Assistant Teacher</p> <p>All Assistant Teachers must have completed six semester hour credits in the care of young children or child development¹ or have completed three semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete within one year of employment.</p>

c. An additional quality point can be earned by meeting additional requirements in both the administrative practices and the family/community involvement areas.

Quality Point	
Points	Criteria
1	<p>Administrative Practices—meet three requirements below</p> <ol style="list-style-type: none"> 1. Provide four of the benefits from the list* of options below for all full time staff. 2. Include grievance procedure and a professional conduct code for staff in written personnel policies. 3. Pay scale based on education, experience, responsibilities and merit. 4. Provide training to staff on cultural sensitivity. 5. Written parent and staff confidentiality policy and provide training to staff and <p>Family/Community Involvement—meet four requirements below</p> <ol style="list-style-type: none"> 1. Participate in meetings for directors provided by Resource and Referral agency at least quarterly, with the director or assistant director attending 50% of the meetings. 2. Provide a complaint process for parents. 3. Offer opportunity for a formal parent/teacher conference meeting annually. 4. Provide an expanded list of local community resources to parents annually including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, food stamps and information on a child's medical home. 5. Parent Advisory Council meets annually to review policies, procedures and parent handbook. 6. One group meeting per year offered to all families. <p>One parent education workshop offered per year by center or other agency.</p>

The following footnotes reference program criteria and staff qualifications in Section 5119:

Staff Qualifications

¹The following may be substituted to meet this requirement of three semester hour credits in the care of young children or child development: a CDA or have approved high school child development courses or have five years full-time experience in an early childhood program or have completed a Child Care Assistant Teacher 1 LA Pathways Classroom Certificate. The following may be used to meet the requirement of up to six semester hour credits in the care of young children or child development: CDA or have completed a Child Care Assistant Teacher 2 LA Pathways Classroom Certificate. An individual may use the above substitutions to meet the requirements for a maximum of six semester hour credits.

²The following may be substituted to meet the requirement for three semester hour credits in administration: LA Pathways Administrator Certificate or National Administrator Credential (NAC) or three years experience in administration or a combination of one year in administration experience and four years in teaching young children in an early childhood program.

NOTE For Director Qualification: Experience in teaching young children or administration may only be substituted one time. At the next QRS review, the necessary educational requirement (credits in the care of young children or child development or credits in administration) must be met.

³For the purpose of this document, the designated social-emotional subscale of the ERS is defined as consisting of the following subscales: ITERS-R—Listening and Talking, Interaction and Program Structure; ECERS-R—Language-Reasoning, Interaction and Program Structure.

*Staff benefits options: employee health insurance or comparable health benefits; paid annual leave; paid sick leave; paid holiday; child care benefit/discount; bonus based on merit/achievement or education; retirement compensation; annual increments based on merit; tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes; differential shift pay, flextime, paid professional association fee.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5121. Participation

A. A child care center will complete the application for participation in the Quality Rating System. A quality rating verification visit will be conducted by the Department and one or more stars may be awarded.

B. Quality ratings will be valid for one year from the date of the star rating award. Ratings will have to be earned annually through the quality rating verification process.

C. Centers with one-star award may apply for a quality rating verification after receiving their one-star award. Centers with more than one-star may apply for a quality rating review six months after the date of their current rating award.

D. Centers that have achieved a star rating will have their rating revoked if the child care license is revoked or if the child care center is referred to the designated licensing committee with a recommendation from the department for revocation.

E. Centers that have achieved a star rating may have their rating reviewed and modified if, at any time, it becomes known to the department or the department receives information or has actual knowledge that the child care center no longer meets standards for the center's current star rating award.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

§5123. Quality Rating System Awards

A. Bonus payments will be issued after the end of each calendar quarter to Class A child care centers that care for children receiving assistance from the Child Care Assistance Program and for children in the state's Foster Care Program in accordance with the star rating for the service(s) period for that quarter. The payment is equal to a percentage, as defined below, of all child care subsidy payments received from the department by the Class A center for services provided during the service period(s) based for that quarter on the center's rating(s):

1. one star—0 percent;
2. two star—3 percent;
3. three star—8 percent;
4. four star—13.5 percent;
5. five star—20 percent.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule establishes the quality rating system and criteria for achieving stars. High quality early care and education supports strong families and successful children.

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

3. What effect will this have on the functioning of the family? Having access to quality child care allows parents to enter the workforce and become successful and productive employees. Quality child care helps parents maintain the dual role of strong parents and productive employees.

4. What effect will this have on family earnings and family budget? High quality and stable child care help parents to work and is essential for workforce stability. Quality care costs more money but research from states with a quality rating system shows that it has not raised market prices in a significant way.

5. What effect will this have on the behavior and personal responsibility of children? Research shows that quality child cares positively impacts children's behavior. In fact, the success of children in high quality child care indicates that the long term results are not just from making children "smarter," but from helping children attain needed social, emotional, and behavioral benefits. Program effects of increased IQ may diminish over time, whereas the social, emotional, and behavioral gains appear to be more stable and lasting.

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

All interested persons may submit written comments through, October 25, 2007, to Adren O. Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed Rule will be held on October 25, 2007, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room

1-129, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Ann S. Williamson
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Child Care Quality Rating System**

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

The Department proposes to adopt Subchapter C, Quality Rating System (QRS), granted by the authority of the Child Care and Development Fund (CCDF). The Quality Rating System provides a mechanism by which child care centers can be assessed regarding the level of quality care given, offers a structure for child care centers to communicate the level of quality offered, and provides a guide for parents to choose higher settings of child care beyond basic licensure.

The implementation cost for QRS is anticipated to be \$13.2 million for FY 07/08, \$13.5 million for FY 08/09, and \$14.3 million for FY 09/10. The costs are for 18 additional staff who will award the quality ratings of centers, training and technical assistance to help centers improve the quality of service, grants to help centers make changes that facilitate enhanced quality, tiered payments to providers based on the quality of care offered to children, contracts to add needed features to information technology, management of the Environmental Rating Scale assessment project, and the cost of publishing rulemaking. The costs are based on 1,762 child care centers that currently exist in Louisiana and from information derived from other states that have quality rating systems. Federal Child Care and Development funds have been appropriated in FY 07/08 to cover these costs. It is anticipated that sufficient CCDF funds will also be appropriated in subsequent fiscal years to cover the respective costs.

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

This rule will have no effect on revenue collections of State or local governmental units.

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

The QRS will benefit participating child care centers by providing training, assistance, and monetary incentives that will encourage a higher standard of care for children. Families who participate in QRS will benefit from receiving a higher standard of care for their children.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Child care employees who achieve higher educational or professional development levels could qualify for better employment opportunities

Adren O. Wilson
Assistant Secretary
0709#060

Robert E. Hosse
Staff Director
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Transportation and Development
Professional Engineering and Land Surveying Board**

Technical Revisions
(LAC 46:LXI.707, 2305, 2307, 2505, 2701, and 2907)

Under the authority of the Louisiana Professional Engineering and Land Surveying Licensure Law, R.S. 37:681 et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Professional Engineering and Land Surveying Board has initiated procedures to amend its Rules contained in LAC 46:LXI.Chapters 1 through 33.

The amendments are primarily technical housekeeping revisions of existing board rules.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LXI. Professional Engineers and Land Surveyors
Chapter 7. Bylaws**

§707. Board Organization

A. - B. ...

C. Date of Elections. The election of board officers shall take place not later than at the board's November meeting. In the event that an officer cannot complete his/her term, an election in order to fill the unexpired term shall be scheduled at the earliest practical regular or special meeting.

D. - E.12. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:110 (May 1979), LR 11:1179 (December 1985), LR 19:54 (January 1993), LR 21:1353 (December 1995), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1024 (July 2001), LR 30:1707 (August 2004), LR 33:

Chapter 23. Firms

§2305. Supervising Professional

A.1 In the case of firms providing or offering to provide professional services in the state of Louisiana, all such professional services shall be executed under the responsible charge of a licensed professional, and designated by the firm as a supervising professional. Such licensed professional shall be an active employee of the firm:

a. - b. ...

2. When the work consists of plans, designs, specifications, reports or maps, such licensed professional shall affix his/her seal, signature and date to them, as required by law. The appearance of a seal on a document of any type shall constitute a representation that such document was prepared by the licensed professional or under his/her responsible charge.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:689.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:115 (May 1979), amended LR 8:191 (April 1982), LR 10:343 (April 1984), LR 11:362 (April 1985), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1036 (July 2001), LR 30:1719 (August 2004), LR 33:

§2307. Professional Identification

A. Letterheads, business cards, advertisements and other similar identifying items issued by firms providing or offering to provide professional services in the state of Louisiana shall reflect the exact firm name contained on its certificate of licensure issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:689.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:116 (May 1979), amended LR 8:191 (April 1982), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1036 (July 2001), LR 30:1720 (August 2004), LR 33:

Chapter 25. Professional Conduct

§2505. Services

A. - B. ...

C. Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matters in which they lack competence, nor to any such plan or document not prepared under their responsible charge. Responsible charge requires a licensee or employee to carry out all client contacts, provide internal and external financial control, oversee employee training, and exercise control and supervision over all job requirements to include research, planning, design, field supervision and work product review. A licensee shall not contract with a non-licensed individual to provide these professional services. Research, such as title searches and soil testing, may be contracted to a non-licensed individual, provided the licensee reviews the work. The professional engineer and professional land surveyor may affix their seal, signature and date to drawings and documents depicting the work of two or more professionals provided that a note under the seal designates the specific subject matter for which each is responsible.

