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Executive Orders

EXECUTIVE ORDER KBB 06-32

Accountability for Line Item Appropriations

WHEREAS, the Louisiana Legislature annually appropriates sums commonly referred to as "Line Item Appropriations" to non-state entities, quasi-public entities, and private agencies and entities for public purposes;

WHEREAS, it is the responsibility of executive branch agencies to administer payments pursuant to legislative Line Item Appropriations;

WHEREAS, Article VII, Section 14 of the Louisiana Constitution of 1974 (hereafter "Art. VII, §14"), expresses the general prohibition that "the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private";

WHEREAS, Line Item Appropriations are itemized in the General Appropriation Bill (HB1) of each regular session of the Louisiana Legislature, or in supplemental appropriation bills, as items within the budgets of various executive branch agencies, or in what is commonly known as Schedule 20 of HB1; and

WHEREAS, it is in the best interest of the state of Louisiana to insure that payments pursuant to Line Item Appropriations are carefully administered to assure that funds are utilized to accomplish the anticipated public purposes and to avoid constitutionally prohibited donations;

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

SECTION 1: Line Item Appropriations require a cooperative endeavor agreement or contract between the recipient and an executive branch state agency to satisfy the provisions of Art. VII, §14. In addition to the requirements of this Order, cooperative endeavor agreements must comply with the provisions of Executive Order No. KBB 2005-14, issued on May 27, 2005.

SECTION 2: Cooperative endeavor agreements or contracts for Line Item Appropriations shall include the following information:

A. The legal name and mailing address of the recipient entity, and, if the entity is non-public, a description of the legal status of the entity. (Any private entity required to register with the Secretary of State Office must be in good standing with that Office);

B. The names and addresses of all officers and directors of any non-public recipient entity. Additionally, the entity shall provide the names and addresses of its executive director, chief executive officer, or other person responsible for the day-to-day operations of the entity, and the key personnel responsible for the program or functions funded through the line item appropriation;

C. A listing of any person receiving any thing of economic value from any recipient entity if that person is a member of the immediate family of a state elected or appointed official. The listing shall include the amount of the

thing of economic value received, the position held by the immediate family member in the entity, if applicable, and the public position held by the official. (If the listing indicates any relationship which may be a possible violation of the Code of Governmental Ethics, R.S. 42:1101, et seq., the state agency shall seek an opinion from the Board of Ethics as to the propriety of proceeding with the agreement.);

D. A detailed description of the public purpose sought to be achieved through the Line Item Appropriation;

E. A comprehensive budget, provided to the agency and the legislative auditor, showing all anticipated uses of the Line Item Appropriation, additional sources of revenue for the program or project funded by the appropriation, an estimate of the duration of the project, and a plan showing specific goals and objectives, including measures of performance;

F. A plan to monitor compliance with the terms of the cooperative endeavor agreement authorizing the expenditure of the Line Item Appropriation, assigning a particular person within the agency to be responsible for monitoring the agreement. Written reports must be provided to the agency at least every three (3) months concerning the use of the Line Item Appropriation and the specific goals and objectives for the use of the appropriation; and

G.1. A certification that the entity has no outstanding audit issues or findings or that the entity is working with appropriate governmental agencies to resolve those issues or findings; and

2. For those Schedule 20 Line Item Appropriations, the Division of Administration shall provide, pursuant to written agreement, staff support and technical assistance, as requested by the Office of the Treasurer, to confect and monitor cooperative endeavor agreements or contracts.

SECTION 3: Executive branch agencies are prohibited from making disbursements pursuant to Line Item Appropriations until the cooperative endeavor agreement or contract has received final approval of the Office of Contractual Review within the Division of Administration. Final approval shall not be granted unless all of the information required pursuant to Section 2 of this Order has been provided.

SECTION 4: Executive branch agencies shall monitor disbursements pursuant to Line Item Appropriations on a quarterly basis. Under circumstances such that the recipient entity has not demonstrated substantial progress towards goals and objectives, based on established measures of performance, further disbursements shall be discontinued until substantial progress is demonstrated or the entity has justified to the satisfaction of the agency reasons for the lack of progress. If the transferring agency determines that the recipient failed to use the Line Item Appropriation within the estimated duration of the project or failed to reasonably achieve its specific goals and objectives, without sufficient justification, the agency shall demand that any unexpended funds be returned to the state treasury unless approval to retain the funds is obtained from the Division of

Administration and the Joint Legislative Committee on the Budget.

SECTION 5: Executive branch agencies may call upon the Office of the Legislative Auditor and/or the Office of State Inspector General to assist the agency in determining whether Line Item Appropriations are being or have been properly expended.

SECTION 6: All departments, commissions, boards, offices, entities, agencies, and officers of the state of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in implementing the provisions of this Order.

SECTION 7: The provisions of this Order shall not be applicable to Line Item Appropriations that satisfy the criteria enumerated in Section 18(B)(2) of HB1 of the 2006 Regular Session of the Louisiana Legislature.

SECTION 8: This Order is effective upon signature and shall continue 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 12th day of July, 2006.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0608#067

EXECUTIVE ORDER KBB 06-33

Accountability for Line Item Appropriations
Amends Executive Order No. KBB 06-32

WHEREAS, Executive Order No. KBB 2006-32 was issued on July 12, 2006, to insure that payments pursuant to Line Item Appropriations are carefully administered to assure that funds are utilized to accomplish the anticipated public purposes and to avoid constitutionally prohibited donations;

WHEREAS, it is necessary to amend Executive Order No. KBB 2006-32, to clarify its prospective application;

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

SECTION 1: Section 7 of Executive Order No. KBB 2006-32, issued on July 12, 2006, is amended as follows:

The provisions of this Order shall be applicable to Line Item Appropriations for Fiscal Year 2006-2007 and thereafter, but shall not be applicable to such appropriations that satisfy the criteria enumerated in Section 18(B)(2) of HB 1 of the 2006 Regular Session of the Louisiana Legislature.

SECTION 2: All other sections, subsections, and paragraphs of Executive Order No. KBB 2006-32, issued on July 12, 2006, shall remain in full force and effect.

SECTION 3: This Order is effective upon signature and shall continue 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 3rd day of August, 2006.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0608#068

EXECUTIVE ORDER KBB 06-34

Louisiana Emergency Operations Plan

WHEREAS, the state of Louisiana must be prepared to respond in a coordinated, effective, and efficient manner to all emergencies and disasters to which it is subjected;

WHEREAS, it is the policy of the state of Louisiana for all homeland security and emergency preparedness functions to follow the principles outlined in the National Incident Management System, or its successor, R.S. 29:722(C); and

WHEREAS, the state of Louisiana will best achieve effective coordinated emergency planning by updating the state's current emergency operations plan through the replacement of Executive Order No. KBB 2005-18, issued on July 11, 2005, and by the Governor's Office of Homeland Security and Emergency Preparedness updating its emergency operations plan;

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

SECTION 1:

A. The director of the Governor's Office of Homeland Security and Emergency Preparedness (hereafter "director"), shall direct the state of Louisiana's emergency and/or disaster operations; and

B. The director, or the director's designee, shall also coordinate the activities of all non-state agencies, departments, and/or organizations involved in emergency management within the state of Louisiana.

SECTION 2:

A. The director shall supplement the provisions of this Order by prescribing rules, regulations, and procedures, which combined with the revisions of this Order, shall constitute the Louisiana Emergency Operations Plan (hereafter "Plan");

B. The Plan shall follow the principles outlined in the National Incident Management System, or its successor, and also provide for the emergency operations that may be implemented should an emergency and/or disaster strike the state of Louisiana or an area within the state of Louisiana; and

C. The Plan shall be binding on all departments, commissions, boards, agencies, organizations and employees

of the state of Louisiana, and on all local governments or political subdivisions of the state authorized or directed to conduct homeland security and emergency management operations.

SECTION 3:

A. The director shall control the activation and/or implementation of the Plan and the conclusion and/or deactivation of the Plan;

B. The director shall also control the activation and deactivation of the State Emergency Operations Center (hereafter "Center"); and

C. The activation of the Center shall constitute the implementation of the Plan.

SECTION 4: The departments, offices, agencies and organizations of the state of Louisiana government have primary and support responsibilities for the following Emergency Support Functions (ESF):

ESF	ANNEX	DEPARTMENT/AGENCY	SUPPORT		
ESF 1	Transportation	Department of Transportation and Development	P		
		Louisiana National Guard	S		
		Department of Agriculture and Forestry	S		
		Department of Corrections	S		
		Department of Education	S		
		Office of the Governor - Office of Elderly Affairs	S		
		Department of Health and Hospitals	S		
		Louisiana Public Service Commission	S		
		Louisiana Board of Regents	S		
		Louisiana State Police	S		
		Department of Wildlife and Fisheries	S		
		Volunteer Organizations	S		
		ESF 2	Communications	Governor's Office of Homeland Security and Emergency Preparedness	P
				Louisiana National Guard	P
Louisiana State Police	P				
Department of Agriculture and Forestry	S				
Department of Corrections	S				
Department of Culture, Recreation and Tourism	S				
Department of Economic Development	S				
Department of Education	S				
Department of Environmental Quality	S				
Office of the Governor - Division of Administration	S				
Office of the Governor - Office of Elderly Affairs	S				
Office of the Governor - Oil Spill Coordinator	S				
Louisiana State University- Health Sciences Center	S				
Department of Health and Hospitals	S				
Department of Justice	S				
Department of Labor	S				
Louisiana Public Service Commission	S				
Louisiana Board of Regents	S				
Department of Revenue	S				
Department of Social Services	S				
Department of Transportation and Development	S				
Department of Wildlife and Fisheries	S				
Volunteer Organizations	S				

ESF	ANNEX	DEPARTMENT/AGENCY	SUPPORT
ESF 3	Public Works and Engineering	Department of Transportation and Development	P
		Louisiana National Guard	S
		Office of the Governor - Division of Administration	S
		Department of Health and Hospitals	S
		Department of Natural Resources	S
		Volunteer Organizations	S
ESF 4	Firefighting	Department of Agriculture and Forestry	P
		Louisiana National Guard	S
		Department of Environmental Quality	S
		Louisiana State Fire Marshal	S
		Department of Transportation and Development	S
		Department of Wildlife and Fisheries	S
ESF 5	Emergency Management	Volunteer Organizations	S
		Governor's Office of Homeland Security and Emergency Preparedness	P
		Louisiana National Guard	S
		Department of Agriculture and Forestry	S
		Department of Corrections	S
		Department of Culture, Recreation and Tourism	S
		Department of Economic Development	S
		Department of Education	S
		Department of Environmental Quality	S
		Office of the Governor - Division of Administration	S
		Office of the Governor - Office of Elderly Affairs	S
		Office of the Governor - Office of Indian Affairs	S
		Office of the Governor - Oil Spill Coordinator	S
		Louisiana State University- Health Sciences Center	S
		Department of Health and Hospitals	S
		Department of Justice	S
		Department of Labor	S
		Department of Natural Resources	S
		Louisiana Public Service Commission	S
		Louisiana Board of Regents	S
Department of Revenue	S		
Secretary of State	S		
Department of Social Services	S		
Louisiana State Police	S		
Department of Transportation and Development	S		
Department of the Treasury	S		
Department of Wildlife and Fisheries	S		
Volunteer Organizations	S		
ESF 6	Mass Care, Housing and Human Services	Department of Social Services	P
		Department of Corrections	P
		Governor's Office of Homeland Security and Emergency Preparedness	S
		Louisiana Family Recovery Corps	S
		Louisiana Housing Finance Agency	S
		Louisiana National Guard	S
		Department of Agriculture and Forestry	S
		Department of Culture, Recreation and	S

ESF	ANNEX	DEPARTMENT/AGENCY	SUPPORT
		Tourism	
		Louisiana State Fire Marshal	S
		Office of the Governor - Office of Elderly Affairs	S
		Department of Health and Hospitals	S
		Louisiana State University- Health Sciences Center	S
		Department of Insurance	S
		Department of Labor	S
		Department of Natural Resources	S
		Louisiana Board of Regents	S
		Department of Veterans Affairs	S
		Department of Revenue	S
		Volunteer Organizations	S
ESF 7	Resource Support	Governor's Office of Homeland Security and Emergency Preparedness	P
		Louisiana National Guard	P
		Department of Agriculture and Forestry	S
		Department of Culture, Recreation and Tourism	S
		Department of Economic Development	S
		Department of Environmental Quality	S
		Office of the Governor - Division of Administration	S
		Louisiana State University- Health Sciences Center	S
		Department of Health and Hospitals	S
		Department of Labor	S
		Department of Natural Resources	S
		Louisiana Board of Regents	S
		Department of Social Services	S
		Louisiana State Police	S
		Department of Transportation and Development	S
		Department of the Treasury	S
		Volunteer Organizations	S
ESF 8	Public Health & Medical Services	Department of Health and Hospitals	P
		Louisiana National Guard	S
		Department of Agriculture and Forestry	S
		Department of Corrections	S
		Department of Environmental Quality	S
		Louisiana State University- Health Sciences Center	S
		Louisiana Board of Regents	S
		Louisiana State Fire Marshal	S
		Department of Transportation and Development	S
		Department of Veterans Affairs	S
		Volunteer Organizations	S
ESF 9	Search & Rescue	Department of Wildlife and Fisheries	P
		Louisiana National Guard	S
		Department of Agriculture and Forestry	S
		Department of Corrections	S
		Department of Culture, Recreation and Tourism	S
		Louisiana State Fire Marshal	S
		Louisiana State Police	S
		Department of Transportation and Development	S
		Louisiana State University- Health Sciences Center	S
		Volunteer Organizations	S

ESF	ANNEX	DEPARTMENT/AGENCY	SUPPORT
ESF 10	Oil Spill, Hazardous Materials and Radiological	Office of the Governor - Oil Spill Coordinator	P
		Louisiana State Police	P
		Department of Environmental Quality	P
		Governor's Office of Homeland Security and Emergency Preparedness	S
		Louisiana National Guard	S
		Department of Agriculture and Forestry	S
		Louisiana State Fire Marshal	S
		Louisiana State University- Health Sciences Center	S
		Department of Health and Hospitals	S
		Department of Natural Resources	S
		Department of Transportation and Development	S
		Department of Wildlife and Fisheries	S
		Volunteer Organizations	S
		ESF 11	Agriculture
Louisiana National Guard	S		
Department of Corrections	S		
Department of Environmental Quality	S		
Department of Health and Hospitals	S		
Louisiana Board of Regents	S		
Louisiana State University- Health Sciences Center	S		
Department of Transportation and Development	S		
ESF 12	Energy	Department of Wildlife and Fisheries	S
		Volunteer Organizations	S
		Department of Natural Resources/Intrastate Natural Gas	P
		Louisiana Public Service Commission/Power	P
		Louisiana National Guard	S
ESF 13	Public Safety & Security	Louisiana State Police	P
		Department of Justice	P
		Louisiana National Guard	S
		Department of Agriculture and Forestry	S
		Department of Corrections	S
		Department of Culture, Recreation and Tourism	S
		Office of the Governor - Division of Administration	S
		Louisiana Board of Regents	S
		Department of Revenue	S
		Department of Transportation and Development	S
		Department of Wildlife and Fisheries	S
ESF 14	Community, Recovery, Mitigation and Economic Stabilization	Louisiana Youth Services	S
		Governor's Office of Homeland Security and Emergency Preparedness	P
		Department of Economic Development	P
		Louisiana National Guard	S
		Department of Agriculture and Forestry	S
		Department of Culture, Recreation and Tourism	S
		Department of Education	S
		Department of Environmental Quality	S
		Office of the Governor - Division of Administration	S
		Office of the Governor - Office of Financial Institutions	S

ESF	ANNEX	DEPARTMENT/AGENCY	SUPPORT
		Louisiana State University- Health Sciences Center	S
		Department of Health and Hospitals	S
		Department of Insurance	S
		Department of Justice	S
		Department of Labor	S
		Department of Natural Resources	S
		Louisiana Public Service Commission	S
		Louisiana Board of Regents	S
		Department of Revenue	S
		Department of Social Services	S
		Secretary of State	S
		Louisiana State Police	S
		Department of Transportation and Development	S
		Department of the Treasury	S
		Volunteer Organizations	S
ESF 15	Emergency Public	Governor's Office of Homeland Security and Information Emergency Preparedness	P
		Louisiana National Guard	S
		Department of Agriculture and Forestry	S
		Department of Corrections	S
		Department of Culture, Recreation and Tourism	S
		Department of Economic Development	S
		Department of Education	S
		Department of Environmental Quality	S
		Louisiana State Fire Marshal	S
		Office of the Governor - Division of Administration	S
		Office of the Governor - Office of Elderly Affairs	S
		Office of the Governor - Office of Financial Institutions	S
		Office of the Governor - Office of Indian Affairs	S
		Office of the Governor - Oil Spill Coordinator	S
		Louisiana State University- Health Sciences Center	S
		Department of Health and Hospitals	S
		Department of Justice	S
		Department of Insurance	S
		Department of Labor	S
		Department of Natural Resources	S
		Louisiana Public Service Commission	S
		Louisiana Board of Regents	S
		Department of Revenue	S
		Department of Social Services	S
		Secretary of State	S
		Louisiana State Police	S
		Department of Transportation and Development	S
		Department of the Treasury	S
		Department of Wildlife and Fisheries	S
		Volunteer Organizations	S
ESF 16	Military Support to Civilian Affairs	Louisiana National Guard	P
		Governor's Office of Homeland Security and Emergency Preparedness	S

SECTION 5: The head of each department, office, agency, and organization (hereafter "department") identified in Section 4 of this Order shall designate both an emergency coordinator and an alternate emergency coordinator to act on the department's behalf during an emergency situation, and furnish the director with their names and all telephone numbers. The head of each department shall also designate a Continuity of Operations Plan (COOP) coordinator who will prepare and maintain plans, procedures, arrangements, and agreements to ensure that the organization will continue to carry out its mission in an emergency or disaster.