D. Licensees may accept an assignment outside of their areas of competence to the extent that their services are restricted to those phases of the project in which they are qualified, and to the extent that they are satisfied that all other phases of such project will be performed or supervised by licensed, qualified associates, consultants, or employees, in which case they may then seal, sign and date the documents for the total project.

E. - F.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 7:648 (December 1981), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1037 (July 2001), LR 30:1721 (August 2004), LR 32:1620 (September 2006), LR 33:

Chapter 27. Use of Seals

§2701. Seal and Signature

A. The following rules for the use of seals to identify work performed by a professional engineer or professional land surveyor shall be binding on every licensee.

1. - 1.a.ii. ...

2. Seal Design and Signature Requirements

a. - e. ...

f. A seal must always be accompanied by the licensee's signature and date. Electronic signatures are not authorized except for electronic transmission of work as stated herein below.

* * *

3. Seal Responsibility

a. ...

b. Responsible Charge

i. - i.(d).(ii). ...

ii. No licensee shall affix his/her seal or signature to reports, plats, sketches, working drawings, specifications, design calculations, or other engineering and land surveying documents developed by others not under his/her responsible charge and not subject to the authority of that licensee, except:

(a). in the case of an individual licensee checking the work of and taking the professional responsibility for an out-of-state individual licensee, the Louisiana licensee shall completely check and have responsible charge of the design. Such responsible charge shall include possession of the sealed, signed and dated reproducible construction drawings, with complete sealed, signed and dated design calculations indicating all changes in design;

(b). certification of standard design plans which are initially prepared and sealed by a professional engineer properly licensed in the jurisdiction of origin of such plans. Standard design plans may then be reviewed by a Louisiana resident professional engineer for code conformance, design adequacy, and site adaption for the specific application within Louisiana. The professional engineer licensed in Louisiana assumes responsibility for such standard designs. Standard plans, which bear the seal of a professional engineer licensed in another state, territory, or possession of the United States, or the District of Columbia, shall be sealed, signed and dated by the Louisiana resident professional engineer who is assuming responsibility. In addition to the seal, signature and date, a statement shall be included as follows:

"These plans have been properly examined by the undersigned. I have determined that they comply with existing local Louisiana codes, and have been properly site adapted to use in this area."

(c). certification of single family residential design plans for conformance with applicable state and local building codes. Such plans shall be sealed, signed and dated by the professional engineer who is making such certification. In addition to the seal, signature and date, a statement shall be included as follows:

"These plans have been properly examined by the undersigned. I have determined that they comply with the following existing state and local building codes for the jurisdiction in which the residence is to be located (check all that apply): structural; mechanical; electrical; plumbing."

iii. No licensee shall affix his/her seal, signature or date to documents having titles or identities excluding the licensee's name unless:

(a) - (c). ...

4. Seal Use

a. Completed Work

i. - i.(a). ...

ii. Drawings and Plats

(a). In the case of multiple sealings, the first sheet or title page shall be sealed, signed and dated by the licensee or licensees in responsible charge. In addition, each sheet shall be sealed, signed and dated by the licensee or licensees responsible for each sheet.

(b). In the case of a firm, each sheet shall be sealed, signed and dated by the licensee or licensees responsible for that sheet and the licensee(s) in responsible charge shall seal, sign and date the title page or first sheet.

iii. Specifications, Reports, Design Calculations and Information

(a). In the case of specifications or reports of multiple pages, the first sheet or title page of each document shall be sealed, signed and dated by the licensee or licensees involved. Subsequent revisions shall be dated and initialed by the licensee in responsible charge whose seal, signature and date appears on the first sheet or title page.

(b). In the case of a firm, the licensee in responsible charge shall seal, sign and date the title page or first sheet.

b. Preliminary Work

i. All preliminary documents, so marked in large bold letters, shall contain a statement that the documents are not to be used for construction, bidding, recordation, conveyance, sales, or as the basis for the issuance of a permit. Preliminary documents are not required to have the licensee's seal, signature and date affixed, but must bear the name and licensure number of the licensee, and the firm's name, if applicable.

c. - c.i.(e). ...

5. Electronic Transmission

a. Drawings, specifications, plans, reports or other documents which require a seal may be transmitted electronically provided the seal, signature and date of the licensee is transmitted in a secure mode that precludes the seal, signature and date being produced or modified. Drawings, reports or documents which are signed using a digital signature as defined in the rules shall contain the authentication procedure and a list of the hardware, software, and parameters used to prepare the document(s).

b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:696.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 8:192 (April 1982), amended LR 12:692 (October 1986), LR 16:774 (September 1990), LR 17:273 (March 1991), LR 19:58 (January 1993), LR 22:287 (April 1996), LR 23:869 (July 1997), amended by the Louisiana Legislature, House Concurrent Resolution Number 2 of the 1998 First Extraordinary Session, LR 24:1207 (June 1998), repromulgated by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 25:1525 (August 1999), amended LR 27:1039 (July 2001), LR 30:1723 (August 2004), LR 33:

Chapter 29. Minimum Standards for Property Boundary Surveys

§2907. Property Boundary Survey

A. - B. ...

C. Product. A property boundary survey will result in the establishment of monumented corners; point of curvature and tangency; and reference points (see Subsection E, "Monuments"). In event that no plat of survey is required, the professional land surveyor must maintain adequate records to substantiate his professional opinion in reestablishing boundary lines and corners on a survey. If requested by the client, a boundary survey may also include the following:

1. a sealed, signed and dated metes and bounds written description depicting the surveyed boundary (see Subsection H, "Descriptions");

2. ...

3. a sealed, signed and dated written report of the surveyor's findings and determinations.

D. - F.7. ...

G. Plats, Maps, and Drawings. Every original plat or map of a boundary survey should be a reproducible drawing at a suitable scale which clearly shows the results of the field work, computations, research and record information as compiled and checked. The plat map or drawing shall be prepared in conformity with the following guidelines.

1. - 14. ...

15. Each plat, map or drawing shall show the following:

a. - e. ...

f. signature and seal of the professional land surveyor under whose direction the survey was done.

16. Final plats or maps issued to the client must contain a certificate sealed, signed and dated by the professional land surveyor certifying its authenticity (that it represents his/her survey) and stating that the survey is in accordance with the applicable standards of practice as stipulated in this publication based on the current survey "classification" (see §2905 on Classification of Surveys).

H. Descriptions. A written legal description of the surveyed tract of land must provide information to properly locate the property on the ground and distinctly set it apart from all other lands. The following guidelines apply.

1. - 10. ...

11. The metes and bounds description shall then be sealed, signed and dated by the land surveyor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 16:1065 (December 1990), amended LR 19:58 (January 1993), LR 22:714 (August 1996), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1043 (July 2001), LR 30:1726 (August 2004), LR 33:

Family Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the *Louisiana Register*. The proposed Rule have no known impact on family formation, stability or autonomy.

Interested parties are invited to submit written comments on the proposed Rule through October 10, 2007, at 4:30 p.m., to Donna D. Sentell, Executive Secretary, Louisiana Professional Engineering and Land Surveying Board, 9643 Brookline Avenue, Suite 121, Baton Rouge, LA 70809-1433.

Donna D. Sentell
Executive Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Technical Revisions**

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

There will be no costs or savings to state or local governmental units resulting from this rule change.

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

There will be no effect on revenue collections of state or local governmental units as a result of this proposed action.

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

The proposed rule change will have no impact on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Robert E. Eddleman
Deputy Executive Secretary
0709#029

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

Removal of Abandoned Crab Traps (LAC 76:VII.367)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend a Rule, LAC 76:VII.367, which provides for an abandoned crab trap removal program. Authority to establish these regulations is vested in the commission by R.S. 56:332(N). Said Rule is attached and made a part of this Notice of Intent.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and final Rule, including but not limited to, the filing of the fiscal and economic impact statement, the filing of the Notice of Intent and final Rule, and the preparation of reports and correspondence to other agencies of government.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§367. Removal of Abandoned Crab Traps

A. The use of crab traps shall be prohibited from 6 a.m., February 23, 2008, through 6 a.m. March 3, 2008, within

that portion of Lafourche Parish and Terrebonne Parish as described below:

1. from a point originating along the western shoreline of Cut Off Canal at its intersection with Grand Bayou, thence southward along the western shoreline of Cut Off Canal to its intersection with the boundary of the Pointe-aux-Chenes Wildlife Management Area, thence west along the southern boundary of the Pointe-aux-Chenes Wildlife Management Area to the Humble Canal, thence west along the northern shoreline of Humble Canal to its intersection with Bayou Terrebonne, thence south along the western shoreline of Bayou Terrebonne to its intersection with Bush Canal, thence west along the northern shoreline of Bush Canal to its intersection with Bayou Little Caillou, thence south along the western shoreline of Bayou Little Caillou to 29 degrees 17 minutes 00 seconds north latitude, thence east along 29 degrees 17 minutes 00 seconds north latitude to the eastern shoreline of Bayou Pointe-aux-Chenes, thence north along the eastern shoreline of Bayou Pointe-aux-Chenes to the eastern shoreline of Cut Off Canal, thence north along the eastern shoreline of Cut Off Canal to its intersection with the southern shoreline of Grand Bayou, thence west across Cut Off Canal and terminating at the point of origin at the western shoreline of Cut Off Canal at its intersection with Grand Bayou.

B. All crab traps remaining in the closed area during the specified period shall be considered abandoned. These trap removal regulations do not provide authorization for access to private property; authorization to access private property can only be provided by individual landowners. Crab traps may be removed only between one-half hour before sunrise to one-half hour after sunset. Anyone is authorized to remove these abandoned crab traps within the closed area. No person removing crab traps from the designated closed area shall possess these traps outside of the closed area. The Wildlife and Fisheries Commission authorizes the Secretary of the Department of Wildlife and Fisheries to designate disposal sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:332(N).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, and Wildlife and Fisheries Commission LR 30:101 (January 2004), amended LR 31:108 (January 2005), LR 32:266 (February 2006), LR 33:113 (January 2007), LR 33:

Family Impact Statement

In accordance with Act No. 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Interested persons may submit written comments relative to the proposed Rule to Vincent Guillory, Marine Fisheries Biologist Manager, Marine Fisheries Division, Box 189, Bourg, LA 70343, prior to Monday, November 5, 2007.

Earl P. King, Jr.
Chairman

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

RULE TITLE: Removal of Abandoned Crab Traps

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

No increase or decrease in costs or savings to state or local governmental units associated with implementing the proposed rule is anticipated.

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

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

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

The proposed rule would prohibit the use of crab traps in a portion of Lafourche and Terrebonne parishes from 6:00 a.m. on February 23, 2008 through 6:00 a.m. on March 3, 2008. Crab fishermen who utilize the area proposed for closure will incur lost fishing time during the designated period and be subjected to additional costs from having to temporarily remove their traps. These impacted crab fishermen will have to either move their traps to adjacent open fishing areas or remove their traps for the duration of the closure.

Local seafood dealers, processors and consumers may experience a slight decrease in the availability of fresh crabs during the closure, resulting in a slightly higher price for fresh crabs in the short term. The crab resource, however, will not be

lost or harmed in any way and will be available for harvest when the closed area is reopened.

Recreational saltwater anglers, commercial fishermen and individuals who operate vessels within the designated area may realize slight positive benefits from the removal of abandoned crab traps, since encounters with abandoned traps often result in lost fishing time and damage to the vessel's lower unit and/or fishing gear. The removal of abandoned crab traps will reduce the mortality of and injuries to crabs and by-catch which become trapped and die in these traps. Thus, the removal of abandoned crab traps should provide improved fishing and reduced fishing costs.

The overall impact of the proposed area closure is anticipated to be slight, since the duration of the closure is only for ten days during the lowest harvest time of the year, and adjacent waters will be open for crab fishermen to continue to fish.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Effects on competition and employment are expected to be negligible, since adjacent waters will remain open for crab harvest and fishermen who fish during this time period are expected to relocate their traps.

Wynnette Kees
Deputy Undersecretary
0709#041

Robert E. Hosse
Staff Director
Legislative Fiscal Officer

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 3-4, 2007, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates: August 31, 2007
 Re-Take Candidates: September 21, 2007
 Reciprocity Candidates: November 9, 2007

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to August 31, 2007. Questions may be directed to (225) 952-8100.

Bob Odom
 Commissioner

0709#045

POTPOURRI

Department of Environmental Quality Office of the Secretary

Regulatory Permits—Advanced Notice of Rulemaking and Solicitation of Comments (LAC 33:III.301-311 and 501)(AQ274-AQ278)

Act 115 of the 2006 Regular Session of the Louisiana Legislature, which became effective on August 15, 2006, allows the department to develop regulatory permits for certain sources of air emissions pursuant to R.S. 30:2054(B)(9). Pursuant to R.S. 30:2054(B)(9)(b)(viii), all regulatory permits shall be promulgated in accordance with rulemaking procedures as provided in R.S. 30:2019 and R.S. 49:950 et seq.

The department seeks public comments on several rules under development for regulatory permits through this Advanced Notice of Proposed Rulemaking. The draft rules are for the general requirements for regulatory permits (AQ274) and for specific regulatory permits for oil and gas well testing (AQ275), release of natural gas from pipelines (AQ276), emergency engines (AQ277), and portable air curtain incinerators (AQ278). The following table identifies and describes each rule.

Rule Log #	Rule Title	LAC Cite
AQ274	Regulatory Permits	LAC 33:III.301, 303, and 501

Rule Log #	Rule Title	LAC Cite
	This proposed rule outlines the various requirements and limitations imposed by R.S. 30:2054(B)(9) on all regulatory permits to be developed by the department. This rule implements Act 115 of the 2006 Regular Session of the Louisiana Legislature, which allows the department to develop and promulgate regulatory permits for certain sources of air emissions.	
AQ275	Regulatory Permit for Oil and Gas Well Testing	LAC 33:III.305
	This regulatory permit will authorize the operation of temporary separators, tanks, meters, and fluid-handling equipment necessary to test the content of a subsurface stratum believed to contain crude oil or natural gas and/or to establish the proper design of a permanent fluid-handling facility. Releases of natural gas less than 2.5 MM ft ³ in volume require no controls; those greater than or equal to 2.5 MM ft ³ must be controlled by flaring. Authorization shall remain effective for 60 days following the date the administrative authority determines that the application is complete.	
AQ276	Regulatory Permit for Release of Natural Gas from Pipelines	LAC 33:III.307
	This regulatory permit will authorize the release of natural gas resulting from metering, purging, and maintenance operations associated with petroleum pipelines. Releases of natural gas less than 2.5 MM ft ³ in volume require no controls; those greater than or equal to 2.5 MM ft ³ must be controlled by flaring. Authorization shall remain effective for 60 days following the date the administrative authority determines that the application is complete.	
AQ277	Regulatory Permit for Emergency Engines	LAC 33:III.309
	This regulatory permit will authorize the installation and use of stationary emergency engines, including electrical power generators, firewater pumps, and air compressors, and the associated fuel storage tanks. The permit may be used to authorize both permanent and temporary emergency engines. Permanent engines must be incorporated into the facility's permit at next modification; temporary engines must be on site for no more than 12 months. Operating time of the engine will be limited to 500 hours per 12-consecutive-month period.	
AQ278	Regulatory Permit for Portable Air Curtain Incinerators	LAC 33:III.311
	This regulatory permit will authorize the installation and use of portable air curtain incinerators (ACIs), the engine that drives the fan mechanism, and the associated fuel storage tank. Each ACI must have a manufacturer's rated capacity less than or equal to 10 tons per hour and must not remain at a single operational site (not to include storage locations) for more than 90 consecutive days. Operations will be restricted to between 8 a.m. and 5 p.m. each day.	

Associated with each regulatory permit is a unique application with instructions. These documents can be accessed at <http://www.deq.louisiana.gov/portal/tabid/2787/Default.aspx>. The department also seeks comments on these documents.

Written comments regarding the draft regulations and associated forms are due no later than 4:30 p.m., November 1, 2007. Comments should be submitted to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or faxed to (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Persons commenting should identify the comments by each particular rule log number. Copies of the draft regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each purchase. The draft regulations are

available with this Potpourri notice on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

The draft regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 3. Regulatory Permits

[Rule Log #AQ274—§§301, 303, and 501]

§301. Purpose

A. This Chapter establishes regulatory permits as authorized by R.S. 30:2054(B)(9). Regulatory permits may be used to authorize emissions from the sources and activities identified in this Chapter by notifying the department of the planned activity using the appropriate form provided by the department. No construction, modification, or operation of a source or activity identified in this Chapter that ultimately may result in an initiation of, or an increase in, emission of *air contaminants* as defined in LAC 33:III.111 shall commence until the appropriate permit fee has been paid in accordance with LAC 33:III.Chapter 2 and the administrative authority has notified the applicant that the application (i.e., notification form) submitted in accordance with LAC 33:III.303.H has been determined to be complete.