SECTION 6: The head of each department assigned a primary ESF responsibility in Section 4 of this Order shall submit implementing procedures to the director that set forth the department's procedures for carrying out its assigned emergency support functions. The head of each department shall submit annual updates of their implementing procedures to the director.

SECTION 7: The head of each department assigned a support ESF responsibility in Section 4 of this Order shall assist its primary department in the preparation of their procedures and/or any other documents necessary to support the Plan.

SECTION 8: The head of each department assigned a primary and/or a support ESF responsibility in Section 4 of this Order will:

A. Staff the Center with personnel during training exercises and emergencies as requested by the director;

B. Maintain and operate a 24-hour response capability in the department headquarters, or in the department's designated emergency operations center, when the Plan is implemented;

C. Participate in exercises of the Plan when scheduled by the director;

D. Participate in, and conduct, training essential to implementation of the department's assigned emergency service;

E. Conduct an annual internal review to update the details of the department's implementing procedures and advise the director of any needed modifications to the department's implementing procedures; and

F. Maintain logs, records, and a reporting system required by all state and federal laws, rules, and regulations.

SECTION 9: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of the provisions of this Order.

SECTION 10: Executive Order No. KBB 2005-18, issued on July 11, 2005, is hereby terminated and rescinded.

SECTION 11: This Order is effective upon signature and shall continue 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 3rd day of August, 2006.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0608#069

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner

Fluoroquinolones in Seafood (LAC 7:XXXV.147)

The Commissioner of Agriculture and Forestry hereby adopts the following Emergency Rule governing the testing and sale of seafood in Louisiana. 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 has promulgated these rules and regulations to implement standards relating to Fluoroquinolones in seafood that are consistent with standards adopted by the United States Food and Drug Administration, (FDA), regarding Fluoroquinolones in foods. All seafood sold in Louisiana must meet the standards set out in these regulations prior to distribution and sale of seafood in Louisiana.

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 immediately implement testing of seafood for Fluoroquinolones, to provide for the sale of seafood and any products containing seafood that are not contaminated with Fluoroquinolones. This Rule becomes effective upon signature, August 1, 2006, 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

§147. Fluoroquinolones in Seafood

Prohibited—Testing and Sale

A. Definitions

Food Producing Animals—both animals that are produced or used for food and animals that produce material used as food.

Geographic Area—a country, province, state, or territory or definable geographic region.

Seafood—any edible freshwater or saltwater fish or shellfish, whether whole, portioned, processed and any product containing seafood.

B. No seafood may be held, offered or exposed for sale, or sold in Louisiana if such seafood contains Fluoroquinolones.

C. No seafood that is harvested from or produced, processed or packed in a geographic area, that the commissioner declares to be a location where Fluoroquinolones is being used on or found in food producing animals or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E. No seafood from any such geographic area may be used, as an ingredient in any food held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E.

D. The commissioner may declare a geographic area to be a location where Fluoroquinolones is being used on or found in food producing animals or in products from such animals, based upon 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 that geographic area.

1. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

2. The commissioner may release any such geographic area from a previous declaration that Fluoroquinolones is being used on food producing animals in that location. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

E. Seafood that comes from a geographic area declared by the commissioner to be a location where Fluoroquinolones is being used on, or is found in food

producing animals or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana.

1. Each sample shall consist of a case per lot of seafood.

2. Each sample shall be identified as follows:

- a. any package label;
- b. any lot or batch numbers;
- c. the country, province and city of origin;
- d. the name and address of the importing company;
- e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

3. Sample Preparation

a. The laboratory shall randomly select 12 filets of fish from the case, remove any skin, and cut each filet in half. Use half of the sample for the original analysis portion and retain the other half of the sample in a freezer as a reserve. Thoroughly blend the halves of the filets to be tested.

b. For all other seafood take samples from 12 randomly selected areas of each case in an amount to equal approximately 1 pound. Remove any skin or shell and thoroughly blend the meat. After the sample is blended, split the sample in half, setting aside one-half for testing and reserving the other half in a freezer.

4. Sample Analysis

a. Remove for testing, approximately 2 grams from the portion of the sample being tested.

b. The sample is initially tested using liquid chromatography with florescent detection. Samples that test positive are to be retested for confirmation of the initial test result using liquid chromatography with electrospray mass spectroscopy.

c. The initial test shall conform to the test method authored by Roybal et al in the Journal of AOAC International, Volume 85, Number 6, 2002, page 1293, or current FDA methods. The confirmation testing shall conform to FDA LIB 4108 or current FDA methods.

d. Other methods for sampling, identification, sample preparation, testing and analysis may be used if expressly approved in writing by the commissioner.

5. Any qualified laboratory may perform the testing and analysis of the samples unless the laboratory is located in any geographic area that the commissioner has declared to be a location where Fluoroquinolones is being used on or found in food producing animals, or in products from such animals. The commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

6. The laboratory that tests and analyzes a sample or samples for Fluoroquinolones shall certify the test results in writing.

7. A copy of the certified test results along with the written documentation necessary to show the methodology used for the sampling, identification, sample preparation, testing and analysis of each sample shall be sent to and actually received by the department prior to the seafood being held for sale, offered or exposed for sale, or sold in Louisiana.

a. The test results and accompanying documentation must contain a test reference number.

b. The certified test results and the accompanying documentation must be in English and contain the name and address of the laboratory and the name and address of a person who may be contacted at the laboratory regarding the testing of the seafood.

8. Upon actual receipt by the department of a copy of the certified test results and written documentation required to accompany the certified test results then the seafood may be held, offered or exposed for sale, or sold in Louisiana, unless a written stop-sale, hold or removal order is issued by the commissioner.

9. A copy of the test results, including the test reference number, shall either accompany every shipment and be attached to the documentation submitted with every shipment of such seafood sent to each location in Louisiana or shall be immediately accessible to the department, upon request, from any such location.

F. Any person who is seeking to bring seafood that is required to be sampled and tested under this Section, into Louisiana, or who holds, offers or exposes for sale, or sells such seafood in Louisiana shall be responsible for having such seafood sampled and tested in accordance with Subsection E. Any such person must, at all times, be in full and complete compliance with all the provisions of this Section.

G. The commissioner may reject the test results for any seafood if the commissioner determines that the methodology used in sampling, identifying, sample preparation, testing or analyzing any sample is scientifically deficient so as to render the certified test results unreliable, or if such methodology was not utilized in accordance with, or does not otherwise meet the requirements of this Section.

H. In the event that any certified test results are rejected by the commissioner then any person shipping or holding the seafood will be notified immediately of such rejection and issued a stop-sale, hold or removal order by the commissioner. Thereafter, it will be the duty of any such person to abide by such order until the commissioner lifts the order in writing. Any such person may have the seafood retested in accordance with this Section and apply for a lifting of the commissioner's order upon a showing that the provisions of this Section have been complied with and that the seafood are certified as being free of Fluoroquinolones.

I. The department may inspect, and take samples for testing, any seafood, of whatever origin, being held, offered or exposed for sale, or sold in Louisiana.

J. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any seafood that does not meet the requirements of this Section. Any such order shall remain in place until lifted in writing by the commissioner.

K. The department may take physical possession and control of any seafood that violate the requirements of this Section if the commissioner finds that the seafood presents an imminent peril to the public health, safety and welfare and that issuance of a stop-sale, hold or removal order will not adequately protect the public health, safety and welfare.

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;
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.

M. All records and information regarding the distribution, purchase and sale of seafood or any food containing seafood from the listed geographic areas shall be maintained for two years and shall be open to inspection by the department.

N. Penalties for any violation of this Section shall be the same as and assessed in accordance with R. S. 3:4624.

O. The effective date of this Section is August 12, 2005.

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 32:

Bob Odom
Commissioner

0608#020

DECLARATION OF EMERGENCY

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Expedited Penalty Agreement
(LAC 33:I.801, 803, 805, and 807)(OS054E10)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement expedited penalty agreements.

This is a renewal and revision of Emergency Rule OS054E9, which was effective on March 20, 2006, and published in the *Louisiana Register* on April 20, 2006, and again on May 20, 2006 with a correction. This renewal of the Emergency Rule amends the violations, and adds a new violation, under all media; amends a reporting period under air quality violations; adds a solid waste violation; and amends the water quality violations.

The Emergency Rule will abate the delay in correcting minor and moderate violations of the Environmental Quality Act. Delays in enforcement reduce the effectiveness of the action, unnecessarily utilize resources, and slow down the enforcement process. In the past three years alone, the Enforcement Division has received 8,139 referrals and has issued 4,259 actions. Currently strained budget and resource issues pose imminent impairment to addressing minor and moderate violations. This Rule will provide an alternative penalty assessment mechanism that the department may

utilize, at its discretion, to expedite penalty agreements in appropriate cases. The report to the Governor by the Advisory Task Force on Funding and Efficiency of the Louisiana Department of Environmental Quality recommended this action as a pilot program. The legislature approved the report and passed Act 1196 in the 2003 Regular Session allowing the department to promulgate rules for the program. This Emergency Rule allows the operation of the pilot program to commence immediately, without the delay and inflexibility of a permanent rule. It will also allow the department to gather information to formulate a long-term rule and to evaluate the environmental and public health benefits and the social and economic costs of such a program in order to justify these requirements for the permanent rule.

This Emergency Rule is effective on July 18, 2006, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning OS054E10 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, and 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.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 8. Expedited Penalty Agreement

§801. Definitions

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

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

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

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

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

§803. Purpose

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

1. addresses common violations of minor or moderate gravity;

2. quantifies and assesses penalty amounts for common violations in a consistent, fair, and equitable manner;

3. ensures that the penalty amounts are appropriate, in consideration of the nine factors listed in R.S. 30:2025(E)(3)(a);

4. eliminates economic incentives for noncompliance for common minor and/or moderate violations; and

5. ensures expeditious compliance with environmental regulations.

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

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

§805. Applicability

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

B. Departmental Discretion. The secretary of the department or his designee, at his sole discretion, may propose an expedited penalty agreement for any violation described in LAC 33:I.807.A and considered in accordance with Subsection E of this Section. The expedited penalty agreement shall specify that the respondent waives any right to an adjudicatory hearing or judicial review regarding violations identified in the signed expedited penalty agreement. The respondent must concur with and sign the expedited penalty agreement in order to be governed by this Chapter and R.S. 30:2025(D).

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

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

E. Nine Factors for Consideration. An expedited penalty agreement may be used only when the following criteria for the nine factors for consideration are satisfied.

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

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

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

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

c. The violation is easily identifiable and corrected.

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

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

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

5. The Monetary Benefits Realized Through Noncompliance. The respondent's monetary benefit from noncompliance for the violation identified shall be considered. The intent of these regulations is to eliminate economic incentives for noncompliance.

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

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

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

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

F. Schedule. The respondent must return the signed expedited penalty agreement and payment for the assessed amount to the department within 30 days of the respondent's

receipt of the expedited penalty agreement. If the department has not received the signed expedited penalty agreement and payment for the assessed amount by the close of business on the thirtieth day after the respondent's receipt of the expedited penalty agreement, the expedited penalty agreement may be withdrawn at the department's discretion.

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

H. Additional Rights of the Department

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

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

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

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

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

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

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

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

§807. Types of Violations and Expedited Penalty Amounts

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

Expedited Penalties			
Violation	Citation	Amount	Frequency
ALL MEDIA			
Failure to provide timely notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition.	LAC 33:I.3917.A	\$500	Per occurrence
Failure to provide prompt notification of any unauthorized discharge that results in the contamination of the groundwaters of the state or that otherwise moves in, into, within, or on any saturated subsurface strata in accordance with LAC 33:I.3923.	LAC 33:I.3919.A	\$500	Per occurrence
Failure to provide timely written notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition.	LAC 33:I.3925.A	\$500	Per occurrence
AIR QUALITY			
40 CFR Part 70 General Permit conditions (Part K, L, M, or R): Failure to timely submit any applicable annual, semiannual, or quarterly reports.	LAC 33:III.501.C.4	\$500	Per occurrence
Failure to submit an Annual Criteria Pollutant Emissions Inventory in a timely and complete manner when applicable.	LAC 33:III.919	\$500	Per occurrence
Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable.	LAC 33:III.5107	\$500	Per occurrence
Control of Fugitive Emissions, sandblasting facilities: Failure to take all reasonable precautions to prevent particulate matter from becoming airborne.	LAC 33:III.1305.A	\$250	Per occurrence
Failure to provide notice of change of ownership within 45 days after the change.	LAC 33:III.517.G	\$200	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report as specified in a minor source permit.	LAC 33:III.501.C.4	\$250	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report (other than those specified elsewhere in this Section) as specified in a Part 70 (Title V) air permit.	LAC 33:III.501.C.4	\$350	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to submit an updated Emission Point List, Emissions Inventory Questionnaire (EIQ), emissions calculations, and certification statement as described in LAC 33:III.517.B.1 within seven calendar days after effecting any modification to a facility authorized to operate under a standard oil and gas permit.	LAC 33:III.501.C.4	\$750	Per occurrence/ emission point
Failure to submit the Title V permit renewal application at least six months prior to the date of expiration, applicable only when the renewal application is submitted prior to permit expiration and a renewal permit is issued on or before the expiration date.	LAC 33:III.507.E.4	\$1,000	Per occurrence
Failure to maintain records for glycol dehydrators subject to LAC 33:III.2116.	LAC 33:III.2116.F	\$250	Per occurrence
Failure to submit an initial perchloroethylene inventory report.	LAC 33:III.5307.A	\$250	Per occurrence
Failure to submit perchloroethylene usage reports by July 1 for the preceding calendar year.	LAC 33:III.5307.B	\$250	Per occurrence
Stage II Vapor Recovery			
Note: LAC 33:III.2132 is only applicable to subject gasoline dispensing facilities in the parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee.			
Failure to submit an application to the administrative authority prior to installation of the Stage II vapor recovery system.	LAC 33:III.2132.B.6	\$500	Per occurrence
Failure to have at least one person trained as required by the regulations.	LAC 33:III.2132.C	\$300	Per occurrence
Failure to test the vapor recovery system prior to start-up of the facility and annually thereafter.	LAC 33:III.2132.D	\$750	Per occurrence
Failure to post operating instructions on each pump.	LAC 33:III.2132.E	\$100	Per occurrence
Failure to maintain equipment and tag defective equipment "out of order."	LAC 33:III.2132.F.1 and 3-4	\$500	Per inspection
Failure to perform daily inspections and accurately record results.	LAC 33:III.2132.F.2	\$300	Per inspection
Failure to maintain records on-site for at least two years and present them to an authorized representative upon request.	LAC 33:III.2132.G.1-7	\$300	Per compliance inspection
Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site.	LAC 33:III.905	\$100	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
HAZARDOUS WASTE			
Used Oil			
Failure of a used oil generator to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4013.E	\$500	Per occurrence
Failure of a used oil transfer facility to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4035.H	\$500	Per occurrence
Failure of a used oil processor or re-refiner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4049.G	\$500	Per occurrence
Failure of a used oil burner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4069.G	\$500	Per occurrence
SOLID WASTE			
Failure to report any discharge, deposit, injection, spill, dumping, leaking, or placing of solid waste into or on the water, air, or land.	LAC 33:VII.315.K	\$500	Per occurrence
Waste Tires			
Storage of more than 20 whole tires without authorization from the administrative authority.	LAC 33:VII.10509.B	\$200	Per occurrence
Transporting more than 20 tires without first obtaining a transporter authorization certificate.	LAC 33:VII.10509.C	\$200	Per occurrence
Storing tires for greater than 365 days.	LAC 33:VII.10509.E	\$200	Per occurrence
Failure to maintain all required records for three years on-site or at an alternative site approved in writing by the administrative authority.	LAC 33:VII.10509.G	\$200	Per occurrence
Failure to obtain a waste tire generator identification number within 30 days of commencing business operations.	LAC 33:VII.10519.A	\$300	Per occurrence
Failure to accept one waste tire for every new tire sold unless the purchaser chooses to keep the waste tire.	LAC 33:VII.10519.B	\$100	Per occurrence
Failure to remit waste tire fees to the state on a monthly basis as specified.	LAC 33:VII.10519.D	\$100	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to post required notifications to the public.	LAC 33:VII.10519.E	\$100	Per occurrence
Failure to list the waste tire fee on a separate line on the invoice so that no tax will be charged on the fee.	LAC 33:VII.10519.F	\$100	Per occurrence
Failure to keep waste tires or waste tire material covered as specified.	LAC 33:VII.10519.H	\$200	Per occurrence
Failure to segregate waste tires from new or used tires offered for sale.	LAC 33:VII.10519.M	\$200	Per occurrence
Failure to provide a manifest for all waste tire shipments containing more than 20 tires.	LAC 33:VII.10533.A	\$200	Per occurrence
Failure to maintain completed manifests for three years and have them available for inspection.	LAC 33:VII.10533.D	\$200	Per occurrence
Failure to collect appropriate waste tire fee for each new tire sold.	LAC 33:VII.10519.C, 10535.B	\$200	Per occurrence
Failure to submit application and fees for transporter authorization.	LAC 33:VII.10523.A	\$300	Per occurrence
Failure to use a manifest when transporting greater than 20 waste tires.	LAC 33:VII.10523.C	\$200	Per occurrence
Failure of transporter to transport all waste tires to an authorized collection center or a permitted processing facility.	LAC 33:VII.10523.D	\$300	Per occurrence
Failure of out-of-state or out-of-country transporters to comply with state waste tire regulations.	LAC 33:VII.10523.E	\$200	Per occurrence
Failure to provide notification in writing within 10 days when any information on the authorization certificate form changes, or if the business closes and ceases transporting waste tires.	LAC 33:VII.10523.G	\$100	Per occurrence
Failure by collectors or collection centers to follow the requirements for receipt of tires.	LAC 33:VII.10527.A	\$200	Per occurrence
Failure of collection center operators to meet the standards in LAC 33:VII.10525.D.1-10 and 12-24.	LAC 33:VII.10527.B	\$300	Per occurrence
Failure of recyclers to provide notification of their existence and obtain an identification number.	LAC 33:VII.10531.A	\$300	Per occurrence
Failure of waste tire or waste tire material recyclers to meet the requirements of LAC 33:VII.10525.D.	LAC 33:VII.10531.B	\$300	Per occurrence
Failure to follow the requirements for manifest discrepancies.	LAC 33:VII.10533.C	\$300	Per occurrence
WATER QUALITY			
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit.	LAC 33:IX.2701.A	\$200 and completion of a department-sponsored compliance class	10 or fewer violations

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit.	LAC 33:IX.2701.A	\$300 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit.	LAC 33:IX.2701.A	\$500 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG540000 permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG540000 permit.	LAC 33:IX.2701.A	\$600 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG750000 permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG750000 permit.	LAC 33:IX.2701.A	\$600 and completion of a department-sponsored compliance class	More than 10 violations
Failure to develop and/or implement a Spill Prevention and Control Plan (SPC):			
1. Failing to develop an SPC plan for any applicable facility.	LAC 33:IX.905	\$500	Per occurrence
2. Failing to implement any component of an SPC plan.	LAC 33:IX.905	\$100	Per occurrence
Failure to submit certain reports as required by any LPDES permit not previously defined as an LPDES General Permit in LAC 33:I.801, including noncompliance reports, storm water reports, pretreatment reports, biomonitoring reports, overflow reports, construction schedule progress reports, environmental audit reports as required by a municipal pollution prevention plan, and toxicity reduction evaluation reports.	LAC 33:IX.2701.A	\$300	Per required submittal

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to prepare and/or implement any portion or portions of a Storm Water Pollution Prevention Plan (SWPPP), Pollution Prevention Plan (PPP), or Best Management Practices/Plan (BMP) as required by any LPDES permit not previously defined as an LPDES General Permit in LAC 33:1.801.	LAC 33:IX.2701.A	\$500	Per occurrence
Failure to submit a Notice of Intent for coverage under the LAR050000 or LAR100000 LPDES Storm Water General Permit.	LAC 33:IX.2511.C.1	\$1,000	Per occurrence
Unauthorized discharge of oil field wastes, including produced water.	LAC 33:IX.1901.A	\$1,000	Per occurrence
Unauthorized discharge of oily fluids.	LAC 33:IX.1701.B	\$1,000	Per occurrence
UNDERGROUND STORAGE TANKS			
Failure to register existing or new USTs containing regulated substances.	LAC 33:XI.301.A-B	\$300	Per inspection
Failure to certify and provide required information on the department's approved registration form.	LAC 33:XI.301.B.1-2	\$300	Per inspection
Failure to provide notification within 30 days after selling a UST system or acquiring a UST system; failure to keep a current copy of the registration form on-site or at the nearest staffed facility.	LAC 33:XI.301.C.1-3	\$300	Per inspection
Failure to provide corrosion protection to tanks that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.1	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to provide corrosion protection to piping that routinely contains regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$250 and completion of a department-sponsored compliance class	Per inspection
Failure to provide corrosion protection to flex hoses and/or sub-pumps that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$100 and completion of a department-sponsored compliance class	Per inspection
Failure to provide spill and/or overflow prevention equipment as specified.	LAC 33:XI.303.B.3	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to upgrade existing UST systems to new system standards as specified.	LAC 33:XI.303.C	\$500 and completion of a department-sponsored compliance class	Per inspection

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to pay fees by the required date.	LAC 33:XI.307.D	\$200	Per inspection
Failure to report, investigate, and/or clean up any spills and overfills.	LAC 33:XI.501.C	\$1,500	Per inspection
Failure to continuously operate and maintain corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground or water.	LAC 33:XI.503.A.1	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to have UST systems equipped with cathodic protection systems inspected for proper operation as specified.	LAC 33:XI.503.A.2	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to inspect UST systems with impressed current cathodic protection systems every 60 days to ensure that the equipment is running properly.	LAC 33:XI.503.A.3	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to comply with recordkeeping requirements.	LAC 33:XI.503.B	\$200 and completion of a department-sponsored compliance class	Per inspection
Failure to meet requirements for repairs to UST systems.	LAC 33:XI.507	\$300	Per inspection
Failure to follow reporting requirements, maintain required information, and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them after a request.	LAC 33:XI.509	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to meet the performance requirements when performing release detection required in LAC 33:XI.703.	LAC 33:XI.701	\$750 and completion of a department-sponsored compliance class	Per inspection
Failure to use a method or combination of methods of release detection described in LAC 33:XI.701 for all new or existing tank systems.	LAC 33:XI.703.A.1	\$1,500 and completion of a department-sponsored compliance class	Per inspection
Failure to satisfy the additional requirements for petroleum UST systems as specified.	LAC 33:XI.703.B	\$350 and completion of a department-sponsored compliance class	Per inspection
Failure to maintain release detection records.	LAC 33:XI.705	\$200 and completion of a department-sponsored compliance class	Per inspection

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to report any suspected release within 24 hours after becoming aware of the occurrence or when a leak detection method indicates that a release may have occurred.	LAC 33:XI.703.A.2 or 707	\$500 and completion of a department-sponsored compliance class	Per occurrence
Failure to investigate and confirm all suspected releases of regulated substances that require reporting under LAC 33:XI.707 within seven days.	LAC 33:XI.711	\$1,500	Per occurrence
Failure to maintain corrosion protection and/or release detection on a UST system that is temporarily closed and contains more than 2.5 cm (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system.	LAC 33:XI.903.A	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to comply with permanent closure and/or changes in service procedures.	LAC 33:XI.905	\$500	Per inspection

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

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

Mike D. McDaniel, Ph.D.
Secretary

0608#004

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Expedited Permitting Program
(LAC 33:I.1801, 1803, 1805, 1807 and 1809)(OS073E)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement the expedited permitting program.

This Emergency Rule provides a process for expedited permitting and the implementation of the associated permitting fees authorized by Acts 586 and 779 of the 2006 Regular Legislative Session. These Acts allow for expedited permits to be processed at no additional cost to the department for overtime pay.

This Emergency Rule will allow the department to implement a pilot program format to gather the information needed to draft a final rule. Specifically, the department will be able to evaluate the environmental and public health benefits and the social and economic costs of expedited permitting and the associated fees.

Moreover, rapid implementation of Acts 586 and 779 will allow the expedited permitting program to begin immediately, enhancing economic growth. Many companies consider environmental permitting timelines in determining where to locate a proposed facility. Expedited permitting allows companies to act more quickly in response to market demands and conditions.

This Emergency Rule is effective on July 31, 2006, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning OS073E you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, and 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.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Chapter 18. Expedited Permitting Program

§1801. Scope

A. This Chapter establishes a program to expedite the processing of permits, modifications, licenses, registrations, or variances for environmental permit applicants who may request such services.

B. Eligibility and Priority

1. To the extent practicable, requests proposing new construction that will result in the creation of new permanent jobs will be given highest consideration.

2. Applications for permit renewals and/or reconciliations are not eligible for expedited processing pursuant to the provisions of this Chapter unless associated with new construction.

3. Applications for any permit, modification, license, registration, or variance needed to avoid or mitigate enforcement action are not eligible for expedited processing pursuant to the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

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

§1803. Procedures

A. Contents of Request. An applicant requesting expedited processing of a permit, modification, license, registration, or variance shall furnish the following information:

1. the requested timeframe for a final permit decision;
2. the basis and/or need for the request;
3. a commitment to provide any additional information required by the department as quickly as practicable;
4. after-hours contact information, including the cell phone number and e-mail address, for the individual(s) responsible for providing technical information; and

5. the maximum expedited permitting fee, if any, the applicant is willing to remit in accordance with LAC 33:I.1805.

B. Within 10 working days after receipt of a request to process any permit, modification, license, registration, or variance on an expedited basis, a final decision to grant or deny the request shall be issued.

C. Additional Information

1. If at any time during the review process of an application that has been determined complete the department finds that additional information is necessary, the department shall provide notice to the applicant and require a response from the applicant within a reasonable, specified time.

2. The applicant shall respond to the notice within the time specified. Such a response shall contain all information required by the department.

3. The department reserves the right to cease processing the permit, modification, license, registration, or variance in accordance with the provisions of this Chapter if the applicant fails to supply the requested additional information within the specified time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

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

§1805. Fees

A. In addition to the fees charged pursuant to R.S. 30:2014, a fee shall be charged for each permit, modification, license, registration, or variance that is processed on an expedited basis in accordance with the provisions of this Chapter.

1. An appropriate fee shall be computed based on the maximum per hour overtime salary, including associated related benefits, of the civil service employee(s) of the department who perform(s) the work.

2. The fee shall be computed by multiplying the salary figure from Subsection A.1 of this Section by every overtime hour or portion thereof that a department employee or contractor works processing the expedited permit, modification, license, registration, or variance.

3. The applicant may request that the expedited permitting fee not exceed a maximum amount. If such a maximum amount is established, the number of overtime hours a department employee or contractor works processing the permit, modification, license, registration, or variance shall be limited accordingly. If further processing of the application is required, the department's continued review will not follow the provisions of this Chapter, and the request will no longer be handled on an expedited basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

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

§1807. Invoicing and Failure to Pay

A. An invoice for the expedited permitting fee shall be transmitted to the applicant after the final decision has been

made on the application for the permit, modification, license, registration, or variance.

B. Failure to pay the expedited permitting fee by the due date specified on the invoice will constitute a violation of these regulations and shall subject the applicant to relevant enforcement action under the Louisiana Environmental Quality Act including, but not limited to, revocation or suspension of the permit, modification, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

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

§1809. Public Notice and Availability of Records

A. Requirement to Provide Public Notice. The department shall provide notice of each permit, modification, license, registration, or variance that is processed pursuant to the provisions of this Chapter.

1. The notice shall be given by advertisement in a newspaper in the local area where the facility is located, in the official state journal, and by mail to persons included on the appropriate mailing list developed and maintained by the department.

2. For permit actions subject to public notice requirements under other regulations or program requirements, such public notice shall contain information relative to this Section.

3. For permit actions not normally subject to public notice under other regulations or program requirements, the applicant shall be responsible for providing notice and shall bear all publication costs. Submission of proof of publication shall be required.

B. Contents of the Public Notice. The advertisement for public notice shall contain the name and address of the permitting authority, the name and address of the applicant/permittee, the name and physical location of the affected facility, and a statement that the application is being or has been processed in accordance with the provisions of the Expedited Permitting Program.

C. Availability of Records. All recorded information (completed permit application form, fact sheet or statement of basis, draft and proposed permits, or any public document) not classified as confidential information under R.S. 30:2030(A) or 30:2074(D) and designated as such in accordance with applicable regulations shall be made available to the public for inspection and copying in accordance with the Public Records Act, R.S. 44:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.

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

Mike D. McDaniel, Ph.D.
Secretary

0608#019

DECLARATION OF EMERGENCY

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Remediation of Sites with Contaminated Media
(LAC 33:V.109)(HW084E9)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), which allows the Department of Environmental Quality to use emergency procedures to establish Rules, and under the authority of R.S. 30:2011, the secretary of the department hereby declares that an emergency action is necessary in order to implement Rules to address the remediation of sites with contaminated environmental media.

This is a renewal of Emergency Rule HW084E8, which was effective March 27, 2006, and published in the *Louisiana Register* on April 20, 2006. The department has proposed a Rule to promulgate these regulation changes.

Current regulation causes contaminated environmental media to retain the description of having RCRA-listed waste "contained-in," therefore slowing the remediation of the site or possibly halting it completely due to administration and disposal issues. This Rule will remove a regulatory hurdle that deters site remediation. The incentive to remediate pollution stems from the resulting substantially reduced disposal and transportation costs for contaminated environmental media that are not required to be managed in the same manner as hazardous waste. Language has been added to further define the management of contaminated media as nonhazardous. The Rule will also result in simplification of the waste handling process by reducing administrative requirements and providing greater consistency with non-RCRA waste handling requirements and practices. This will provide strong motivation to initiate and accelerate voluntary remediation of contaminated sites without increasing risks to human health or the environment. Any person claiming this exclusion shall have records supporting the exclusion.

This Emergency Rule is effective on July 25, 2006, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning HW084E9 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, and 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.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 1. General Provisions and Definitions

§109. Definitions

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

* * *

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

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

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

e. Rebuttable Presumption for Used Oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in LAC 33:V.4901. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (e.g., by using an analytical method from LAC 33:V.Chapter 49.Appendix A to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in LAC 33:V.3105.Table 1).

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

ii. The rebuttable presumption does not apply to used oils contaminated with Chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are

destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

3. - 6.b. ...

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 32:

Mike D. McDaniel, Ph.D.
Secretary

0608#003

DECLARATION OF EMERGENCY

**Office of the Governor
Manufactured Housing Commission**

**Definition of Code, Modular Home and Factory Built Home
(LAC 55:V.501)**

In accordance with the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), which allows the Louisiana Manufactured Housing Commission (hereinafter the "commission") to use emergency procedures to establish rules, and under the authority of R.S. 51:911.26(E), the Director of the Louisiana Manufactured Housing Commission declares that an emergency action is necessary to continue and to extend its earlier action providing for and/or updating necessary definitions located in R.S. 51:911.22. On March 16, 2004, the commission adopted the International Building Code for all factory built, residential dwellings not constructed to the federal Department of Housing and Urban Development's construction standards outlined under 42 U.S.C. 5401 (hereinafter "Modular Homes"). Further, in keeping with the intent of recent legislative actions, the commission hereby updates its March 16 action by adopting the Louisiana State Uniform Construction Code, as provided for in Act No. 12

or the First Extraordinary Session of 2005, for all Modular Homes in Louisiana. Additionally, it is necessary to provide for the definition of "Modular Home" and "Factory Built Home." This procedure will allow the commission to address these matters in a timely manner.

In consequence of the vast devastation and destruction sustained by property owners in the areas of the state affected by Hurricanes Katrina and Rita, many citizens of the state are utilizing or contemplating utilizing factory-built housing to address their housing needs. In order to minimize the potential of risk to public health, safety and welfare, it is imperative that the distribution and installation of all factory-built homes be properly regulated.

This Emergency Rule shall become effective on July 22, 2006 and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first.

Title 55

PUBLIC SAFETY

Part V. Fire Protection

Chapter 5. Manufactured Housing (Installation)

Subchapter A. General Requirements

§501. Definitions

A. ...

* * *

Code—the National Manufactured Home Construction and Safety Standards Act of 1974, 42 USC 5401 et seq., as amended, and federal regulations promulgated pursuant thereto, along with the Louisiana State Uniform Construction Code provided for in Act No.12 of the First Extraordinary Session of 2005, together with any additional construction or installation-related standards adopted by the Louisiana Manufactured Housing Commission.

* * *

Factory-Built Home—a mobile home, manufactured home and a modular home as those terms are defined under R.S. 51:911.22.