B. Sources and activities not addressed by a regulatory permit must be authorized in accordance with LAC 33:III.Chapter 5.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:

§303. Scope

A. Regulatory permits cannot be used to authorize construction of a *major source*, as defined in LAC 33:III.502, or a *major modification*, as defined in LAC 33:III.504.K and 509.B.

B. Use of a regulatory permit may be precluded by specific permit conditions contained within a Part 70 Operating Permit.

C. Regulatory permits shall not authorize the maintenance of a nuisance or a danger to public health or safety.

D. All emissions control equipment specifically required by, or otherwise installed in order to comply with, the terms and conditions of a regulatory permit shall be maintained in good condition and operated properly.

E. Regulatory permits shall not preclude the administrative authority from exercising all powers and duties as set forth in R.S. 30:2011(D) including, but not limited to, the authority to conduct inspections and investigations and enter facilities, as provided in R.S. 30:2012, and to sample or monitor, for the purpose of assuring compliance with a regulatory permit or as otherwise authorized by the Louisiana Environmental Quality Act, the

Clean Air Act, or regulations adopted thereunder, any substance or parameter at any location.

F. Regulatory permits shall require compliance with all applicable provisions of the Louisiana air quality regulations and the Clean Air Act. Violation of the terms or conditions of a regulatory permit constitutes a violation of such regulation or Act.

G. Regulatory permits shall, as appropriate, prescribe emission limitations, any necessary control requirements, other enforceable conditions, and associated monitoring, recordkeeping, and reporting provisions necessary for the protection of public health and the environment.

H. Regulatory permits shall require any person seeking such a permit to submit a written notification describing the planned activity and any appropriate fee to the department. Submission of a written notification and appropriate fee shall be in lieu of submission of a permit application. The written notification shall be signed and certified by a responsible official. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information contained in the notification are true, accurate, and complete. Any person who submits a written notification and appropriate fee shall be authorized to operate under the regulatory permit for which the notification was submitted when notified by the administrative authority that the notification was complete.

I. All regulatory permits promulgated by the department shall establish notification procedures, permit terms, and confirmation of notification by the administrative authority and shall be promulgated in accordance with the procedures provided in R.S. 30:2019.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:

[Rule Log #AQ275—§305]

§305. Regulatory Permit for Oil and Gas Well Testing

A. Applicability. This regulatory permit authorizes the operation of temporary separators, tanks, meters, and fluid-handling equipment necessary to test the content of a subsurface stratum believed to contain crude oil or natural gas and/or to establish the proper design of a permanent fluid-handling facility, subject to the requirements established herein, upon notification by the administrative authority that the application (i.e., notification form) submitted in accordance with Subsection C of this Section has been determined to be complete.

B. Control Requirements. For purposes of this Section, volumes of natural gas should be calculated at *standard conditions*, as defined in LAC 33:III.111.

1. Releases of natural gas less than 2.5 million (MM) cubic feet in volume require no controls.

2. Releases of natural gas greater than or equal to 2.5 MM cubic feet in volume shall be controlled by flaring. Flaring must continue until less than 0.25 MM cubic feet of gas remains to be released, at which time flaring is no longer required.

3. Notwithstanding the volumes specified in Paragraphs B.1 and 2 of this Section, releases that will result in total VOC emissions of 5,000 pounds or more; benzene emissions equal to or exceeding its minimum emission rate

(MER) established by LAC 33:III.5112, Table 51.1; or total benzene, toluene, ethylbenzene, and xylene (BTEX) emissions of 2,000 pounds or more shall be controlled by flaring. Flaring must continue until less than 0.25 MM cubic feet of gas remains to be released, at which time flaring is no longer required.

C. Notification Requirements

1. The following information shall be submitted to the Office of Environmental Services using the appropriate form provided by the department:

- a. the name of the owner or operator;
- b. the physical location of the well;
- c. the date(s) and expected duration of the activity;
- d. a description of the processes and equipment involved, including control measures, if required; and
- e. the estimated emissions associated with the testing event, including the anticipated volume of natural gas to be flared or released and the amount of crude oil to be produced. Emissions of toxic air pollutants (TAPs) listed in LAC 33:III.5112, Tables 51.1 and 51.3, shall be speciated.

2. A copy of the notification required by Paragraph C.1 of this Section shall be submitted to the appropriate DEQ Regional Office.

3. A separate notification shall be submitted for each testing event.

4. The notification shall be submitted such that it is received by the department at least three working days prior to the testing event.

D. The authorization for the specific testing event addressed by the application submitted in accordance with Subsection C of this Section shall remain effective for 60 days following the date on which the administrative authority determines that the application is complete.

E. Operation of temporary separators, tanks, meters, and fluid-handling equipment beyond seven operating days shall not be authorized by this regulatory permit and must be approved by the administrative authority.

F. Recordkeeping and Reporting. The following information shall be recorded and submitted to the Office of Environmental Services no later than 30 calendar days after completion of the testing event:

1. the date(s) and duration of the testing event;
2. the actual volumes of natural gas flared and natural gas released, as well as the total amount of crude oil produced; and
3. the actual criteria pollutant and TAP emissions associated with the testing event.

G. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit shall be \$300 (fee number 1710). There shall be no annual maintenance fee associated with this regulatory permit.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:

[Rule Log #AQ276—§307]

§307. Regulatory Permit for Release of Natural Gas from Pipelines and Associated Equipment

A. Applicability. This regulatory permit authorizes the release of natural gas resulting from metering, purging, and

maintenance operations associated with petroleum pipelines, subject to the requirements established herein, upon notification by the administrative authority that the application (i.e., notification form) submitted in accordance with Subsection C of this Section has been determined to be complete.

B. Control Requirements. For purposes of this Section, volumes of natural gas should be calculated at *standard conditions*, as defined in LAC 33:III.111.

1. Releases of natural gas greater than or equal to 1.0 million (MM) cubic feet, but less than 2.5 MM cubic feet, in volume require no controls.

2. Releases of natural gas greater than or equal to 2.5 MM cubic feet in volume shall be controlled by flaring. Flaring must continue until less than 0.25 MM cubic feet of gas remains to be released, at which time flaring is no longer required.

3. Notwithstanding the volumes specified in Paragraphs B.1 and 2 of this Section, releases that will result in total VOC emissions of 5,000 pounds or more; benzene emissions equal to or exceeding its minimum emission rate (MER) established by LAC 33:III.5112, Table 51.1; or total benzene, toluene, ethylbenzene, and xylene (BTEX) emissions of 2,000 pounds or more shall be controlled by flaring. Flaring must continue until less than 0.25 MM cubic feet of gas remains to be released, at which time flaring is no longer required.

4. Natural gas releases covered by this regulatory permit shall have a hydrogen sulfide (H₂S) content of no more than 0.25 grains per 100 standard cubic feet.

C. Notification Requirements

1. The following information shall be submitted to the Office of Environmental Services using the appropriate form provided by the department:

- a. the name of the owner or operator;
- b. the type of, and reason for, the activity;
- c. the physical location;
- d. the date(s) and expected duration of the activity;
- e. a description of the processes and equipment involved, including control measures, if required;
- f. the estimated emissions associated with the metering, purging, or maintenance operation, including the volume of natural gas to be flared or released. Emissions of toxic air pollutants (TAPs) listed in LAC 33:III.5112, Tables 51.1 and 51.3, shall be speciated; and
- g. approximate H₂S content in the natural gas.

2. A copy of the notification required by Paragraph C.1 of this Section shall be submitted to the appropriate DEQ Regional Office.

3. A separate notification shall be submitted for each metering, purging, or maintenance operation.

4. The notification shall be submitted such that it is received by the department at least three working days prior to the metering, purging, or maintenance event. In emergency situations, the department will waive the three-working day requirement.

D. The authorization for a release from the specific metering, purging, or maintenance operation addressed by the application submitted in accordance with Subsection C of this Section shall remain effective for 60 days following the date on which the administrative authority determines that the application is complete.

E. This regulatory permit does not authorize releases from metering, purging, or maintenance operations associated with pipelines carrying refined petroleum products (e.g., ethylene, propylene, 1,3-butadiene).

F. Conducting metering, purging, and maintenance operations beyond seven operating days at a single location shall not be authorized by this regulatory permit and must be approved by the administrative authority.

G. Resetting of flow meters (changing orifice plates, etc.) and calibration of meters are considered routine activities and are not classified as purging or maintenance operations.

H. Recordkeeping and Reporting. The following information shall be recorded and submitted to the Office of Environmental Services no later than 30 calendar days after completion of the metering, purging, or maintenance operation:

1. the date(s) and duration of the metering, purging, or maintenance operation;
2. the actual volumes of natural gas flared and natural gas released; and
3. the actual criteria pollutant and TAP emissions associated with the metering, purging, or maintenance operation.

I. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit shall be \$300 (fee number 1710). There shall be no annual maintenance fee associated with this regulatory permit.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:

[Rule Log #AQ277—§309]

§309. Regulatory Permit for Emergency Engines

A. Applicability

1. This regulatory permit authorizes the installation and use of stationary emergency engines, including electrical power generators, firewater pumps, and air compressors, subject to the requirements established herein, upon notification by the administrative authority that the application (i.e., notification form) submitted in accordance with Subsection L of this Section has been determined to be complete. This regulatory permit also authorizes the associated fuel storage tanks.

2. This regulatory permit may be used to authorize the use of both permanent and temporary emergency engines.

3. This regulatory permit does not apply to:

a. emergency electrical power generators deemed insignificant in accordance with item B.45 in the insignificant activities list in LAC 33:III.501.B.5; and

b. *nonroad engines*, as defined at 40 CFR 1068.30.

4. This regulatory permit cannot be used to authorize use of an emergency engine that combusts noncommercial fuels, including used crankcase oil or any other used oil; facility byproducts; or any other type of waste material.

5. This regulatory permit cannot be used to authorize use of an emergency engine that, when considering potential emissions from the engine and potential emissions from the remainder of the stationary source, would result in the creation of a major source of criteria pollutants, hazardous air pollutants, or toxic air pollutants.

6. This regulatory permit cannot be used to authorize use of an emergency engine that would result in a *major modification*, as defined in LAC 33:III.504.K or 509.B.

B. Definitions

Emergency Engine—any stationary internal combustion engine (ICE) whose operation is limited to emergency situations (e.g., involuntary power curtailment, power unavailability, maintenance activity that requires the main source of power to be shut down) and required readiness testing and maintenance checks.

C. Opacity

1. Limitations

a. *Smoke*. The emission of smoke shall be controlled so that the shade or appearance of the emission is not darker than 20 percent average opacity.

b. *Particulate Matter*. The emission of particulate matter shall be controlled so that the shade or appearance of the emission is not denser than 20 percent average opacity, except that the emissions may have an average opacity in excess of 20 percent for not more than one 6-minute period in any 60 consecutive minutes.

c. When the presence of uncombined water is the only reason for failure of an emission to meet the requirements of this Subsection, this Subsection will not apply.

2. Monitoring and Recordkeeping

a. The permittee shall inspect each emergency engine's stack for visible emissions once each month or at each readiness testing event if the engine is tested at a frequency less than monthly.

b. If visible emissions are detected for a period longer than 6 consecutive minutes, the permittee shall conduct a 6-minute opacity reading in accordance with Method 9 of 40 CFR 60, Appendix A, during the next required visible emissions check.

c. If the shade or appearance of the emission is darker than 20 percent average opacity (per Method 9), the permittee shall take corrective action to return the engine to its proper operating condition, and the 6-minute opacity reading in accordance with Method 9 shall be repeated. The permittee shall notify the Office of Environmental Compliance no later than 30 calendar days after any Method 9 reading in excess of 20 percent average opacity. This notification shall include the date the visual check was performed, results of the Method 9 testing, and a record of the corrective action employed.

d. Records of visible emissions checks shall include the emergency engine's ID number, the engine's serial number, the date the visual check was performed, a record of emissions if visible emissions were detected for a period longer than 6 consecutive minutes, the results of any Method 9 testing conducted, and a record of any corrective action employed. These records shall be kept on-site and available for inspection by the Office of Environmental Compliance.

D. Fuel Sulfur Content

1. The permittee shall not combust distillate oil that contains greater than 0.5 weight percent sulfur.

2. A statement from the fuel oil supplier that each shipment of distillate oil delivered to the facility complies with the specifications of this Subsection shall be kept on-site and available for inspection by the Office of Environmental Compliance.

E. Operating Time

1. Operating time of each emergency engine shall be limited to 500 hours per 12-consecutive-month period.

2. Operating time of each emergency engine shall be monitored by any technically-sound means, except that a run-time meter shall be required for all permanent units.

3. Operating time of each emergency engine shall be recorded each month, as well as its operating time for the last 12 months. These records shall be kept on-site and available for inspection by the Office of Environmental Compliance.

F. New Source Performance Standards

1. Each emergency stationary compression ignition (CI) internal combustion engine (ICE) that commences construction after July 11, 2005, and that meets any of the following conditions must comply with the applicable provisions of 40 CFR 60, Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, unless exempted as described in 40 CFR 60.4200(d):

a. the stationary CI ICE is manufactured after April 1, 2006, and is not a fire pump engine;

b. the stationary CI ICE is manufactured as a certified National Fire Protection Association (NFPA) fire pump engine after July 1, 2006; or

c. the stationary CI ICE is modified or reconstructed after July 11, 2005.

2. The date that construction commences is the date the engine is ordered by the owner or operator.

3. Terms used in this Subsection are defined in 40 CFR 60.4219, except that *modification* is defined in 40 CFR 60.2 and further described in 40 CFR 60.14, and *reconstruction* is defined in 40 CFR 60.15.

G. National Emissions Standards for Hazardous Air Pollutants

1. Each emergency stationary reciprocating internal combustion engine (RICE) that commences construction or reconstruction on or after December 19, 2002, and that is located at a major source of hazardous air pollutant emissions shall comply with the initial notification requirements of 40 CFR 63, Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

a. In accordance with 40 CFR 63.6645(d), the notification shall include the information in 40 CFR 63.9(b)(2)(i) - (v), a statement that the stationary RICE has no additional requirements, and an explanation of the basis of the exclusion (i.e., that it operates exclusively as an emergency stationary RICE).

b. A stationary RICE is reconstructed if the definition of *reconstruction* in 40 CFR 63.2 is satisfied.

2. In accordance with 40 CFR 63.6590(b)(3), no initial notification is necessary for an existing emergency stationary RICE. A stationary RICE is "existing" if construction or reconstruction of the stationary RICE commenced before December 19, 2002. A change in ownership of an existing stationary RICE does not make that stationary RICE a new or reconstructed stationary RICE.

3. Terms used in this Subsection are defined in 40 CFR 63.6675.

H. Temporary Emergency Engines. For each temporary emergency engine brought on-site, record the date the unit is

delivered; its make, model, and manufacturer's rated horsepower; the fuel type; and the date the unit was removed from the site. These records shall be kept on-site and available for inspection by the Office of Environmental Compliance. The authorization for the use of any emergency engine identified as being temporary shall remain effective for 12 months following the date on which the administrative authority determines that the application submitted in accordance with Subsection L of this Section is complete.

I. Permanent Emergency Engines. Permanent emergency engines authorized by this regulatory permit shall be included in the next renewal or modification of the facility's existing permit, if a permit is required pursuant to LAC 33:III.501.

J. Gasoline storage tanks associated with an emergency engine and with a nominal capacity of more than 250 gallons shall be equipped with a submerged fill pipe.

K. Emissions Inventory. Each facility subject to LAC 33:III.919 shall include emissions from all emergency engines, including temporary units, authorized by this regulatory permit in its annual emissions statement.

L. Notification Requirements. Written notification describing the planned activity shall be submitted to the Office of Environmental Services using the appropriate form provided by the department. A separate notification shall be submitted for each emergency engine.

M. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit is \$713.00 (fee number 1722). In accordance with LAC 33:III.209 and 211, the annual maintenance fee associated with this regulatory permit shall be \$143.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:

[Rule Log #AQ278—§311]

§311. Regulatory Permit for Portable Air Curtain Incinerators

A. Applicability

1. This regulatory permit authorizes the installation and use of portable air curtain incinerators, subject to the requirements established herein, upon notification by the administrative authority that the application (i.e., notification form) submitted in accordance with Subsection E of this Section has been determined to be complete. This regulatory permit also authorizes the engine that drives the fan mechanism and the associated fuel storage tank.

2. This regulatory permit does not apply to an air curtain incinerator that:

a. has a manufacturer's rated capacity greater than 10 tons per hour;

b. is operated at a commercial, industrial, or institutional facility;

c. combusts 100 percent yard waste, defined as grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs, originating from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands;

d. incinerates waste collected from the general public; collected from residential, commercial, institutional,

or industrial sources; or otherwise generated at a location other than the operational site; or

e. remains at a single operational site (not to include storage locations) for more than 90 consecutive days.

B. Definitions

Air Curtain Incinerator (ACI)—an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

Institutional Facility—a facility operated by an organization having a governmental, educational, civic, or religious purpose, such as a school, hospital, prison, military installation, church, or other similar establishment.

C. Operating Requirements

1. Visible Emissions

a. Opacity from the ACI shall not exceed 20 percent, except for a 30-minute start-up period once per day during which opacity shall not exceed 35 percent.

b. The emission of smoke, suspended particulate matter, or uncombined water, or any air contaminants or combinations thereof, that passes onto or across a public road and creates a traffic hazard by *impairment of visibility*, as defined in LAC 33:III.111, or intensifies an existing traffic hazard condition is prohibited.

c. The owner or operator shall conduct a 6-minute opacity reading in accordance with Method 9 of 40 CFR 60, Appendix A, upon request of the department. Results shall be kept on-site and available for inspection by the Office of Environmental Compliance.