* * *

Modular Home—a factory built residential dwelling which is:

- a. transportable in one or more sections;
- b. designed to be used as a dwelling when connected to the required utilities, and includes plumbing, heating, air conditioning and electrical systems with the home; and

c. certified by third-party providers as being constructed in accordance with the Louisiana State Uniform Construction Code provided for in Act No. 12 of the First Extraordinary Session of 2005.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:17 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1693 (December 1997), amended by the Office of the Governor, Manufactured Housing Commission, LR 32:

Deane M. Frazier
Executive Director

0608#014

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Medical Examiners

Emergency Temporary Permit for Physicians and Allied Health Care Practitioners (LAC 46:XLV.412)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), the Louisiana Medical Practice Act, R.S. 37:1270(B), 1275(B), and the Louisiana Health Emergency Powers Act, R.S. 29:769(E), as amended by Act No. 207 of the 2006 Regular Session of the Louisiana Legislature, the Louisiana State Board of Medical Examiners has determined that emergency action is necessary to facilitate the issuance of emergency temporary permits so that physicians and allied health care practitioners from other states may provide our citizens with emergency medical services during and following a public health emergency, as declared by the Governor of this state. This emergency rule creates the process for issuing emergency temporary permits to physicians and allied health care providers who hold a current and unrestricted license or other authority to practice their profession in another state, and who are in good standing in such jurisdictions. Emergency action is necessary to adequately prepare for the 2006 hurricane season, which commenced on June 1, 2006. Immediate implementation of this rule is in the public's best interest in the event that a public health emergency is declared by the Governor prior to the final promulgation of the rule in accordance with the provisions of the Administrative Procedure Act, R.S. 49:951, *et. seq.* This rule, which was adopted by the Board and became effective as of [Month] [Day], 2006, shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning this emergency rule you may contact Robert L. Marier, M.D., Executive Director at (504) 568-6820. This emergency rule, along with appropriate contact and processing information for applications, is available on the internet at www.lsbme.louisiana.gov (Emergency Temporary Licensure), and may be obtained from the Board office from 8:30 AM until 4:30 PM Monday through Friday, 630 Camp Street, New Orleans, LA 70130. Copies of this Emergency Rule may also be requested by telephone (504) 568-6820.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 3. Physicians

Subchapter H. Restricted Licensure, Permits

§412. Emergency Temporary Permits

A. As used in this Section, the following terms shall have the following meanings:

Allied Health Care Practitioner—an individual, other than a physician, authorized by the board to practice in this state as an athletic trainer pursuant to R.S. 37:3301 through 3312; as a clinical exercise physiologist pursuant to R.S. 37:3421 through 3433; as a clinical laboratory scientist pursuant to R.S. 37:1311 through 1329; as a midwife pursuant to R.S. 37:3240 through 3257; as an occupational therapist or occupational therapy assistant pursuant to

R.S. 37:3001 through 3014; as a perfusionist pursuant to R.S. 37:1331 through 37:1343; as a physician assistant pursuant to R.S. 37:1360.21 through 1360.38; as a podiatrist pursuant to R.S. 37:611 through 628; as a polysomnographic technologist or polysomnographic technician pursuant to R.S. 37:2861 through 2870; as a private radiological technologist pursuant to R.S. 37:1292; or as a respiratory therapist or respiratory therapy assistant pursuant to R.S. 37:3351 through 3361.

Board—the Louisiana State Board of Medical Examiners established pursuant to R.S. 37:1263.

DHH—the Louisiana Department of Health and Hospitals or its successor in title.

Physician—an individual authorized by the board to practice medicine in this state, pursuant to R.S. 37:1261-1291.

B. The board may issue an emergency temporary permit to an individual to practice as a physician or allied health care practitioner, valid for a period of not more than 60 days, to provide voluntary, gratuitous medical services in this state during a public health emergency, and for such periods thereafter as DHH shall deem the need for emergency services to continue to exist, at sites specified by DHH or approved by the board, provided such individual:

1. holds a current, unrestricted license in good standing issued by the licensing authority of another state to practice the profession for which the permit is sought; and

2. presents or causes to be presented to the board in advance of providing medical services:

- a. indisputable personal identification;

- b. a copy of his or her professional license or other information deemed satisfactory by the board on which to verify out-of-state licensure;

- c. a completed application and/or such information as may be required by the board; and

- d. as to an allied health care practitioner required by the laws of this state to practice under physician supervision, designation of a physician who will serve in such capacity.

C. An emergency temporary permit may be issued upon such terms, conditions, limitations or restrictions as to time, place, nature, and scope of practice as are, in the judgment of the board, deemed necessary or appropriate to its responsibilities under law.

D. The board may, in its discretion, issue a permit under this Section to an individual to practice as a physician or allied health care practitioner who provides medical services other than on a gratuitous basis, and/or at sites other than those specified by DHH or approved by the board. The board may also issue a permit to an individual who satisfies the provisions of R.S. 29:735.I.

E. A physician or allied health care practitioner shall visibly display a permit issued under this Section, or such other identifying information as the board may specify, in plain view on his or her person at all times while exercising the privileges of such permit.

F. An emergency temporary permit entitles the holder to engage in the practice of his profession in the state of Louisiana only for the period specified by such permit and creates no right or entitlement to licensing, registration, certification or renewal of the permit after its expiration.

G. A permit issued under this Section shall expire and become null and void on the earlier of:

1. 60 days from the date on which it was issued;
2. a date specified on the permit less than 60 days from the date of issuance; or
3. the date that the term of voluntary service is terminated.

H. The board may, in its discretion, extend or renew an expired emergency temporary permit for one or two additional 60-day periods provided all conditions prerequisite to original issuance are satisfied.

I. Following termination of a public health emergency the board may, in its discretion, issue, extend or renew a permit under this Section during such period as DHH shall deem the need for emergency services continues to exist.

J. In the event of a conflict between the provisions of this Section respecting emergency temporary permits and those contained in any Chapter administered by the board respecting an allied health care practitioner, the provisions of this Section shall govern.

K. If any rule, Section, provision or item of this Chapter or the application thereof is held to be invalid, such invalidity shall not affect other rules, Sections, provisions, items or applications, and to this end the rules, Sections, provisions and items of this Chapter are hereby deemed to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 1275; R.S. 37:3301 through 3312; R.S. 37:3421 through 3433; R.S. 37:1311 through 1329; R.S. 37:3240 through 3257; R.S. 37:3001 through 3014; R.S. 37:1331 through 37:1343; R.S. 37:1360.21 through 1360.38; R.S. 37:611 through 628; R.S. 37:2861 through 2870; R.S. 37:1292; R.S. 37:3351 through 3361 and R.S. 29:769(E).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 32:

Robert L. Marier, M.D.
Executive Director

0608#012

DECLARATION OF EMERGENCY

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

Medical Assistance—Pharmacy
(LAC 50:XXIX.971)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to repeal LAC 50:XXIX.971 in the Medical Assistance Program as authorized by Louisiana 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 promulgated a rule to reduce the estimated acquisition cost reimbursement rate for Antihemophilia drugs, Factor product (*Louisiana Register*, Volume 32, Number 2). The bureau subsequently repromulgated all rules governing Medicaid

covered pharmacy services under the *Louisiana Administrative Code (Louisiana Register*, Volume 32, Number 6). The bureau now proposes to repeal the provisions of the June 20, 2006 Rule governing reimbursement for Antihemophilia drugs.

This action is being taken to avoid federal sanctions. It is estimated that implementation of this Emergency Rule will increase expenditures for the reimbursement of Antihemophilia drugs by approximately \$749,707 for state fiscal year 2006-2007.

Emergency Rule

Effective August 20, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals the provisions contained in the June 20, 2006 Rule governing the estimated acquisition cost reimbursement rate for Antihemophilia drugs, Factor product.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 9. Methods of Payment

Subchapter F. Antihemophilia Drugs

§971. 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 32:1066 (June 2006), repealed LR 32:

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, Louisiana 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

0608#060

DECLARATION OF EMERGENCY

**Department of Public Safety and Corrections
Office of the State Fire Marshal**

Uniform Construction Code
Temporary Additional Third Party Provider Options
(LAC 55:V.4003)

The Department of Public Safety and Corrections, Office of the State Fire Marshal hereby adopts the following Emergency Rule governing the Temporary Additional Third-Party Provider Options as provided for by Act 11 of the 2006 1st Extraordinary Session, R.S. 40:1730.24(B). This Rule is being adopted in accordance with the Emergency Rule provisions of R.S. 49:953(B) of the Administrative Procedure Act. This Emergency Rule becomes effective upon signature of the State Fire Marshal, July 21, 2006, and shall remain in effect for the maximum period allowed by the APA, which is 120 days.

As a result of the widespread damage caused by Hurricane Katrina, the Legislature enacted Emergency Wind and Flood

construction code requirement that currently affect certain parishes. Some of the affected parishes do not have code enforcement procedures currently in place and do not have the means necessary to contract with a third party provider at this time. It is necessary for the department to promulgate a rule in order to ease the process of complying with the Wind and Flood provisions until the law goes into effect for the entire state on January 1, 2007. Immediately adopting this administrative rule, in allowing Architects and Engineers to prepare the construction documents and perform the inspections, will greatly improve the facilitation of the intent of this legislation in mandating Wind and Flood provisions.

**Title 55
PUBLIC SAFETY**

Part V. Fire Protection

Chapter 40. State Uniform Construction Code

**§4003. Temporary Additional Third-Party Providers
Options**

A.1. Municipalities and parishes that do not have code enforcement procedures in place shall not require additional third-party plan review to enforce the provisions of R.S. 40:1730.23 for structures where all of the following conditions are met:

a. the construction documents have been prepared and sealed by a Louisiana licensed Architect or Engineer and;

b. such documents contain a statement indicating that the structure has been designed to comply with the wind and flood mitigation requirements of R.S. 40:1730.27, and;

c. such documents indicate the method of compliance used.

2. This shall not prevent the municipality or parish from performing their own plan review, or shall not prevent the local building official from denying the permit request if it is determined that the proposed construction does not comply with the applicable codes, laws or ordinances, or if a threat to public safety and welfare is posed.

B.1. Municipalities and parishes that do not have code enforcement procedures in place shall not require additional third-party inspections to enforce the provisions of R.S. 40:1730.23 for structures where all of the following conditions are met:

a. the construction documents have been prepared and sealed by a Louisiana licensed Architect or Engineer and;

b. the licensed preparer whose seal is contained on the construction documents, or his authorized representative, performs the required inspections, and;

c. upon completion of the required inspections, at each applicable phase of construction, the Louisiana licensed Architect or Engineer records such inspections on a form acceptable to the local building official.

i. The inspection records shall reflect those inspections required by the applicable codes at each phase of construction and shall be available at the building site at all times for review by the local building official.

2. This shall not prevent the municipality or parish from performing their own inspections, or shall not prevent the local building official from denying a request for a certificate of occupancy or certificate of completion, as appropriate, or from issuing a stop-work order for the project or any portion thereof as provided by law, if it is determined

that the building construction does not comply with the applicable codes, or if a threat to public safety and welfare is posed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.24(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 32:

Stephen J. Hymel
Undersecretary

0608#013

DECLARATION OF EMERGENCY

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

FITAP/KCSP/STEP—Parenting Skills
Education and Eligibility Factors
(LAC 67:III.1209, 1223, 1225, 1229, 1245, 1291,
5307, 5321, 5323, 5329, 5339, 5341, 5391, and 5711)

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 amend LAC 67:III, Subpart 2, Subpart 13, and Subpart 16 effective August 29, 2006. This Rule shall remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective May 1, 2006, since it is effective for a maximum of 120 days and will expire on August 28, 2006 before the final Rule takes effect. (The final Rule will be published in the October 2006 issue.)

Pursuant to the authority granted to the Department by Louisiana's Temporary Assistance to Needy Families Block Grant, the agency will amend §1209, §1223, §1225, §1229, §1245, and §1291 in the Family Independence Temporary Assistance Program (FITAP); §5307, §5321, §5323, §5329, §5339, §5341, and §5391 in the Kinship Care Subsidy Program (KCSP) and §5711 in the Strategies to Empower People (STEP) Program. Section 1209 is amended to align with policy the need for a concurrent notice; §1223 is amended to expand the definition of a qualified alien; §1225 is amended to provide good cause for the requirement of enumeration; §1229 is amended regarding deductions for dependent care; §1245 is amended for consistency with KCSP and the STEP Program regarding Parenting Skills Education; §1291 is amended to clarify and correct procedures regarding failure to cooperate in substance abuse screening, testing, or participation. The Kinship Care Subsidy Program is being amended at: §5307 to send a concurrent notice when a child has been certified for Supplemental Security Income; §5321 to define the age limit for KCSP benefits; §5323 to expand the definition of a qualified alien; §5329 to exempt the receipt of Supplemental Security Income in determining eligibility and to exempt at pretest income for children receiving foster care payments and SSI; §5339 to address the age requirement regarding Parenting Skills Education; §5341 and §5391 are repealed as Drug Screening, Testing, Education, and Rehabilitation and the Substance Abuse Treatment Program do not apply to recipients of KCSP benefits. §5711 in the STEP Program is being amended to address FITAP and KCSP recipients who

must participate in Parenting Skills Education and to clarify the scope of Parenting Skills Education.

The authorization for emergency action in this matter is contained in Act 16 of the 2005 Regular Session of the Louisiana Legislature.

Title 67
SOCIAL SERVICES

Part III. Family Support

Subpart 2. Family Independence Temporary Assistance Program

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance

§1209. Notices of Adverse Action

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the client at the time of action in the following situations:

1. - 9. ...
10. Repealed.
11. - 16. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B. and R.S. 46:237; Act 58, 2003 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2447 (December 1999), amended LR 26:349 (February 2000), LR 29:2565 (December 2002), LR 30:493 (March 2004), LR 32:

Subchapter B. Conditions of Eligibility

§1223. Citizenship

A. Each FITAP recipient must be a United States Citizen, a non-citizen national, or a qualified alien. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. A qualified alien is:

1. - 9. ...
10. an alien who is a victim of a severe form of trafficking in persons, or effective May 1, 2006, an eligible relative of a victim of a severe form of trafficking in persons.

B. - B.8. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., P.L. 106-386, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2448 (December 1999), amended LR 26:1342 (June 2000), LR 27:2263 (December 2001), LR 28:1599 (July 2002), LR 32:

§1225. Enumeration

A. Each applicant for, or recipient of, FITAP is required to furnish a Social Security number or to apply for a Social Security number if such a number has not been issued or is not known, unless, effective May 1, 2006, good cause has been established.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.1.B., Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:1342 (June 2000), LR 32:

§1229. Income

A. - B.2. ...

C. Earned Income Deductions. Each individual in the income unit who has earned income is entitled to the following deductions only.

1. Standard Deduction of \$120
2. \$900 Time-Limited Deduction. This deduction is applied for six months when a recipient's earnings exceed the \$120 standard deduction. The months need not be consecutive nor within the same certification periods. The deduction is applicable for a six-month lifetime limit for the individual.

3. Dependent Care Deduction. Recipients may be entitled to a deduction for dependent care for:

- a. an incapacitated adult;
- b. effective May 1, 2006, a child age 13 or older who is not receiving CCAP; or
- c. effective May 1, 2006, the amount charged by a child care provider that exceeds the CCAP maximum for a child in care.

D. - G. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B., R.S. 46:231.2, P.L. 108-447, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:1342 (June 2000), LR 26:2831 (December 2000), LR 31:2956 (November 2005), LR 32:

§1245. Parenting Skills Education

A. Effective May 1, 2006, recipients who are pregnant or have a child under age one shall participate in parenting skills education as outlined in LAC 67:III.Chapter 57, §5711.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.5; Act 58, 2003 Reg. Session. Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR 30:494 (March 2004), LR 32:

Subchapter D. Special Initiatives

§1291. Substance Abuse Treatment Program

A. - E.4. ...

5. Failure to Cooperate. Failure or refusal of a recipient to participate in substance abuse screening, testing, or participation in the education and rehabilitation program, without good cause, will result in the following actions effective May 1, 2006.

a. At application, the application is rejected, unless the person is an 18-year-old dependent child. Exclude any 18-year old dependent child that fails to cooperate until they participate.

b. For certified cases in which the family is not work-eligible, the case will be closed for at least one month and until the client complies with this requirement, whichever is later.

c. For certified cases in which the family is work-eligible, a STEP sanction will be imposed with the appropriate occurrence and reason. The case must remain closed for the duration of the sanction period and until the client complies with this requirement, whichever is later.

d. For certified cases in which an 18-year-old dependent child fails to cooperate, exclude him from the grant until he participates.

6. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:1492 (June 2002), amended LR 32:

**Subpart 13. Kinship Care Subsidy Program (KCSP)
Chapter 53. Application, Eligibility, and Furnishing Assistance**

Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance

§5307. Notices of Adverse Action

A. A notice of adverse action shall be sent at least 13 days prior to taking action to terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the client at the time of action in the following situations:

1. - 13. ...

14. effective May 1, 2006, the child has been certified for Supplemental Security Income and that fact has been established.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:351 (February 2000), amended LR 29:2565 (December 2002), LR 32:

Subchapter B. Conditions of Eligibility

§5321. Age Limit

A. Effective May 1, 2006, a dependent child must be under 18 years of age.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B and R.S. 46:237; Act 58, 2003 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:352 (February 2000), amended LR 30:496 (March 2004), LR 31:103 (January 2005), LR 32:

§5323. Citizenship

A. Each KCSP recipient must be a United States citizen, a non-citizen national, or a qualified alien. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. A qualified alien is:

1. - 9. ...

10. an alien who is a victim of a severe form of trafficking in persons, or effective May 1, 2006, an eligible relative of a victim of a severe form of trafficking in persons.

B. - B.8. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, P.L. 106-386, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:352 (February 2000), amended LR 27:2264 (December 2001), LR 28:1600 (July 2002), LR 32:

§5329. Income

A. Income is any gain or benefit to a household that has monetary value and is not considered a resource. Count all income in determining pretest eligibility except income from:

1. - 28. ...

29. effective May 1, 2006, Supplemental Security Income (SSI).

B. - B.2.c. ...

3. For purposes of this pretest, income is defined as countable income belonging to any member of the KCSP income unit. Exception effective May 1, 2006: Income for children receiving foster care and Supplemental Security Income is not included in the income test.

C. Income after Pretest. The child is determined eligible for KCSP if the child's countable income is, effective July 1, 2006, less than \$280. If the child's countable income is, effective July 1, 2006, \$280 or more, the child is ineligible.