2. Approved Wastes

a. The ACI shall be used to burn only untreated wood, wood refuse, untreated wood products (i.e., crates, pallets, etc.), trees, branches, leaves, grass, and/or other vegetable matter.

b. The owner or operator shall use only clean oils (e.g., diesel fuel, No. 2 fuel oil, kerosene) to ignite waste.

3. Operating Locations

a. The owner or operator shall not locate the ACI at any permitted municipal or sanitary landfill.

b. The ACI must be situated at least 1,000 feet from any dwelling other than a dwelling or structure located on the property on which the burning is conducted, unless the location has been approved by the appropriate DEQ Regional Office.

c. Relocation. The owner or operator shall notify the appropriate DEQ Regional Office at least three working days prior to moving the ACI to a new operating site. Approval must be obtained before operations at the new site can commence.

4. The owner or operator shall restrict incineration to the time period from 8 a.m. to 5 p.m. each day. Piles of combustible material should be of such size as to allow complete reduction in this time interval.

5. The owner or operator shall obtain all necessary permits from local and/or state agencies.

6. The owner or operator shall install on the ACI a manufacturer's nameplate giving the manufacturer's name and the unit's model number and capacity.

7. The owner or operator shall maintain the ACI to design standards and shall not operate the ACI if any equipment is malfunctioning.

8. The owner or operator shall use care to minimize the amount of dirt on the material being burned.

9. Material shall not be added to the ACI in such a manner as to be stacked above the air curtain.

10. An operator shall remain with the ACI at all times when it is operating.

11. Annual operation of the ACI shall be limited to no more than 1,500 hours per year.

D. Recordkeeping and Reporting

1. A daily record of the hours of operation shall be kept on-site and available for review by the Office of Environmental Compliance. Daily records shall include the time combustion commences and the time the fire is completely extinguished.

2. Annual hours of operation for the preceding calendar year shall be reported to the Office of Environmental Compliance annually by February 15.

E. Notification Requirements. Written notification describing the planned activity shall be submitted to the Office of Environmental Services using the appropriate form provided by the department. A separate notification shall be submitted for each air curtain incinerator.

F. In accordance with LAC 33:III.Chapter 2, the fee for this regulatory permit is \$2,394 (fee number 1520). If emissions from the ACI are such that it qualifies for a small source permit as described in LAC 33:III.503.B.2, the fee is \$713 (fee number 1722), in accordance with LAC 33:III.211.B.13.e. In accordance with LAC 33:III.209 and 211, the annual maintenance fee associated with this regulatory permit shall be \$478, if fee number 1520 is applicable, or \$143, if fee number 1722 is applicable.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 34:

Chapter 5. Permit Procedures

[Rule Log #AQ274, cont.—§501]

§501. Scope and Applicability

A. - B.7. ...

C. Scope

1. Except as specified in LAC 33:III.Chapter 3, for each source to which this Chapter applies, the owner or operator shall submit a timely and complete permit application to the Office of Environmental Services as required in accordance with the procedures delineated herein. Permit applications shall be submitted prior to construction, reconstruction, or modification unless otherwise provided in this Chapter.

2. Except as specified in LAC 33:III.Chapter 3, no construction, modification, or operation of a facility which ultimately may result in an initiation of, or an increase in, emission of *air contaminants* as defined in LAC 33:III.111 shall commence until the appropriate permit fee has been paid (in accordance with LAC 33:III.Chapter 2) and a permit (certificate of approval) has been issued by the permitting authority.

3. - 13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy,

Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 34:

Herman Robinson, CPM
Executive Counsel

0709#032

POTPOURRI

Department of Environmental Quality Office of the Secretary

Risk/Cost/Benefit Statement,
Toxic Air Pollutant Ambient Air Standards
(LAC 33:III.5112)(AQ281)

Introduction

The Louisiana Department of Environmental Quality is proposing to revise ambient air standards (AAS), reclassify several toxic air pollutants (TAPs), and add a short term AAS for many Class I TAPs in LAC 33:III.5112, Tables 51.1 and 51.2 (AQ281). The Toxic Air Pollutant Emission Control Program is authorized under R.S. 30:2060. This Rule addresses the requirement at LAC 33:III.5109.B.5 to periodically review and update the ambient air standards for each TAP in LAC 33:III.5112, Table 51.2.

This document has been prepared to satisfy the requirements of R.S. 30:2019(D) and R.S. 49.953(G) (Acts 600 and 642 of the 1995 Louisiana Legislature, respectively). However, this document is not a quantitative analysis of cost, risk, or economic benefit, although potential costs are identified to the extent practical. A potpourri was published in the April 20, 2007, issue of the *Louisiana Register* with an advanced notice of this proposed rulemaking and a request for comments on the estimated cost to implement this regulation as written. The department received comment that the cost would be in excess of \$1,000,000 and a cost/benefit analysis would be required; however no additional specific cost data was provided by commenters. The statutes allow a qualitative analysis of economic and environmental benefit where a more quantitative analysis is not practical.

Therefore, the qualitative approach is taken with this analysis. Retaining methyl ethyl ketone as a toxic air pollutant, raising the AAS for six toxic air pollutants, and reclassifying seven toxic air pollutants will not increase costs to industry. Introducing a short term standard for Class I toxic air pollutants may result in some increased cost, which cannot be determined. The department believes that establishing more stringent standards for 15 AAS is likely to impose the most significant cost to the regulated industry. As discussed below, all the revisions to the air toxics regulation provide environmental benefits by protecting Louisiana citizens from health related exposures to toxic air pollutants.

The dollar benefits of this avoided environmental risk cannot be determined. In addition, the department maintains that the direct environmental benefits to be derived from this Rule will, in the judgment of reasonable persons, outweigh any costs associated with the implementation of the rule and that the rule is the most cost-effective alternative to achieve these benefits.

Risks Addressed by the Rule

According to the Louisiana Environmental Quality Act, the purpose of the Louisiana Air Control Law is "...to promote an environment free from pollution that jeopardizes the health and welfare of the citizens of the state..." (R.S. 30:2052). Therefore, the department asserts that all Louisiana toxic air pollutant ambient air standards (AAS) should represent concentration levels of toxic air pollutants that are insufficient to cause damaging effects to humans when exposed to such levels over the appropriate length of time. For many toxic air pollutants, the department employs the use of occupational exposure guidelines and values that have been adjusted to account for continuous exposure versus an 8- or 10-hour period and for sensitive populations, such as women and children, versus male workers. The environmental agencies in several states do likewise.

In light of the discussion above, a child exposed for a continuous 8-hour period or longer to any n-butyl alcohol concentration below the current regulatory value of 3620 $\mu\text{g}/\text{m}^3$, as listed in LAC 33:III.5112, Table 51.2, should experience no adverse health effects. However, a review of occupational exposure limits for n-butyl alcohol now indicates that the current value of 3620 $\mu\text{g}/\text{m}^3$ should be replaced with a value of 1452 $\mu\text{g}/\text{m}^3$, which is 60.1 percent more stringent (see table below). In other words, if this standard is not revised, then citizens of Louisiana that become exposed to concentrations of n-butyl alcohol less than 3620 $\mu\text{g}/\text{m}^3$, but greater than 1452 $\mu\text{g}/\text{m}^3$, may experience adverse health effects, although the facility responsible for the concentration above 1452 $\mu\text{g}/\text{m}^3$ will probably still be in compliance. For n-butyl alcohol, these adverse health effects include hypoactivity and ataxia.

The table below represents the toxic air pollutants whose health effects review, similar to the example given above for n-butyl alcohol, has indicated that a revision to a lower level is due and the percentage decrease of the AAS.

Proposed 8-Hour Average Standard Changes	
Compound	Percent Decrease of Current AAS
n-Butyl alcohol	59.9%
Hydrochloric acid	60.6%
1,4-Dioxane	95.0%
Hydrofluoric acid	84.2%
Hydrogen cyanide	53.8%
Maleic anhydride	60.0%
Mercury	80.0%
Methyl methacrylate	50.0%
Propionaldehyde	73.4%
Pyridine	80.6%
Sulfuric acid	80.0%
Vinyl acetate	46.3%
Proposed Annual Average Standard Changes	
Compound	Percent Decrease of Current AAS
Acetaldehyde	80.2%
1,2-Dibromoethane	62.2%
Epichlorohydrin	98.8%

From the table above, there are 15 toxic air pollutants whose AAS is proposed to be set at a more stringent level based upon the review of occupational health standards or the EPA's integrated risk information system (IRIS).

Environmental and Health Benefits of the Rule

The benefit of this proposed regulatory action is that no Louisiana citizen will experience adverse health effects from exposure to any of the toxic air pollutants listed in LAC 33:III.5112, Table 51.2, and that the revised AAS will fulfill the purpose of the Louisiana Air Control Law.