D. Payment Amount. Payment amount is, effective July 1, 2006, \$280 a month for each eligible child.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, and P.L. 108-447, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February 2000), amended LR 26:2832 (December 2000), LR 31:2958 (November 2005), LR 32:

§5339. Parenting Skill Education

A. As a condition of eligibility for KCSP benefits, effective May 1, 2006, any child under age 18 who is pregnant or the parent of a child under the age of one must attend a parenting skills education program as outlined in LAC 67:III.Chapter 57, §5711. Failure to meet this requirement without good cause shall result in that minor's ineligibility. Ineligibility will continue until the child has complied.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, Act 58, 2003 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:355 (February 2000), amended LR 30:496 (March 2004), LR 32:

§5341. Drug Screening, Testing, Education, and Rehabilitation Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237; Act 58, 2003 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:355 (February 2000), amended LR 30:497 (March 2004), repealed LR 32:

Subchapter D. Special Initiatives

§5391. Substance Abuse Treatment Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:1493 (June 2002), repealed LR 32:

Subpart 16. Strategies to Empower People (STEP) Program

Chapter 57. Strategies to Empower People (STEP) Program

Subchapter B. Participation Requirements

§5711. Parenting Skills Education

A. Effective May 1, 2006, FITAP and KCSP recipients who are pregnant or have a child under age one shall participate in parenting skills education as the primary work activity under the Family Success Agreement. Parenting Skills Education consists of family strengthening, parenting

information, and money management information. The lessons provide key parenting practices for parents to learn child nurturance that includes care, safety, and understanding child development. Applicable child care and transportation shall be provided to participants to enable their participation.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004), amended LR 32:

Ann Silverberg Williamson
Secretary

0608#054

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

TANF Initiatives (LAC 67.III.5511 and 5583)

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 adopt LAC 67:III, Subpart 15, Chapter 55, §5511 Micro-Enterprise Development Program and §5583, Third Party In-Kind Contributions as new TANF Initiatives. This Emergency Rule is effective August 29, 2006, and will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective May 1, 2006, 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 2006 issue.)

As a result of Act 1 of the 2004 Regular Legislative Session, the agency repealed several TANF Initiatives including Micro-Enterprise Development effective September 2004, as funding was no longer available. Pursuant to Act 16 of the 2005 Regular Session of the Louisiana Legislature, the agency is re-establishing this program as funds have once again been appropriated for this initiative. Additionally, Act 16 permits the agency to establish §5583, Third Party In-Kind Contributions, as a new TANF Initiative to provide a mechanism to capture information on third party in-kind contributions for use as TANF Maintenance of Effort (MOE).

The authorization for emergency action in this matter is contained in Act 16 of the 2005 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

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

Chapter 55. TANF Initiatives

§5511. Micro-Enterprise Development Program

A. Effective May 1, 2006, the Office of Family Support shall enter into a Memorandum of Understanding with the Department of Economic Development to provide assistance to low-income families who wish to start their own businesses.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by

promoting job preparation, work, and marriage. This goal will be accomplished by providing assistance to low-income families through the development of comprehensive micro-enterprise development opportunities as a strategy for moving parents into self-sufficiency.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), Free or Reduced School Lunch, or who has earned income at or below 200 percent of the federal poverty level. Only the parent or caretaker relative within the needy family is eligible to participate.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§5583. Third Party In-Kind Contributions as TANF MOE

A. The Office of Family Support may enter into a Memorandum of Understanding with the American Red Cross and other third-party organizations to collect information on expenditures for services provided to families following a federally-declared disaster for the purpose of claiming eligible expenditures as TANF Maintenance of Effort (MOE). Eligible expenditures include activities and services provided on a congregate basis to the community as a whole, such as sheltering, feeding, bulk distribution of items, but not including any expenses for which the federal government is obligated to reimburse the third party.

B. The third party organization shall determine the total value of the expenses and advise OFS of this value on a periodic basis.

C. OFS shall establish a methodology to estimate the percentage of total expenses that were made on behalf of TANF-eligible families following a federally-declared disaster.

D. These services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.

E. Financial eligibility for these services is limited to eligible families. A family consists of a minor child living with a custodial parent or an adult caretaker relative. An eligible family is one with income at or below 200 percent of the federal poverty level.

F. OFS will count eligible third party in kind contributions as TANF Maintenance of Effort (MOE) funds starting September 2005.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Ann Silverberg Williamson
Secretary

0608#053

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2006-07 Early Migratory Bird Hunting Season

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under 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 seasons for early migratory birds during the 2006-2007 hunting season shall be as follows:

Mourning and White-Winged Doves: Split Season,

Statewide, 70 days

September 2 - September 10

October 14 - November 19

December 16 - January 8

Mourning, White-Winged and fully dressed Eurasian Collared-Doves and Ringed-Turtle Doves: Daily bag limit 12 in aggregate, Possession 24 in aggregate but note: Eurasian collared doves and ringed turtle doves may only be hunted or taken during the open mourning dove season. There is no bag limit on Eurasian collared-doves or ringed turtle-doves provided that a fully feathered wing and head remain attached to the carcass of the bird. Fully dressed Eurasian-collared doves and ringed turtle-doves (those without a fully feathered wing and head naturally attached to the carcass) shall be included in the aggregate bag.

Teal: September 15 - September 30

Daily bag limit 4, possession limit 8, blue-winged, green-winged and Cinnamon teal only. Federal and state waterfowl stamps required.

Rails: Split Season, Statewide, 70 days

September 15 - September 30

Remainder of season to be set in August with the duck regulations.

King and Clapper: Daily bag limit 15 in the aggregate and possession 30 in the aggregate. Sora and Virginia: Daily and possession bag 25 in the aggregate.

Gallinules: Split Season, Statewide, 70 days

September 15 - September 30

Remainder of season to be set in August with the duck regulations. Common and Purple: Daily bag limit 15 in the aggregate, possession of 30 in the aggregate.

Woodcock: December 18 - January 31, Statewide

Daily bag limit 3, possession limit 6.

Snipe: Deferred to be set in August with the duck regulations.

Extended Falconry Season

Mourning Doves: Split Season, Statewide

September 11 - October 13

November 20 - November 23

Woodcock: Split Season, Statewide

October 28 - December 17

February 1 - February 11

Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during the extended falconry seasons and regular hunting seasons. Remainder of extended falconry seasons for ducks, rails, gallinules to be set in August with the duck regulations.

Shooting and Hawking Hours:

Teal, Rail, Woodcock, and Gallinule: One-half hour before sunrise to sunset.

Mourning Dove: One-half hour before sunrise to sunset except 12:00 noon to sunset on the opening weekends of each segment, September 2-3, October 14-15 and December 16-17.

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 140,000 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 on September 1, 2006 and extend through sunset on February 28, 2007.

Dwight Landreneau
Secretary

0608#030

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2006 Fall Inshore Shrimp Season

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or parts of state inside waters and shall have the authority to open or close state outside waters, the Wildlife and Fisheries Commission does hereby set the 2006 Fall Shrimp Season in inside waters to open as follows:

Shrimp Management Zone 1, that portion of Louisiana inside waters from the Mississippi-Louisiana state line to the eastern shore of South Pass of the Mississippi River, to open at 12 noon August 21, 2006, and

That portion of Shrimp Management Zone 2 from the eastern shore of South Pass of the Mississippi River to the Atchafalaya River Ship Channel at Eugene Island as delineated by the Channel red buoy line, to open at 12 noon August 14, 2006.

That portion of Shrimp Management Zone 2 from the Atchafalaya River Ship Channel at Eugene Island as delineated by the Channel red buoy line to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, to open at 12 noon August 21, 2006.

Shrimp Management Zone 3, that portion of state inside waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island to the Louisiana-Texas state line, to open at 12 noon August 21, 2006, and

The Commission also hereby sets the closing date for the 2006 Fall Shrimp Season in inside waters at official sunset December 18, 2006 except in the open waters of Breton and Chandeleur Sounds as described by the double-rig line (R.S. 56:495.1(A)2) which shall remain open until 6 a.m., March 31, 2007. The Commission also grants authority to the

Secretary of the Department of Wildlife and Fisheries to change the closing dates if biological and technical data indicate the need to do so or if enforcement problems develop and to close and reopen all or parts of state inside and outside waters if significant numbers of small white shrimp are found in these waters.

Terry D. Denmon
Chairman

0608#032

DECLARATION OF EMERGENCY

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

2006-07 Oyster Season

In accordance with the emergency provisions of the Administrative Procedure Act, Louisiana Revised Statutes (R.S.) 49:953(B) and 967(D), and under the authority of R.S. 56:433, R.S. 56:435.1, and R.S. 56:435.1.1(D) notice is hereby given that the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declare:

The oyster season in the primary public oyster seed grounds east of the Mississippi River, as described in Louisiana Administrative Code (LAC) 76:VII.511 and LAC 76:VII.513, including the sacking only area of the public grounds which is generally Lake Fortuna and Lake Machias to a line from Mozambique Point to Point Gardner to Grace Point at the Mississippi River Gulf Outlet, and including the Bay Gardene Public Oyster Seed Reservation, as described in R.S. 56:434.E, shall open one-half hour before sunrise on September 6, 2006 and close one-half hour after sunset on September 27, 2006. These areas shall then re-open at one-half hour before sunrise on November 13, 2006. Oyster harvest during the open season in the Bay Gardene Public Oyster Seed Reservation shall be restricted to seed oysters for bedding purposes only, as described in R.S. 56:433.B(1).

The oyster season in the Hackberry Bay Public Oyster Seed Reservation as described in R.S. 56:434.E shall open one-half hour before sunrise on September 6, 2006 and will close one-half hour after sunset on September 27, 2006, except the 2004 cultch plant locations within the following coordinates which will open one-half hour before sunrise on September 6, 2006 and close one-half hour after sunset on September 8, 2006.

Hackberry Bay north cultch plant

1. 29 degrees 25 minutes 05.03 seconds N
90 degrees 01 minutes 57.01 seconds W
2. 29 degrees 25 minutes 00.39 seconds N
90 degrees 01 minutes 58.34 seconds W
3. 29 degrees 24 minutes 58.22 seconds N
90 degrees 01 minutes 48.45 seconds W
4. 29 degrees 25 minutes 02.86 seconds N
90 degrees 01 minutes 47.12 seconds W

Hackberry Bay south cultch plant

1. 29 degrees 23 minutes 20.15 seconds N
90 degrees 03 minutes 14.15 seconds W
2. 29 degrees 23 minutes 24.01 seconds N
90 degrees 03 minutes 05.55 seconds W

3. 29 degrees 23 minutes 12.77 seconds N
90 degrees 02 minutes 58.98 seconds W
4. 29 degrees 23 minutes 08.92 seconds N
90 degrees 03 minutes 07.58 seconds W

The oyster season in the Hackberry Bay Public Oyster Seed Reservation, excluding the 2004 cultch plants as described above, shall re-open at one-half hour before sunrise on November 13, 2006.

The oyster season in the Lake Felicity and Lake Chien Public Oyster Seed Grounds as described in LAC 76:VII.517 will open one-half hour before sunrise on November 13, 2006 and close one-half hour after sunset on November 15, 2006.

The oyster season in the Bay Junop Public Oyster Seed Reservation as described in R.S. 56:434.E will open one-half hour before sunrise on November 13, 2006 and close one-half hour after sunset on December 12, 2006.

The Vermilion/East and West Cote Blanche/Atchafalaya Bay Public Oyster Seed Grounds, as described in LAC 76:VII.507 and LAC 76:VII.509, will open one-half hour before sunrise on September 6, 2006.

The oyster season in the Calcasieu Lake public oyster area, as described in R.S. 56:435.1 and R.S. 56:435.1.1, is detailed as follows.

1. Calcasieu Lake West Cove Conditional Management Area (west side of Calcasieu ship channel) will open one-half hour before sunrise on October 16, 2006.

2. Calcasieu Lake Conditional Management Area (east side of Calcasieu ship channel) will open one-half hour before sunrise on November 1, 2006.

The sack limit for Calcasieu Lake is set at 15 sacks per day as provided for in R.S. 56:435.1.1. However, these conservation actions will not supercede public health closures.

The following areas will remain closed for the 2006/2007 oyster season: the Deep Lake, Lake Tambour, and Lake Mechant Public Oyster Seed Grounds (as described in LAC 76:VII.517), the Sister Lake Public Oyster Seed Reservation (as described in R.S. 56:434.E) and the Sabine Lake public oyster tonging area (as described in R.S. 56:435.1).

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of non-living reef material in seed oyster loads, or if oyster resources and/or reefs are being adversely impacted, or if enforcement problems are encountered.

The secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource has ended, or may open areas if substantial oyster resources are located.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action unless such closure is ordered by the Louisiana Department of Health and Hospitals for public health concerns.

Terry D. Denmon
Chairman

0608#031

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2006 Spring Inshore Shrimp Season Closure—Zone 3

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act, which allow the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497, which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters, and a resolution adopted by the Wildlife and Fisheries Commission on May 4, 2006, which authorized the Secretary of the Department of Wildlife and Fisheries to close the 2006 Spring Inshore Shrimp Season in any portion of Louisiana's inside waters to protect small white shrimp if biological and technical data indicate the need to do so, or if enforcement problems develop, the secretary hereby declares:

The 2006 spring shrimp season in inside waters will close in Shrimp Management Zone 3 on Monday, July 17, at 6 a.m., except for that portion of the Calcasieu Ship Channel originating at a line between Channel Markers 85 and 86 southward to a point originating along the inside/outside shrimp line at Calcasieu Pass as described in R.S.56:495(A) and including East Pass from its origin at the Calcasieu Ship Channel to the south end of Calcasieu Lake and West Pass from its origin at the Calcasieu Ship Channel to the south end of West Cove which will close on Wednesday, July 26, at 6 a.m. Zone 3 is that portion of Louisiana's inside waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island to the Louisiana-Texas state line.

State Territorial waters south of the Inside/Outside Shrimp Line, as described in R.S. 56:495 will remain open to shrimping.

The number, distribution and percentage of small juvenile white shrimp taken in biological samples within Zone 3 have progressively increased in recent weeks and the region is being closed to protect these developing shrimp.

Dwight Landreneau
Secretary

0608#002

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Commercial Tilefish Season Closure

The commercial season for the harvest of tilefishes in Louisiana state waters will close effective 12:01 a.m., July 22, 2006. The tilefish assemblage includes tilefish, goldface tilefish, blackline tilefish, anchor tilefish and blue line tilefish. The Secretary has been informed that the commercial season for tilefishes in the Federal waters of the Gulf of Mexico off the coast of Louisiana will close at 12:01 a.m., July 22, and will remain closed until 12:01 a.m., January 1, 2007.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary of the Department by the Commission in its resolution of January 5, 2006 to modify opening and closing dates of 2006 commercial reef fish seasons in Louisiana state waters when he is informed by the Regional Director of the National Marine Fisheries Service that the seasons have been closed in adjacent Federal waters, and that the NMFS requests that the season be modified in Louisiana State waters, the Secretary hereby declares:

The commercial fishery for tilefishes in Louisiana waters will close at 12:01 a.m., July 22, 2006, and remain closed until 12:01 a.m., January 1, 2007. Effective with this closure, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell tilefishes whether within or without Louisiana waters. Effective with closure, no person shall possess tilefishes in excess of a daily bag limit, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing tilefish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The Secretary has been notified by National Marine Fisheries Service that the commercial tilefish season in Federal waters of the Gulf of Mexico will close at 12:01 a.m., July 22, 2006 and the season will remain closed until 12:01 a.m., January 1, 2007. Having compatible season regulations in State waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of this species in the long term.

Dwight Landreneau
Secretary

0608#010

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Large Coastal Shark Closure

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary of the Department by the Commission in its rule LAC 76:VII.357.M.2 which allows the Secretary to declare a closed season when he is informed that the commercial large coastal shark seasonal quota for that species group and fishery has been met in the Gulf of Mexico, and that such

closure order shall close the season until the date projected for the re-opening of that fishery in the adjacent Federal waters, the Secretary of the Department of Wildlife and Fisheries hereby declares:

Effective 11:30 p.m., July 31, 2006, the commercial fishery for large coastal sharks in Louisiana waters, as described in LAC 76:VII.357.B.2, (great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark and tiger shark) will close until 12:01 a.m., September 1, 2006. Nothing herein shall preclude the legal harvest of large coastal sharks by legally licensed recreational fishermen during the open season for recreational harvest. Effective with this closure, no person shall commercially harvest, possess, purchase, exchange, barter, trade, sell or attempt to purchase, exchange, barter, trade or sell large coastal sharks or fins thereof, whether taken from within or without Louisiana waters. Also

effective with the closure, no person shall possess large coastal sharks in excess of a daily bag limit whether taken from within or without Louisiana waters, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing large coastal sharks taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The Secretary has been notified by the National Marine Fisheries Service that the second trimester subquota for large coastal sharks is projected to be reached on or before July 31, 2006 and that the Federal season closure is necessary to ensure that the established quotas are not exceeded.

Dwight Landreneau
Secretary

0608#011

Rules

RULE

Board of Elementary and Secondary Education

Bulletin 111—Louisiana School, District, and State Accountability System (LAC 28:LXXXIII.Chapter 45)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended to *Bulletin 111—The Louisiana School, District, and State Accountability System* (LAC Part Number LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components. Chapter 45, Disaster Considerations for School and District Accountability, is designed to address the impact of natural disasters on schools/districts ability to meet the objectives of the accountability system.

Title 28

EDUCATION

Part LXXXIII. Bulletin 111—Louisiana School, District, and State Accountability System

Chapter 45. Disaster Considerations for School and District Accountability

§4501. Potential Impact of Disasters on Accountability

A. Special consideration shall be given to schools and districts significantly impacted by disasters when accountability decisions are made. The consideration shall include but not be limited to:

1. closure of schools and districts for extended periods of time;
2. transfer of significant numbers of students from affected schools and districts;
3. enrollment of significant numbers of displaced students into receiving schools and districts;
4. emigration of displaced students to other states;
5. multiple transfers of displaced students as they move from shelters and temporary housing to more permanent situations;
6. the transfer of displaced students as they return to their home schools and districts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1412 (August 2006).

§4503. One Year Waiver for "Severe Impact" Schools and Districts

A. Schools that meet either of two conditions associated with disasters shall be labeled "severe impact" schools and shall receive a one year waiver of accountability decisions based on the schools' school performance scores. The conditions are:

1. the school was closed, due to a disaster, for 18 or more consecutive school days during a given academic year;
- or

2. the school either gained or lost 25 percent or more of its testing population due to a disaster.

a. This 25 percent gain or loss is calculated by dividing a school's prior year October 1 enrollment of students in grades 3-11 into its current year October 1 enrollment of 3-11 students exited using "disaster" codes or entered using "disaster" codes (see §4507).

B. Schools that do not meet the severe impact criteria shall be labeled "limited impact" schools.

C. Severe impact schools that receive the one year "disaster" waiver shall not have school performance scores, growth labels, or performance labels published for the year of the waiver. Assessment results will be provided to the districts for planning purposes.

D. The year following the waivers, the waived schools shall be considered new schools.

E. Districts may request to be considered "severe impact" districts and receive a one year waiver from accountability labels and decisions if:

1. they are closed for 18 consecutive school days; or
2. they gain or lose 25 percent of their testing population before Oct. 1; or
3. they have 50 percent or more of their schools granted a one year waiver due to a disaster.

F. Districts receiving a one year waiver shall not have district performance scores, district responsibility indices, and associated labels published for the year of the waiver.

G. Districts may elect to have severe impact schools:

1. remain fully in accountability and receive scores and labels as limited impact schools (see §4507 and §4509); or
2. receive scores and labels as limited impact schools, but schools:

- a. will not enter or advance in school improvement or academic assistance as a result of accountability labels based on data collected during the year of the disaster; but
- b. schools can exit school improvement or academic assistance as a result of accountability labels based on data collected during the year of the disaster.

H. Districts must provide justification to the LDE and receive LDE approval if they elect to:

1. have some of their severe impact schools receive the one year waiver and subsequent new school status, while;
2. they elect for other severe impact schools to follow one of the choices in Paragraphs G.1 and 2 above.

I. Districts may request of the LDE that limited impact schools be relabeled severe impact schools if special circumstances exist at the schools. The LDE may grant the request if adequate justification is provided by the district. Requests that attempt to circumvent accountability for schools previously identified as being in school improvement shall be denied.

J. Districts that elect for their schools the provisions in Subsections H and/or I above, must submit in writing, by April 15 of the academic year in which the disaster occurred,

any such requests and any justification supporting the requests.

K. Louisiana Department of Education staff will, after conferring with district personnel, notify in writing by the last "business day" in May, the districts of its decisions concerning requests for the provisions in Subsections H and/or I above.

L. Districts must notify the LDE no later than the last "business day" in May of their final decisions regarding severely impacted schools and the choices in Subsection G (above).

M. Situations not considered by this policy but that substantially impact a school's accountability results may be addressed by the school district during the established appeal/waiver period following the official fall release of accountability results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1412 (August 2006).

§4505. Severe Impact Schools Following a One Year Disaster Waiver

A. Severe impact schools that fall within a K-8 configuration and that receive the one year waiver will:

1. the following year, receive only assessment indices with no published growth or performance scores or labels;
2. the second year following the waiver, receive baseline school performance scores and performance labels;
3. the third year following the waiver be fully included in accountability with growth and baseline SPSs and growth and performance labels.

B. Due to the inclusion of a graduation index in accountability, severe impact schools that fall within the 9-12 configuration and that receive the one year waiver will:

1. the following year, receive only assessment indices with no published growth or performance scores or labels;
2. the second year following the waiver, receive baseline assessment indices and performance labels assigned to those indices;
3. the third and fourth years following the waiver, be fully included in accountability with growth and baseline assessment indices and growth and performance labels assigned to those indices;
4. the fifth year following the waiver, be fully included in accountability with:
 - a. growth assessment Indices and growth labels assigned to those indices; and
 - b. a graduation index; and
 - c. a baseline school performance score comprised of assessment and graduation data;
5. the sixth year following the waiver, be fully included in accountability with growth and baseline SPSs comprised of assessment and graduation data and growth and performance labels.

C. Severe impact combination schools shall have their two components (K-8 and 9-12) re-enter accountability as described in Subsections A and B (above). The overall scores will be calculated using weighted averages of the appropriate assessment indices and/or school performance scores from the two components.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1413 (August 2006).

§4507. Identifying Displaced Students

A. Beginning in fall 2005, the Louisiana Department of Education (LDE) will provide specific entry and exit codes and detailed instruction on the use of those codes to address significant and specific disaster situations.

B. The Louisiana Department of Education must determine what specific disasters and impacted districts to which these codes will be applied and any time limitations.

C. Districts are required to use the "disaster codes" as instructed by the LDE if consideration related to accountability is to be granted the schools and districts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1413 (August 2006).

§4509. Assessment Index Calculations with Displaced Students for Limited Impact Schools

A. When student mobility occurs prior to October 1 of a given academic year as a result of a disaster, the data collected during that academic year for calculating the assessment index (for use in the Growth and Baseline SPS) shall be evaluated in two ways:

1. as described in Chapters 3 and 4;
2. as described in Chapters 3 and 4, but excluding the assessment results of any student who entered the school using a "disaster" entry code during that academic year. The assessment index calculated when excluding the displaced students is called the alternate assessment index.

B. Growth labels shall be assigned and Growth SPS reported using the higher of the two assessment indices.

C. Performance labels shall be assigned and Baseline SPS reported using the lower of the two assessment indices, except:

1. when using the higher of the two prevents a school from being labeled academically unacceptable, the higher assessment index shall be used.

D. The lower of the two assessment indices shall be used the following academic year in the Baseline SPS for reporting and assigning performance labels, except:

1. when using the higher of the two prevents a school from being labeled academically unacceptable, the higher assessment index shall be used.

E. If large numbers of displaced students impact a school's performance due to intra-district transfers, the district may appeal during the established appeal/waiver period following the official fall release of accountability results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1413 (August 2006).

§4511. Graduation Index Calculations for Limited Impact Schools

A. Displaced students entering grades 9-12 at a limited impact school using a "disaster" entry code shall not enter the graduation cohort in that academic year.

B. If such a student is included in a school's Oct. 1 count of the following academic year, the student shall enter the graduation cohort as described in Chapter 6.

C. When student mobility is a result of a disaster, students exiting grades 9-12 using a "disaster" exit code shall not be considered dropouts (refer to §611).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1413 (August 2006).

§4517. District Performance Score Calculations with Displaced Students

A. The district performance scores will be calculated using the same indices as school performance scores with the same considerations for displaced students (described in §§4507-4515).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1414 (August 2006).

§4527. Disaster Considerations for the School and District Subgroup Component

A. Schools and districts shall receive a one year exclusion from the subgroup component in accountability if they:

1. reside within the boundaries of parishes declared natural disaster areas by the President of the United States; and
2. were closed due to the declared disaster for 18 consecutive school days.

B. Any school or district with displaced students comprising 5 percent or more of its eligible subgroup component testing population on the days of testing in a given academic year, and that fails the subgroup component, shall receive a one year exclusion from accountability decisions (refer to §3103) based on the subgroup component during the academic year in which the disaster occurred.

C. Any school or district that fails the subgroup component because of the failure of any subgroup that includes displaced students shall be re-evaluated with the displaced students comprising a separate subgroup and excluded from all other subgroups.

1. If, after re-evaluation, no subgroups fail or only the displaced students subgroup fails the subgroup component, the school or district shall:

- a. submit a plan for approval to the LDE addressing the needs of displaced students; and
- b. implement the plan after receiving LDE approval.

2. The school or district shall not be labeled as failing subgroup AYP, nor enter or advance in school improvement.

3. Schools or districts that, at the beginning of the following academic year, enroll fewer than 50 percent of the students who comprised the displaced students subgroup may request a one year exclusion from the subgroup component.

4. The displaced students shall not be considered a separate subgroup the following academic year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1414 (August 2006).

Weegie Peabody
Executive Director

0608#024

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Curriculum and Instruction (LAC 28: CXV.2319, 2377, and 2387)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2319, High School Graduation Requirements, §2377, General Career and Technical Education, and §2387, Trade and Industrial Education. This action will up-date Career and Technical course offerings. In updating these courses offerings our Career and Technical program of studies will be more aligned with national standards.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2319. High School Graduation Requirements

A. - E. ...

F. High School Area of Concentration

1. All high schools shall provide students the opportunity to complete an area of concentration with an academic focus and/or a career focus.

a. To complete an academic area of concentration, students shall meet the current course requirements for the Tuition Opportunity Program for Students (TOPS) Opportunity Award plus one additional Carnegie unit in mathematics, science, or social studies.

b. To complete a career area of concentration, students shall meet the minimum requirements for graduation including four elective primary credits in the area of concentration and two related elective credits, including one computer/technology course. The following computer/technology courses can be used to meet this requirement.

Course	Credit
Computer/Technology Literacy	1
Computer Applications or Business Computer Applications	1
Computer Architecture	1
Computer Science I, II	1 each
Computer Systems and Networking I, II	1 each
Desktop Publishing	1
Digital Graphics & Animation	1/2
Multimedia Presentations	1/2 or 1
Web Mastering or Web Design	1/2
Independent Study in Technology Applications	1
Word Processing	1
Telecommunications	1/2
Introduction to Business Computer Applications	1
Technology Education Computer Applications	1
Advanced Technical Drafting	1
Computer Electronics I, II	1 each
Database Programming with PL/SQL	1
Java Programming	1
Database Design and Programming	1/2

G - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:24.4, R.S. 17:183.2, R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006).

§2377. General Career and Technical Education

A. General Career and Technical Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
CTE Internship I	11-12	2
CTE Internship II	12	2
General Cooperative Education I	11-12	3
General Cooperative Education II	12	3
Education for Careers	9-12	1/2 -1
Teacher Cadet I	11-12	1
Teacher Cadet II	12	1
Advanced Television Broadcasting I	10-12	1-3
Advanced Television Broadcasting II	11-12	1-3
Digital Media I	10-12	1-3
Digital Media II	11-12	1-3
Oracle Internet Academy		
Database Design and Programming	11-12	1
Java Programming	11-12	1
Database Programming with PL/SQL	11-12	1/2
Finance Academy		
Economics and the World of Finance	11-12	1/2
Banking and Credit	11-12	1/2
Financial Planning	11-12	1/2
Securities	11-12	1/2
Insurance	11-12	1/2
International Finance	11-12	1/2
Introduction to Financial Services	11-12	1/2 - 1
Hospitality and Tourism Academy		
Introduction to Travel and Tourism	11-12	1/2
Travel and Tourism II	11-12	1/2
Travel Destinations I, II	11-12	1/2
Systems Applications	11-12	1/2
Economics for Travel and Tourism	11-12	1/2
Information Technology Academy		
Introduction to Information Technology	11-12	1/2
Digital Networks	11-12	1/2
Advanced Web Tools	11-12	1/2
Databases	11-12	1/2
Introduction to the Internet	11-12	1/2
Logic for Programming	11-12	1/2

B. General Cooperative Education courses shall be limited to students who meet the specific prerequisites and requirements of one of the specialized cooperative education programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1299 (June 2005), amended LR 32:1415 (August 2006).

§2387. Trade and Industrial Education

A. Trade and Industrial Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Air Conditioning/ Refrigeration I, II	11-12	1-3
Air Conditioning/ Refrigeration III, IV	11-12	2-3
Auto Body Repair I, II	11-12	1-3

Course Title(s)	Recommended Grade Level	Units
Auto Body Repair III, IV	11-12	2-3
Automotive Technician I, II	11-12	1-3
Automotive Technician III, IV, V, VI	11-12	3
General Automotive Maintenance	11-12	1-3
G. M. Technician I, II	11-12	1-3
ABC Carpentry I, II	11-12	1-3
ABC Electrical I, II	11-12	1-3
ABC Instrumentation Control Mechanic I, II	11-12	1-3
ABC Pipe Fitter I, II	11-12	1-3
ABC Welding Technology I, II	11-12	1-3
Masonry I, II	11-12	1-3
Cabinetmaking I, II	11-12	1-3
Carpentry I, II	11-12	1-3
Carpentry III, IV	11-12	2-3
Culinary Occupations I, II	11-12	1-3
Culinary Occupations III, IV	11-12	2-3
Custom Sewing I, II	11-12	1-3
Computer Electronics I, II	11-12	1-3
Commercial Art I, II	11-12	1-3
T & I Cooperative Education (TICE) I	11-12	1-3
T & I Cooperative Education (TICE) II	12	1-3
T & I Elective I	11-12	1-3
T & I Elective II	11-12	1-3
Cosmetology I, II	11-12	1-3
Cosmetology III, IV	11-12	2-3
Diesel Mechanics I, II	11-12	1-3
Diesel Mechanics III, IV	11-12	2-3
Drafting and Design Technology I, II	11-12	1-3
Drafting and Design Technology III, IV	11-12	2-3
Basic Electricity I, II	11-12	1-3
Electronics I, II	11-12	1-3
Industrial Electronics I, II	11-12	1-3
Electrician I, II	11-12	1-3
Electrician III, IV	11-12	2-3
Graphic Arts I, II	11-12	1-3
Graphic Arts III, IV	11-12	2-3
Horticulture I, II	11-12	1-3
Industrial Engines I, II	11-12	1-3
Laboratory Technology I, II	11-12	1-3
Industrial Machine Shop I, II	11-12	1-3
Industrial Machine Shop III, IV	11-12	2-3
Marine Operations I, II	11-12	1-3
Photography I, II	11-12	1-3
Plumbing I, II	11-12	1-3
Printing I, II	11-12	1-3
Sheet Metal I, II	11-12	1-3
Outdoor Power Equipment Technician I, II	11-12	1-3
Outdoor Power Equipment Technician III, IV	11-12	2-3
Television Production I, II	11-12	1-3
Upholstery I, II	11-12	1-3
Welding I, II	11-12	1-3
Welding III, IV	11-12	2-3

B. Trade and industrial education programs may be offered in two consecutive class periods, five days per week, for 36 weeks each year for two units of credit, or may be offered with three consecutive class periods for three units of credit in the selected Trade and Industrial Education program.

C. Each LEA that operates a career/technical center or comprehensive high school may award 1 1/2 units of credit to students enrolled in a two-hour block for 36 weeks, or 2 1/2 units of credit to students enrolled in a three-hour block for 36 weeks in approved trade and industrial education programs. This scheduling allows students to be

excused from class for one hour each day for one semester to take the required course in Free Enterprise at either the tenth, eleventh, or twelfth grade level.

D. An LEA may offer a one-hour trade and industrial education program for one unit of credit at the ninth or tenth grade level as a prerequisite to enrollment in a related trade and industrial education program at the tenth, eleventh, or twelfth grade level. The course shall be in the programmatic area in which the trade and industrial education instructor is certified to teach.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 32:1415 (August 2006).

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Executive Director

0608#005

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Louisiana Educational Leaders Induction (LELI) Program (LAC 28: CXV.507)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*, §507. Louisiana Educational Leaders Induction (LELI) Program. Existing policy contained in Section 507 of Bulletin 741 states the Louisiana Principal/Assistant Principal Induction Program guidelines. This revision to policy reflects new guidelines for the Louisiana Educational Leaders Induction Program for the induction of first- and second-year principals, first-year assistant principals, and district level leaders. This policy was updated to align it with current certification policy. The proposed changes will clarify eligibility requirements for issuance of Educational Leader certificates and will allow for more effective implementation of the new Educational Leader Certification Structure.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 5. Personnel

§507. Louisiana Educational Leaders Induction (LELI) Program

A. All newly appointed principals, assistant principals, and district level leaders with provisional principal or Educational Leader Level 1 certification shall participate in the LELI.

B. The LELI Program shall include the following.

1. Individuals appointed to a principalship, assistant principalship, or district level leadership position after October 1 shall be enrolled in the LELI at the beginning of the following year.

2. LELI program requirements shall also apply to an individual serving as Acting Principal or Acting Assistant

Principal if he/she is serving in a full-time, full-year administrative capacity.

3. A newly appointed assistant principal who successfully completes the Assistant Principal Induction Program and three years of educational leadership experience may request to have his/her provisional principal status or Educational Leader Level 1 endorsement updated to Educational Leader Level 2.

4. A newly appointed principal who successfully completes the Principal Induction Program and three years of educational leadership experience may request to have his/her provisional principal status or Educational Leader Level 1 endorsement updated to Educational Leader Level 2.

5. A newly appointed district leader who successfully completes the District-Level Educational Leader Induction Program and three years of educational leadership experience may request to have his/her provisional principal status or Educational Leader Level 1 endorsement updated to Educational Leader Level 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3761.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1266 (June 2005), amended LR 32:1416 (August 2006).