Economic Costs

The department estimates that approximately 110 Louisiana facilities have the potential to emit any one of these toxic air pollutants and may be required to install additional controls as a result of the more stringent AAS. The upper limit of the number of controls to be installed would be no larger than 1650 (110 x 15) instances of new control equipment or new ductwork installed on an already existing control. For the cost estimate, the assumption is that 1/3 of the facilities will require new control equipment and 2/3 can route these emissions to existing control equipment by installing new ductwork. Equipment costs shown below are estimated with the assistance of the EPA Air Pollution Cost Control Manual, January 2002, http://www.epa.gov/ttn/catc/dir1/c_allchs.pdf. These costs are not facility-specific and may only provide an order of magnitude.

Control Equipment Type	Estimated Average Total Capital Cost ¹	Estimated Average Annual Operating Cost ¹
Carbon absorption	\$300,000	\$80,000
Condenser	\$80,000	No estimate—some costs recouped
Incinerator	\$500,000 - \$1,200,000	\$300,000 - \$400,000
Wet scrubber	\$80,000	\$275,000
Electrostatic precipitator (ESP)	\$2,000,000	\$550,000
Install new ductwork	\$20,000	Negligible

¹ Cost in 1993 dollars

The equation below assumes that 2/3 of the facilities install new ductwork to direct emissions to an existing control.

$2/3 \times 1650 \times \$20,000 = \$22,000,000$ (estimated cost for installing new ductwork to existing control devices)
--

Assume the remaining 1/3 facilities chose control equipment types uniformly; that is, equal numbers chose carbon absorption units, condensers, incinerators, wet scrubbers, or ESPs. The number of facilities choosing each control equipment option would be 1/3 x 1/5 x 1650. For example:

$1/3 \times 1/5 \times 1650 \times \$300,000 = \$33,000,000$ (estimated cost for installation of carbon absorbers)

Control Equipment Type	Estimated Total Capital Cost	Estimated Annual Operating Cost per Facility
Install new ductwork	\$22,000,000	Negligible
Carbon absorbers	\$33,000,000	\$80,000
Condensers	\$8,800,000	No estimate—some costs recouped

Control Equipment Type	Estimated Total Capital Cost	Estimated Annual Operating Cost per Facility
Incinerators	\$55,000,000 - \$132,000,000	\$300,000 - \$400,000
Wet scrubbers	\$8,800,000	\$275,000
ESPs	\$220,000,000	\$550,000

For all facilities combined, the estimated total capital cost ranges from \$347,600,000 to \$424,600,000, with estimated annual operating expenses of \$132,550,000 to \$143,550,000 (110 x (80,000 + (300,000 to 400,000) + 275,000 + 550,000).

The department conducted screening modeling which indicates that only 28 facilities or 34 facility-AAS combinations (since some facilities failed the department's screening modeling for more than one pollutant) may be required to install additional controls to meet the revised standards for any one toxic air pollutant. Previously it was determined that 1650 represented the maximum number of Louisiana facility-AAS combinations. The screening modeling eliminates all of the 1650 except for 34. Therefore, 34/1650 x the range of capital cost, or \$7,162,667 to \$8,749,333, and 34/1650 x the range of annual operating cost, or \$2,731,333 to \$2,958,000, provides an estimate of the total cost for compliance with the revised standards. Converting to present day dollars, the range of capital costs becomes \$9,993,036 to \$12,206,682 and the range of operating costs becomes \$3,810,635 to \$4,126,870.

The facilities that cannot meet the revised AAS at their property line may still be granted a waiver from control requirements if they can demonstrate that: (1) compliance with the standards would be economically infeasible; (2) residual emissions would not cause significant harm to the environment or public health; and (3) the facility's emissions are controlled to a level that meets the Maximum Achievable Control Technology.

Conclusion

The department believes that the benefits of enhanced environmental and public health protection outweigh the costs of the Rule. Therefore, the Rule is the most cost-effective alternative to achieve these benefits.

Herman Robinson, CPM
Executive Counsel

0709#031

POTPOURRI

**Office of the Governor
Board of River Port Pilot Commissioners and Examiners
Calcasieu River Waterway**

Recommendation No. 2007-001-A
Additional Pilots for the Calcasieu River Ship Channel

WHEREAS, the Board of River Port Pilot Commissioners and Examiners (Calcasieu) ("Board") heard and received the report of Martin Moore-Ede, M.D., Ph.D., with Circadian International, Inc. revised August 14, 2007; and

WHEREAS, in a public meeting duly noticed in accordance with law, taken public comment on the above study; and

WHEREAS, the board has determined that a need presently exists to increase the number of pilots in order to safely and adequately handle vessel traffic on the Calcasieu River Ship Channel ("Channel"); and

WHEREAS, the board has determined that the above increase is needed to provide safe, adequate, and efficient transit of vessel traffic on the Channel.

NOW THEREFORE, it is hereby ordered and directed as follows:

SECTION 1: In accordance with and furtherance of the determination of the Board of Commissioners of Board of River Port Pilot Commissioners and Examiners (Calcasieu) adopted by Resolution on August 15, 2007, an additional 2 pilots shall be hired for the Calcasieu River Ship Channel.

SECTION 2: This recommendation is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Board of Commissioners of the Board of River Port Pilot Commissioners and Examiners (Calcasieu).

THUS DONE AND SIGNED at Lake Charles, Louisiana, on this twenty-ninth day of August, 2007.

Brett Palmer
President

0709#081

POTPOURRI

Office of the Governor Board of River Port Pilot Commissioners and Examiners Calcasieu River Waterway

Resolution No. 2007-001

A RESOLUTION authorizing an increase in the authorized number of pilots for the Calcasieu River Ship Channel.

NOW THEREFORE be it resolved by the Board of Commissioners of the Board of River Port Pilot Commissioners and Examiners (Calcasieu) in special session convened that:

SECTION 1: After considering the study and presentation of Martin Moore-Ede, M.D., Ph.D. with Circadian International, Inc. revised August 14, 2007, and public comments received at the specially called meeting of the board on August 15, 2007, the Board of Commissioners of the Board of River Port Pilot Commissioners and Examiners (Calcasieu) does hereby authorize the hiring of 2 additional pilots thereby increasing the authorized number of pilots for the Calcasieu River Ship Channel from 16 to 18.

SECTION 2: Further, the Board of Commissioners of the Board of River Port Pilot Commissioners and Examiners (Calcasieu) does hereby authorize its president to take all appropriate steps necessary to ensure that this resolution is fully carried out, including the issuance of an order of the board sitting for the provisions of this resolution.

THUS PASSED AND ADOPTED at Lake Charles, Louisiana, on this fifteenth day of August, 2007.

Brett Palmer
President

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of a resolution adopted by the Board Commissioners of the Board of River Port Pilot Commissioners and Examiners (Calcasieu) in special session convened on this fifteenth day of August, 2007.

Daryl Didier
Secretary

0709#082

POTPOURRI

Office of the Governor Oil Spill Coordinator's Office

Duck Lake Oil and Gas Field Crude Oil Discharge Draft
Damage Assessment and Restoration Plan

Action: Notice of availability of a Draft Damage Assessment and Restoration Plan (Draft DARP) with a 30-day public review and comment period.

Agencies: Louisiana Oil Spill Coordinator's Office, Office of the Governor (LOSCO); Louisiana Department of Environmental Quality (LDEQ); and Louisiana Department of Wildlife and Fisheries (LDWF).

Authorities: The Oil Pollution Act of 1990 (OPA) (33 USC 2701 et seq.) and the Louisiana Oil Spill Prevention and Response Act of 1991 (OSPRA) (La. Rev. Stat. 30:2451 et seq.) are the principal federal and state statutes, respectively, authorizing federal and state agencies and tribal officials to act as natural resource trustees for the recovery of damages for injuries to trust resources and services resulting from oil-spill incidents in Louisiana. In accordance with OPA and OSPRA, the agencies listed above (hereafter referred to as the "Trustees") have conducted a Natural Resource Damage Assessment (NRDA) for the unauthorized discharge of crude oil into the Duck Lake Oil and Gas Field, located in St. Martin Parish, Louisiana, on or about December 4, 2002 (hereafter referred to as the "the incident"), in which Hilcorp Energy Company (Hilcorp) was identified by the Trustees as the Responsible Party.

Summary: Pursuant to 15 C.F.R. § 990.23 and 15 C.F.R. § 990.55(c) and La. Admin. Code 43:XXIX, Chapter 1, notice is hereby given that a document entitled, "Draft Damage Assessment and Restoration Plan for the St. Martin Parish Duck Lake Oil and Gas Field Oil Spill" will become available for public review and comment on September 20, 2007. The Draft DARP was prepared by the Trustees to address injuries to natural resources and services resulting from the incident. On September 20, 2004, the Trustees published a Notice of Intent (NOI) in the *Louisiana Register* (Vol. 30, No. 09, pp. 2214-2215) to conduct restoration planning for the incident in order to develop restoration

alternatives that will restore, replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of the incident. The Draft DARP identifies the natural resources and services that were determined to be injured by the incident, describes the assessment procedures used to quantify injury, outlines the scaling techniques and restoration alternative selection process, and presents the proposed plan to restore, replace, or acquire resources or services equivalent to those lost as a basis for compensating the public for injuries to natural resources and services resulting from the incident. The Trustees will consider comments received during the public comment period before finalizing the DARP. Public review of the Draft DARP is consistent with all State and Federal laws and regulations that apply to the NRDA process, including Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. § 2706; the regulations for NRDA under OPA, 15 C.F.R. Part 990; Section 2480 of the Louisiana Oil Spill Prevention and Response Act (OSPRA), La. Rev. Stat. 30:2480; and the regulations for NRDA under OSPRA, La. Admin. Code 43:XXIX, Chapter 1.

Interested members of the public are invited to view the Draft DARP via the internet at <http://www.losco.state.la.us> (look under News Flash for Duck Lake Oil Spill) or by requesting a copy of the document from Gina Muhs Saizan at the address provided below:

Gina Muhs Saizan
Louisiana Oil Spill Coordinator's Office, Office of the Governor
150 Third Street, Suite 405
Baton Rouge, LA 70801
gina.saizan@la.gov

Comment submittals: Comments must be submitted in writing or digitally to Gina Muhs Saizan on or before the end of the 30-day comment period.

For further information: Contact Gina Muhs Saizan at (225) 219-5800 or by email at gina.saizan@la.gov.

Roland Guidry
Oil Spill Coordinator

0709#042

POTPOURRI

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

Benchmark Benefit Package

The Health Care Reform Act of 2007, Act 243 of the 2007 Regular Session of the Louisiana Legislature, directed the Department of Health and Hospitals to lead the initiative to improve health care outcomes in Louisiana by developing and implementing a health care delivery system that provides a continuum of evidence-based, quality driven health care services. In compliance with Act 243, the department gives notice that it shall develop and implement

a health care delivery system known as Louisiana Health First which shall consist of a medical home system of care for low-income uninsured citizens of the state.

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

0709#076

POTPOURRI

**Department of Labor
Office of Workers' Compensation**

Average Weekly Wage Rate

Pursuant to Act 583 of the Regular session of the 1975 Louisiana Legislature, this state's average weekly wage upon which the maximum workers' compensation weekly benefit amount will be based, effective September 1, 2007 has been determined by the Department of Labor to be \$696.

This information updates R.S. 23:1202 of the Louisiana Workers' Compensation Act.

	Average Weekly Wage	Maximum Comp	Minimum Comp
Sept 1, 1985 - Aug 31, 1986	339.24	254.00	68.00
Sept 1, 1986 - Aug 31, 1987	347.65	261.00	70.00
Sept 1, 1987 - Aug 31, 1988	348.80	262.00	70.00
Sept 1, 1988 - Aug 31, 1989	356.40	267.00	71.00
Sept 1, 1989 - Aug 31, 1990	367.90	276.00	74.00
Sept 1, 1990 - Aug 31, 1991	376.02	282.00	75.00
Sept 1, 1991 - Aug 31, 1992	393.08	295.00	79.00
Sept 1, 1992 - Aug 31, 1993	409.30	307.00	82.00
Sept 1, 1993 - Aug 31, 1994	424.91	319.00	85.00
Sept 1, 1994 - Aug 31, 1995	430.21	323.00	86.00
Sept 1, 1995 - Aug 31, 1996	440.55	330.00	88.00
Sept 1, 1996 - Aug 31, 1997	454.67	341.00	91.00
Sept 1, 1997 - Aug 31, 1998	466.57	350.00	93.00
Sept 1, 1998 - Aug 31, 1999	489.95	367.00	98.00
Sept 1, 1999 - Aug 31, 2000	512.47	384.00	102.00
Sept 1, 2000 - Aug 31, 2001	517.93	388.00	104.00
Sept 1, 2001 - Aug 31, 2002	530.43	398.00	106.00
Sept 1, 2002 - Aug 31, 2003	554.31	416.00	111.00
Sept 1, 2003 - Aug 31, 2004	572.53	429.00	114.00
Sept 1, 2004 - Aug 31, 2005	584.40	438.00	117.00
Sept 1, 2005 - Aug 31, 2006	605.46	454.00	121.00
Sept 1, 2006 - Aug 31, 2007	637.19	478.00	127.00
Sept.1, 2007 - Aug 31, 2008	696.00	522.00	139.00

Actual wages are to be paid if the wages are less than the minimum.

Approved "Mileage Rate" as of July 1, 2007 is \$0.44 per mile.

Karen Reiners Winfrey
Assistant Secretary/Director

0709#051

POTPOURRI

**Department of Labor
Office of Workers' Compensation**

Weekly Compensation Benefits Limits

Pursuant to R.S. 23:1202 and based on the statewide average weekly wage as determined by the Department of Labor, the following limits shall apply to weekly compensation benefits for claimants injured during the period September 1, 2007 through August 31, 2008.

Average Weekly Wage	Maximum Compensation	Minimum Compensation	Mileage Reimbursement
\$696.00	\$522.00	\$139.00	.44cents per mile*

*Effective July 1, 2007 the mileage reimbursement is .44 cents per mile pursuant to LA R.S. 23:1203 D.

Karen Reiners Winfrey
Assistant Secretary/Director

0709#052

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Lyon Operating Co., Inc.	Athens	S	Hoss Sur; Pixley	001	186364
Lyon Operating Co., Inc.	Athens	S	Hoss Sul; Gandy A	001	187183
Lyon Operating Co., Inc.	Athens	S	Hoss Subb; Liles	001	192842
Lyon Operating Co., Inc.	Athens	S	Hoss Suzz; Rabb et al	001	195051
Lyon Operating Co., Inc.	Athens	S	Vua; Tuggle	001	210428
Petroleum Inc- J Franks & Crow Drill	Vidalia	M	Irene Newell Shields	001	69087
Petroleum Inc- J Franks & Crow Drill	Vidalia	M	Irene Newell Shields	002	70107 (30)

Operator	Field	District	Well Name	Well Number	Serial Number
F. A. Callery, Inc.	Wildcat-No La Shreveport Dist	S	C E Ellerbe	001	34125
Atlas Oil and Refining Company	Wildcat-So La Houma Dist	L	Wheeler & Wortham	001	32431
G.G. Cornwell	Vidalia	M	Shields	001	118206 (30)

James H. Welsh
Commissioner

0709#061

POTPOURRI

**Department of Natural Resources
Office of Conservation
Injection and Mining Division**

Hearing Notice—Docket No. IMD 2007-11

Pursuant to the provisions of the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950 as amended, and the provisions of Statewide Order No. 29-B, notice is hereby given that the Commissioner of Conservation will conduct a hearing at 6:00 p.m., Thursday, November 8, 2007, in the Jefferson Davis Police Jury Meeting Room at the Sidney E. Briscoe Jr. Building, 304 N State Street, Jennings, LA.

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application of Charles Holston, Inc., P.O. Box 728, Jennings, LA. The applicant requests approval from the Office of Conservation to construct and operate a commercial deep well injection waste disposal facility to receive, store and dispose of exploration and production waste (E&P Waste) fluids. The facility is located in Section 009, Township 10 South, Range 03 West in Jefferson Davis Parish, near Jennings, LA.

The application is available for inspection by contacting Mr. Stephen Pennington, Office of Conservation, Injection and Mining Division, Room 817 of the LaSalle Building, 617 North Third Street, Baton Rouge, LA, or by visiting the Jefferson Davis Parish Police Jury in Jennings, LA, or the Jefferson Davis Parish Library in Jennings, LA. Information may be received by calling Mr. Stephen Pennington at (225) 342-7334.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Thursday, November 15, 2007, at the Baton Rouge Office. Comments should be directed to:

Office of Conservation
Injection and Mining Division
Post Office Box 94275
Baton Rouge, Louisiana 70804-9275
Re: Docket No. IMD 2007-11

Commercial Facility
Jefferson Davis Parish

James H. Welsh
Commissioner

0709#028

POTPOURRI

**Department of Natural Resources
Office of the Secretary**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that eight claims in the amount of \$33,468.29 were received for payment during the period August 1, 2007 - August 31, 2007.

There were eight claims paid and zero claims denied. Latitude/Longitude Coordinates of reported underwater obstructions are:

2907.191	9006.514	LaFourche
2910.400	9007.611	Jefferson
2916.919	8955.264	Jefferson
2917.436	8951.924	Plaquemines
2917.521	8957.257	Jefferson
2920.566	8947.772	Jefferson
2939.833	9007.539	Jefferson
2948.276	8948.754	St. Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Scott A. Angelle
Secretary

0709#044

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