Weegie Peabody
Executive Director

0608#007

RULE

Board of Elementary and Secondary Education

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

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Nonpublic *Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*, §109, Initial Classification and §303. Instructional Staff (LAC 28:LXXIX). The Rule changes affect the policies concerning school approval and qualification of personnel. The changes in the school approval policy specify the process for obtaining school approval including how long schools must be in existence before they can apply for approval. The changes in §303 are needed to provide clarity and specificity to the existing policy.

Title 28

EDUCATION

Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators Chapter 1. Operation and Administration §109. Initial Classification

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

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

C. Upon receipt of the initial classification and BESE approval, Brumfield-Dodd approval may be requested

through the Office of Communications and Legislative Services.

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

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

Chapter 3. Certification of Personnel

§303. Instructional Staff

A. Each member of the instructional staff teaching secular subjects, pre-kindergarten through 12, shall meet one of the following three options:

1. hold a valid Louisiana teaching certificate for the courses he/she teaches; or

2. qualify to teach in nonpublic schools by meeting all of the following criteria:

a. have a bachelor's degree from a regionally accredited institution;

b. have a college major or the equivalent in the area of his/her teaching assignment; and

c. earn 12 semester hours of professional education courses. A beginning teacher shall have a three-year period in which to meet this 12-semester hour standard.

3. Teachers not meeting the requirements of Paragraphs 1 or 2 of this Section may obtain a Nonpublic Temporary Teaching Authorization (NTTA) issued by the DOE or a diocesan superintendent for schools within the diocesan system. The NTTA is valid for one year. To renew the NTTA, a teacher must complete six semester hours needed to complete the requirements of Paragraphs 1 or 2 of this Section.

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

C. Teachers of the pre-kindergarten class shall be certified or qualified in either elementary, kindergarten, or nursery school or have earned 12 hours in child growth and development. The 12 hours in child growth and development may be earned through the College of Education or the Department/School of Family and Consumer Sciences.

D. Teachers of the kindergarten class shall be certified or qualified in either elementary or kindergarten or have earned 12 hours in child growth and development. The 12 hours in child growth and development may be earned through the College of Education or the Department/School of Family and Consumer Sciences.

E. Staff members teaching religion at the high school level (9-12) for Carnegie units must have a minimum of a bachelor's degree. Staff members teaching religion that do not meet minimum qualifications may be retained in a school provided they were employed during the 1995-96 school year as teachers of religion.

F. Professional and/or technical personnel—e.g., C.P.A.s, doctors, college or university professors, lab technicians, lawyers, and so forth - may teach less than one-half of a school day in their area of expertise.

G. Non-degreed teachers having taught for a period of at least five years prior to September 1, 1977, may be rehired in a school provided their teaching performance was satisfactory; however, these teachers are eligible to teach only in the subject areas as listed prior to September 1, 1977. Upon retirement or replacement, these teachers must be replaced with qualified teachers as described herein.

H. Credentials for graduates of foreign universities or colleges must be submitted to the American Association of Collegiate Registrars and Admissions Officers (AACRAO), Office of International Education Services, for evaluation according to the DOE procedures. After reviewing the AACRAO Evaluation, the local administrator shall determine if the applicant is qualified to teach according to the requirements of this Section. A copy of the AACRAO evaluation shall be kept on file in the principal's office.

1. Applicants with foreign credentials seeking state certification should follow procedures as outlined by the DOE.

I. Teachers in nonpublic schools seeking state certification shall follow the approved procedure.

1. Secondary and elementary personnel may teach grades preK-12 in their qualified areas.

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

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

Weegie Peabody
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0608#006

RULE

Board of Elementary and Secondary Education

Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation (LAC 28:XLIX.109, 111, 303, 313, 333, 341, 345, 349, 503, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, 1117, 1303, 1315, 1703, 1705, 1707, 2101, 2311, 2505, 2507, 2509, 2523 and 3109)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation* (LAC 28:XLIX). Bulletin 1196 is the policy manual designed to provide useful guidance and information for the purpose of improving regulatory compliance and to enhance the understanding and operation of the Child Nutrition Programs in Louisiana. This bulletin was developed as a result of the necessity to incorporate all state policy changes which have already been implemented by the sponsors. These revisions update state policies.

Title 28

EDUCATION

Part XLIX. Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation

Chapter 1. Administration

§109. Requirements for Participation

A. - C.3. ...

4. Under the above criteria, the following types of schools of high school grades or under and institutions generally qualify.

a. Boarding or Institutional Schools

i. Boarding or institutional schools are eligible to participate if food costs for school children are satisfactorily separated from the total food cost, including adults, and if prior approval has been obtained from the state agency. Such eligible schools can claim reimbursement for only one lunch, breakfast, and/or snack per school child served on regular school days.

b. Bureau of Indian Affairs (BIA) Schools

i. Bureau of Indian Affairs schools are operated by the BIA or under a BIA contract; they are allowed to participate under the same terms as all other recognized schools.

c. Charter Schools

i. Independent public schools that provide a program of elementary or secondary education, or both, organized as nonprofit corporations and governed by their own board of directors within the framework agreed to in the charter granted by the local school board or the SBESE are allowed to participate under the same terms as all other recognized schools. These schools must be public (governmental) or private nonprofit having tax-exempt status with the Internal Revenue Service, 501(c)(3).

d. - i. ...

i. Public or nonprofit private RCCIs that have temporary clientele are eligible to participate as long as they operate on a continuous basis. Private RCCIs must be licensed by the state and have tax-exempt status with the Internal Revenue Service, 501(c)(3). RCCIs include, but are not limited to, homes for the mentally, emotionally or physically impaired; unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers.

C.4.j. – D.2.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2101 (December 2001), amended LR 32:1417 (August 2006).

§111. Permanent Agreement between Sponsor and Louisiana State Department of Education

A. Sponsorship of a CNP is limited to the board of a public school system, the board of a charter school if public (governmental) or private nonprofit having tax-exempt status with the Internal Revenue Service, 501(c)(3), or the governing body legally responsible for the administration of a nonpublic school having tax-exempt status with the Internal Revenue Service, 501(c)(3). As sponsors, the board or governing body shall execute the required agreement with the LDOE and accept responsibility for carrying out all terms. The sponsor must also submit an application for participation annually and provide any other required information regarding school food service in the schools or other institutions under its jurisdiction.

B. - C.26.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE Promulgated by the Board of Elementary and Secondary Education, LR 27:2102 (December 2001), amended LR 29:2022 (October 2003), LR 32:1418 (August 2006).

Chapter 3. Financial Management and Accounting §303. Basic Requirements for School Food Service Financial Accountability

A. - A.12.a. ...

13. Accountability of Assets

a. Control over and accountability for all funds, property, supplies, and other program assets shall be maintained to ensure that they are safeguarded and used solely for authorized program purposes.

14. Auditing of Federal Funds

a. A SFA expending a total of \$500,000 or more a year in federal funds for all programs, shall have a single or program specific audit conducted in accordance with the provisions of Circular A-133. (Refer to §333.Audit Requirements, for additional information.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2104 (December 2001), amended LR 32:1418 (August 2006).

§313. Special Functions/Catering

A. The SFA may allow the school food service program to provide services beyond the established school lunch, breakfast, and after school snack programs. Special functions and/or catering activities shall not interfere with the preparation and service of student meals/snacks.

1. Use and Sale of Commodities

a. Commodities may be used in the preparation and sale of foods for any school related functions. (Refer to Chapter 17.Commodities.)

2. Accountability

a. ...

b. School food service must be paid for all services, food, and supplies used in connection with space catering/special functions. The charges for any product or service must be sufficient to recover the full production cost (including commodities when allowed) plus a profit. At a minimum, these costs shall include food, labor (wages plus any benefits), paper and nonfood supplies, transportation, utilities, etc. It is recommended that the SFA add a minimum of 10 percent to the total bill to ensure that all costs are recouped. All monies earned or received shall accrue to the school food service account. The collection and reporting of state and local taxes shall comply with regulations governing sales and use tax. To maintain a tax-exempt status and to avoid competing with the private sector of the community, each SFA should limit catering to schools, school-sponsored events, and nonprofit organization events. (For additional information, contact the nearest district office of the Louisiana Department of Revenue and Taxation, Sales Tax Division.)

c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2106 (December 2001), amended LR 29:2023 (October 2003), LR 32:1418 (August 2006).

§333. Audit Requirements

A. SFAs that expend a total of \$500,000 or more a year in federal funds for all programs shall have a single or program-specific audit conducted in accordance with provisions of Circular A-133 Revised 1997: Audit of States, Local Governments, and Non-Profit Organizations. Louisiana Revised Statutes 24:513 also require governmental audits and examinations of quasi-public entities as specified therein.

B. The SFA should make arrangements for an annual audit in accordance with Louisiana Revised Statutes 24:513. The audit shall be made by an independent auditor [the State Legislative Auditor or a Certified Public Accountant who is licensed to practice in Louisiana and who meets the independent standards specified in Generally Accepted Government Auditing Standards (GAGAS)]. The selection of an independent auditor is the SFA's responsibility, although the legislative auditor or the state agency can provide advice to those SFAs that have little or no experience in arranging for audit services.

C. In selecting an auditor, it is not necessary to implement a formal bid process, although the services must be obtained in an efficient and economical manner that provides maximum open and free competition. The SFA must provide an opportunity for small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals to submit proposals for the audits. The engagements are subject to oversight and approval by the Legislative Auditor.

D. The auditor must evaluate internal controls including an evaluation and written report on the SFA's internal accounting and administrative control systems over its federal financial assistance programs. The auditor must also determine whether the SFA has complied with laws and regulations governing the federally assisted program(s). The auditor shall determine whether the financial statements and supplementary schedule of federal awards of the SFA present fairly its financial position, and whether the results of its financial operations are in accordance with generally accepted accounting principles. The audited financial statements/schedules must provide details relating to the financial position and results of operation of the Child Nutrition Programs.

E. One copy of the audit reports shall be sent to the Office of the Louisiana Legislative Auditor and two copies shall be sent to the Bureau of Internal Auditing, LDOE. Recipients of \$500,000 or more in federal funds shall also submit a copy of the audit report and Form SF-SAC: Data Collection Form within 30 days after its issuance to a central audit report clearinghouse. The address of the clearinghouse is:

Single Audit Clearinghouse
Bureau of the Census
Data Preparation Division
1201 E. 10th Street
Jeffersonville, Indiana 47132

F. A single audit report is due 9 months following the end of the SFA's fiscal year. The state agency is responsible for resolving findings resulting from the audit. Failure to comply with the audit requirements can result in suspension or termination of the agreement between LDOE and the SFA.

G. The SFA's prorata share of expenses of the single audit is an allowable expense. In agency-wide audits, the cost of the audit should be shared by the various funds audited on a per-hour basis. If total federal funding is less than \$500,000, no part of the audit may be charged to the non-profit school food service account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2114 (December 2001), amended LR 32:1419 (August 2006).

§341. Claim for Reimbursement

A. Each SFA shall submit a monthly claim for reimbursement in order to receive reimbursement for reimbursable meals served. The Claim for Reimbursement/System Participation Data and Claim for Reimbursement/School Participation Data are on-line forms used to report the claims data. The District Income and Expense Report shall be submitted as indicated by the state agency after the close of each fiscal year on June 30. These on-line forms and instructions are provided by the state agency.

B. Reimbursement Procedures

1. - 3. ...

4. The claim for reimbursement system and school participation data shall be submitted electronically to the state agency no later than 60 days following the last day of the month covered by the claim. Claims not submitted within 60 days shall not be paid unless authorized by the state agency. A one-time exception for late claim submission may be allowed by the state agency every 36 months with proper written justification.

5. After the 60 day period, upward adjustments for underclaimed errors shall not be made unless authorized by the state agency following a review or audit. Downward adjustments for overclaimed errors shall always be made regardless of when the error is discovered.

6. A valid claim for reimbursement has not been submitted until the District Participation Data and the Claim for Reimbursement, School Participation Data have been accurately completed and received by Appropriation Control.

7. In submitting a claim, the authorized SFA representative shall certify that the claim is true and correct, that records are available to support the claim, and that payment has not been received. Reporting of income and expenditures shall be in accordance with the system of accounting established by the state agency.

8. All School Food Authorities must be enrolled in the Electronic Fund Transfer (EFT) payment process for the receipt of reimbursement funds. Checks will not be mailed for the payment of claims. Participation in Electronic Funds Transfers can result in payments being received sooner.

a. The only requirement for participation in the EFT payment process is that you have an active checking account at a financial institution that can accept ACH credit files and remittance information electronically. Payees that receive payments via EFT will not be sent paper remittance advices. This information will be transmitted electronically will mirror the information currently being printed on check stubs. Remittance information includes: issuing agency

name, telephone number, agency number, document number, reference document number, comments and payment amount.

b. The state of Louisiana currently provides you with remittance information through the Internet. This web-based application is secured and presents detailed information about payments made from the state's central accounting system (ISIS). You have the ability to search for and view payment information for the most recent three years. Access to the application is via a Log-In Screen where the user must provide a valid taxpayer identification number (TIN-FEIN or SSN). The application is accessible through the Office of Statewide Reporting and Accounting Policy's (OSRAP) homepage at <http://www.state.la.us/OSRAP/INDEX.HTM> by clicking on the red Find Payments button.

c. The following information should be verified by your bank to guarantee the success of this process. The EFT payment will be transmitted using a CTX entry in ASCX12 Interchange Control Structures (ANSI ASC X12.5), Application Control Structure (ANSI ASC X 12.6) and ANSI ASC X 12 transactions containing the 820 Transaction Set (ANSI ASC X 12.4). The 820 Transaction Set will contain your remittance information. Your financial institution must have the ability to receive remittance information electronically and agree to provide the information to you upon request. Ensure that you specifically ask if they can provide you with the information found in the 820 Transaction Set. If you desire the receipt of remittance information as EFT's are received, you must specifically request your financial institution provide it to you. Contact the state agency for further information.

C. - D.1. ...

E. District Income and Expense Report

1. The District Income and Expense Report shall be submitted as indicated by the state agency following the close of each fiscal year on June 30. This form shall be used to report the total annual income and expenses for the SFA. Net cash resources shall also be reported on the District Income and Expense Report.

F. - F.1. ...

G. Commodities Received

1. The value of USDA Commodities received during the fiscal year, the federal reimbursement earned, and the state funds received for the fiscal year shall be considered income and reported annually on the District Income and Expense Report.

H. Expenses

1. Food Used

a. The Cost of Food Used Worksheet is prepared monthly to calculate the actual cost of food used in every school that prepares food. At the close of each fiscal year, the cost of purchased food used in all schools for the fiscal year, shall be tabulated and reported as food used in the expense section of the District Income and Expense Report. The Cost of Food Used form and instructions are provided by the state agency.

2. - 5.a. ...

I. Reporting Refunds/Rebates

1. - 3.a. ...

4. Net Cash Resources

a. The net cash resources of the SFA shall be reported on an annual basis each year on the Income and Expense Report. Residential Child Care Institutions should not complete this section of the Income and Expense Report. The purpose of this reporting is to ensure that the SFA maintains a nonprofit status. (Refer to §305.Nonprofit Status/Net Cash Resources, for further information.) To calculate net cash resources, adhere to the procedures listed below.

i. Report any cash on hand in school cafeterias and/or the central office that has not been deposited.

ii. Add the latest reconciled operating-fund bank balance.

iii. Add the total value of investments including interest earned, in certificates of deposit, money market funds, etc.

iv. Add the total of any reserve accounts for self-insurance.

v. Add the total of any reserve accounts for equipment.

vi. Add the total of any accounts receivable such as outstanding reimbursement checks.

vii. Deduct from the subtotal any payables. Examples of payables are salaries earned during the nine months of operation but remaining to be paid during the summer and any unpaid bills for the current fiscal year. Unpaid telephone and utility bills are not reported as accounts payable because they are reported as expenses only when invoiced. Any item reported on the Income and Expense Report as accounts payable shall also be reported in the appropriate category of the Claim for Reimbursement, System Data Report as an expense and shall not be reported on future claims.

viii. Total the value from all commodity invoices received during the fiscal year and report in the income section of the System Data Report.

b. The District Income and Expense Report may differ from the annual financial statements included in the general purpose financial statements of the school board. This difference is due to the fact that the District Income and Expense Report is prepared using a method similar to cash flow, while the annual financial statement of the school board is prepared on a modified accrual or accrual basis of accounting.

c. The state agency will verify net cash resources when audits are conducted. Adjustments will be made if necessary to reconcile these figures.

5. School Participation Data Claim

a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2116 (December 2001), amended LR 29:2024 (October 2003), LR 32:1419 (August 2006).

§345. Residential Child Care Institutions

A. - B. ...

C. Severe-Need Breakfast

1. RCCIs meeting the severe-need criteria may apply for severe-need funding. RCCIs are required to meet the same eligibility criteria as public or nonpublic schools. (Refer to §343.Severe-Need Breakfast, for eligibility requirements.)

2. RCCIs approved for severe-need funding shall receive the severe-need breakfast reimbursement rate throughout the school year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2119 (December 2001), amended LR 32:1420 (August 2006).

§349. Recordkeeping for RCCIs and Boarding Schools

A. - B.11.a. ...

12. Audit Requirements

a. RCCIs and boarding schools expending a total of \$500,000 or more a year in federal funds for all programs shall have a single or program specific audit conducted in accordance with the provisions of Circular A-133. (Refer to §333.Audit Requirements, for more information.) The cost for any audits performed of RCCIs or boarding schools in which total federal funds expended in a year are less than \$500,000 may not be paid from federal school food service program funding.

b. If a participating RCCI or boarding school has federal expenditures of less than \$500,000 in a fiscal year, it shall annually report this information to the Louisiana Department of Education, to ensure compliance with federal audit requirements.

12.c. - 14.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2120 (December 2001), amended LR 28:1737 (August 2002), LR 29:2024 (October 2003), LR 32:1421 (August 2006).

Chapter 5. Free and Reduced Price Meals

§503. Policy Statement

A. Requirements for a Pricing Program

1. A pricing program is one in which a separate identifiable charge is made for meals served to participants. A permanent agreement setting forth conditions for serving free and reduced price meals is entered into between the SFA and the state agency. Additional electronic forms are submitted yearly to update the permanent agreement. The electronic forms are as follows:

- a. Schedule A;
- b. policy checklist;
- c. collection officials;
- d. collection procedure;
- e. labor expense;
- f. income and expenses;
- g. verification summary report.

2. The documents listed below are part of the permanent agreement; they must be updated when adjustments or amendments are made and when requested by the state agency. These forms may be found on the memos/resources list on the Child Nutrition Programs (CNP) home page.

a. a public release/announcement to the community of the SFAs meal prices for the upcoming school year and the intent to offer free and reduced price meals to eligible students;

b. income eligibility guidelines for the current school year and other documents or provisions that contain the eligibility criteria for free and reduced price benefits;

c. the Free and Reduced-Price Meals Family Application form with instructions;

d. the letter to households regarding application for benefits;

e. the direct certification notice;

f. a copy of the notification letter to households regarding application for benefits (Meal Benefits Notice);

g. the collection procedure;

h. collection officials;

i. the notice of selection for verification and other forms of supporting documentation to assist in verification which include the following:

i. acceptable verification documents;

ii. Social Security numbers;

iii. a letter for food stamp/Family Independent Temporary Assistance Program (FITAP) office to complete;

iv. a letter for Social Security office to complete;

v. a letter for employer to complete.

j. the Benefit Change/Termination Notice;

k. the SFA letter to FITAP Office;

l. the SFA Guidance/Acceptable Income Documentation to assist household selected for verification in gathering income information;

m. verification documentation results; (verification tracker form)

3. An electronic version of the approved agreement shall be accessible to the SFA via the CNP website. All personnel responsible for the administration and supervision of the program must be thoroughly familiar with the agreement to ensure compliance with program regulations. In fulfilling its responsibilities, each pricing SFA:

a. agrees to serve meals free or at a reduced price to all children who are determined by the SFA to be eligible for such meals under 7 CFR Part 245;

b. agrees that there will be no physical segregation of or any other discrimination against any child because of inability to pay the full price of the meal; the names of the children eligible to receive free or reduced price meals shall not be published, posted, or announced in any manner; and there shall be no overt identification of any such children by use of special tokens, tickets or any other means. Further assurance is given that children shall not be required to do the following:

i. work for their meals;

ii. use a separate dining room;

iii. go through a separate serving line;

iv. enter the cafeteria through a separate entrance;

v. eat meals at a different time, or eat a different meal;

c. agrees to maintain an up to date master list of all children eligible for free and reduced price meals; this master list must be retrievable by school; the following information must be retrievable by student: approval date, transfer, drop and change in status date;

d. agrees to set reduced price charges for lunch and breakfast at or below the maximum reduced price allowed by regulations and below the full price of the lunch or breakfast;

e. agrees that the information provided by the household is confidential and will be used only for purposes of determining eligibility and verifying data;

f. agrees that in the operation of child feeding programs, no child shall be discriminated against because of race, sex, color, national origin, age, or disability and agrees to have on file procedures for handling discrimination complaints;

g. agrees to designate a school official to review applications and make determinations of eligibility. Such official will use the criteria outlined in the eligibility guidelines (Refer to §505.Application Process.);

h. agrees to establish and use a fair hearing procedure under which a family can appeal a decision made by the SFA with respect to the child's free and reduced price meal application; the SFA can challenge the continued eligibility of any child for free or reduced price meals. During the appeal and hearing, the child, who was determined to be eligible based on the face of the application submitted, will continue to receive free or reduced price meals; prior to initiating the hearing procedure, the school official(s), the parent(s), or guardian(s), may request a conference to discuss the situation, present information, and obtain an explanation of data submitted on the application and the decisions rendered; such a conference shall not in any way prejudice or diminish the right to a fair hearing; the designated hearing official must be someone who is not involved in the original eligibility determination in any way, such as advising or answering questions for the approving official. It is suggested that this person hold a higher position than the determining official; the hearing official for the free and reduced application procedure and the hearing official for verification must be the same person; the hearing procedure shall provide the following for both the family and the SFA:

i. a publicly announced, simple method for making an oral or written request for a hearing;

ii. an opportunity to be assisted or represented by an attorney or other person;

iii. an opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

iv. a hearing scheduled with reasonable promptness and convenience, with adequate notice of its time and place;

v. an opportunity to present oral or documentary evidence and arguments supporting a position without undue interference;

vi. an opportunity to question or refute any testimony or other evidence and to confront and cross examine any adverse witness(es);

vii. a hearing that is conducted and a decision made by an official who did not participate in the decision under appeal or in any previous conference;

viii. a decision of the hearing official based on the oral documentary evidence presented at the hearing and entered into the hearing record;

ix. notifications in writing of the decision to the parties concerned and any designated representative;

x. a written record for each hearing which includes the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official and the reasons therefore, and a copy of the notification to the parties concerned of the hearing official's decision;

i. agrees to retain such written records for a period of three years after submission of the final claim for reimbursement for the fiscal year. If any audit findings have not been resolved, the records shall be maintained as long as required until the audit is closed. These records must be made available for examination by the parties concerned or their designees at any reasonable time and place during such period;

j. agrees to develop and distribute a letter/notice to each child's parent(s) or guardian(s); an application with instructions and a letter to households shall be distributed at or about the beginning of each school year or whenever there is a change in eligibility criteria; households that have been directly certified will be notified of their eligibility; the letter and the application that are sent to parents shall have only the Income Eligibility Guidelines for reduced price meals with an explanation that households with incomes at or below the reduced price guidelines may be eligible for either free or reduced price meals:

i. applications may be submitted and filed at any time during the year. Parent(s) or guardian(s) enrolling a child in a school for the first time shall be supplied with appropriate application materials regardless of the time of year the child is registered. If a child transfers from one school to another under the jurisdiction of the same SFA, eligibility will be transferred to and honored by the receiving school;

ii. if no other income is listed, an application that lists a valid food stamp/FITAP case number should be approved free for all students listed on the application. Parent(s) or guardian(s) will be promptly notified of the acceptance or denial of their application(s);

iii. in certain cases, foster children are also eligible for free or reduced price meals regardless of the income of the household with whom they reside. If a household has foster children and wishes to apply for such meals, the household should complete the application as indicated for a foster child;

iv. when an application is rejected, parent(s) or guardian(s) will be provided written notification that shall include the following elements:

(a) the reason for the denial of benefits: e.g., income in excess of allowable limits or an incomplete application;

(b) notification of the right to appeal;

(c) instructions on how to appeal; and

(d) a statement reminding parents that they may reapply for free and reduced price benefits at any time during the school year;

v. the reasons for ineligibility shall be properly documented and retained on file;

vi. interested parent(s) or guardian(s) are responsible for completing the application and returning it to the school for review. Such applications and documentation of determinations made will be maintained for a period of three years after submission of the final claim for reimbursement for the fiscal year. If any audit findings have not been resolved, the records shall be maintained as long as required until the audit is closed;

k. agrees to submit a public release containing both the free and reduced price Income Eligibility Guidelines and all other information outlined in the letter to households to

the local news media, local unemployment offices and major employers contemplating or experiencing large layoffs;

l. agrees to establish a procedure to collect money from children who pay for their meals and to count by category at the point of service the number of free, reduced price and full-price meals. The procedure used must avoid overt identification; overt identification means any act that openly identifies children as eligible for free or reduced price benefits in the Child Nutrition Programs;

m. agrees to use LDOE prototype documents or accept responsibility for variations;

n. agrees to:

i. verify eligibility for free and reduced price meals regulations;

ii. complete the verification process by November 15 of each year;

iii. maintain a summary of the verification efforts that indicates the total number of applications on file October 1, the number of eligibles as of the last day of October, the percentage or number of applications verified, techniques used, documentation submitted by households, documentation of any changes in eligibility and reasons for changes, and all relevant correspondence with households.

B. Requirements for a Nonpricing Program

1. A nonpricing program is one in which there is no separate identifiable charge made for meals served to participants. A permanent agreement setting forth conditions for serving free meals is entered into between the SFA and the state agency.

a. Additional electronic forms are submitted yearly to update the permanent agreement. The electronic forms are as follows:

i. Schedule A;

ii. policy checklist;

iii. collection officials;

iv. collection procedure;

v. labor expenses;

vi. income and expenses.

b. The documents listed below are part of the permanent agreement; they must be updated when adjustments or amendments are made and when requested by the state agency:

i. a copy of the current license, if private;

ii. Income Eligibility Guidelines for Free and Reduced Price meals;

iii. the collection procedures;

iv. collection officials;

2. - 2.g. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2121 (December 2001), amended LR 29:2025 (October 2003), LR 32:1421 (August 2006).

§505. Application Process

A. - A.5. ...

B. Types of Applications

1. Household Application

a. The USDA prototype household application may be used by all SFAs. SFAs that choose to create a household application (such as a scannable application) must ensure that all information from the prototype application is present on the SFA application. The household application

accommodates one or more children, providing a space for identifying each child separately as a member of a food stamp household or FITAP assistance unit. (Contact the state agency for information regarding FITAP or Food Stamp Numbers.) However, a single Food Stamp or FITAP number is sufficient to establish categorical eligibility for the household. Schools must require the household to submit a separate application for each foster child.

b. Local educational agencies may not request a separate application for each child in the household that attends schools under the same local educational agency.

2. Foreign Language Application

a. Where a significant number or proportion of the population eligible to be served in the SFA needs information in a language other than English, SFAs must make reasonable efforts, considering the size and concentration of such population, to send appropriate non-English language household letters/notices and application forms to such households. (Contact the state agency for foreign language applications.)

C. - C.1. ...

D. Complete Application for Various Types of Students

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

c. Foster Child

i. An individual application is required for each foster child residing in a household. The foster child section of the application must be completed, including the foster child's income. If the foster child receives no income, this must be indicated in the appropriate space on the application. The foster parent or other official must sign the application. The foster child is a household of one; therefore, other household members are not shown on the application.

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

e. Homeless/Migrant/Runaway Students

i. To accommodate homeless, migrant or runaway children whose parent(s) or guardian(s) neglect to complete a free/reduced price meal application, SFAs may use one of the following procedures.

(a). The director of the homeless shelter may complete an application for the child. The director must sign the application; however, a Social Security number is not required.

(b). The SFA may complete an application for a child and approve the child for free meals based solely on their knowledge that the child's address is a homeless shelter or that the child has no known address and is indeed homeless. The decision must be based on concrete information that will support such a determination and provide the basis for that conclusion. The child's status must be confirmed by subsequent information from the homeless/migrant/runaway coordinator. If the coordinator can not confirm the child's status, the eligibility is no longer valid and the SFA must take steps to advise the household and issue a notice of adverse action informing the household that it can reapply for benefits. In this case, the family does not have to repay the meals and the reimbursement claims do not need to be adjusted since the misclassification of the family's status was a legitimate error.

(c). The Homeless/ Migrant/ Runaway Coordinator may provide a list of students in this category to document eligibility. Once an SFA official establishes a child's eligibility as homeless, migrant or runaway, that

eligibility remains in effect for the school year, provided the child was correctly certified. Documentation to substantiate free meal eligibility must consist of the following information:

- (i). child's name;
- (ii). date added;
- (iii). residence (shelter, etc.);
- (iv). signature of determining official; and
- (v). date of withdrawal from the school.

D.3.f. - F.1. ...

G. Eligibility Determination

1. Categorical Eligibility

a. ...

b. Homeless, migrant and runaway children are categorically eligible for free meal benefits. They must either have an application signed by the homeless shelter director or the local homeless/migrant/runaway coordinator or be documented on a list provided by the coordinator.

c. Foster children are not categorically eligible for free meal benefits. An application must be completed for each foster child. An eligibility determination must be based on the foster child's income information.

2. - 3.a. ...

H. Direct Certification

1. SFAs must implement direct certification of children from food stamp/households under the Child Nutrition Programs. Direct certification allows SFAs to certify children as eligible for free meals based on documentation obtained directly from the Food Stamp Office.

2. - 2.b. ...

c. the Social Security number that matches the name and date of birth of the child certified as receiving food stamp benefits; and

d. ...

3. The LDOE will provide SFAs with an electronic file that identifies Louisiana Educational Authority (LEA) enrolled students in their file who can be matched with the school's file using the student's first name, Social Security number and date of birth. Identified also are those students who match on Social Security number in both their file and the school's, but the name and the birth date are different. If the SFA chooses to extend benefits to students not matching on all three factors, documentation must be available to indicate that children receiving food stamps are the same children identified in the school system records. Failure to have the required information could result in disallowance of meals and recovery of reimbursement during a review or audit. If documentation is not available, a free and reduced price meal application must be issued to establish eligibility for that student. Documentation, as described, must be retrievable by the school.

4. - 5. ...

6. SFAs are not required to send the letter/notice and application to those households eligible under direct certification if these materials are distributed through the mail, individual student packets, or other method that prevents the overt identification of children eligible for direct certification. Under this option, households eligible under direct certification will receive a letter notifying them that their children are eligible for free benefits. Other

households will receive a parent letter or notice with an application form.

I. - M.1. ...

N. Reporting Changes in Household Circumstances

1. The Child Nutrition and WIC Reauthorization Act of 2004 states that correctly made eligibility determinations are valid for the entire school year. Households are not required to report any increase in income or decrease in household size during the school year.

2. If a household submits an additional application during the school year that would result in a decrease in benefits, the SFA should contact the household to inform them that the original application may be used for the remainder of the school year. The household must decide whether to remain on the original status or accept the decrease in benefits.

O. - Q.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2124 (December 2001), amended LR 29:2025 (October 2003), LR 32:1423 (August 2006).

§507. Determining Household Size

A. - C.1. ...

D. Military Families. Military personnel on shore duty living with the household or away on Temporary Duty (TDY) are considered household members. Military personnel serving overseas or assigned to a military base and not living with the household for an extended period of time are not considered members of the household for purposes of determining eligibility. Refer to the state agency for current exceptions to this policy (ex. deployed military personnel). Only that portion of their income made available by them or on their behalf to the household is counted as income to the household.

E. - M.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2127 (December 2001), amended LR 32:1424 (August 2006).

§509. Determining Income

A. - A.1.n. ...

B. Income Exclusions

1. The following types of income, which are not classified as reportable income, are considered income exclusions.

a. Income not to be reported or counted includes any cash income or value of benefits a household receives from any federal program that excludes such income by legislative prohibition, such as the value of food stamps, child care grant programs, or Medicare and Medicaid prescription drug card subsidies.

b. - d. ...

e. Privatized housing allowance for military personnel living off-base in housing covered under the Military Housing Privatization Initiative is not counted as income.

f. Family Subsistence Supplemental Allowance (FSSA) received by certain members of the Armed Forces is not considered as income.

g. Occasional earnings received on an irregular basis or not recurring, such as for occasional baby sitting or mowing lawns, are not considered as income.

h. The Earned Income Tax Credit is not considered income.

C. - H.1. ...

I. Military Income/Benefits

1. Military benefits received in cash, such as housing allowances for military households living off base and food allowances, must be considered as income. However, neither the allowance for military personnel living off-base in housing covered under the Military Housing Privatization Initiative nor the Family Subsistence Supplemental Allowance (FSSA) may be counted as income. The value of in-kind benefits other than cash, such as on-base housing, is also not considered as income.

J. - M.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2128 (December 2001), amended LR 32:1424 (August 2006).

§511. Program Operations

A. Nondiscrimination

1. - 4. ...

5. There must not be any overt identification of any of the children by use of special tokens or tickets. The SFA must use the collection procedure approved as part of its yearly update to the permanent agreement.

A.6. - D.3. ...

E. Privacy Act Statement

1. The meal application must contain a privacy act statement. The statement must address the following information.

a. The disclosure of a Social Security number is voluntary; however, the Social Security number of the adult signer of an income application is required for approval of the application. If the adult signer has no Social Security number, this must be indicated on the application.

b. - c. ...

Sample Privacy Act Statement

The Richard B. Russell National School Lunch Act requires the information on this application. You do not have to give the information, but if you do not, we cannot approve your children for free or reduced price meals. You must include the Social Security number of the adult household member who signs the application. The Social Security number is not required when you apply on behalf of a foster child or you list a Food Stamp Program, Family Independence Temporary Assistance Program (FITAP) or Food Distribution Program on Indian Reservations (FDPIR) case number or other FDPIR identifier for your child or when you indicate that the adult household member signing the application does not have a Social Security number. We WILL use your information to see if your child is eligible for free or reduced price meals, and for administration and enforcement of the lunch and breakfast programs. We MAY share your eligibility information with education, health, and nutrition programs to help them evaluate, fund, or determine benefits for their programs, auditors for program reviews, and law enforcement officials to help them look into violations of program rules.

F. - F.1.c.iv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2129 (December 2001), amended LR 32:1425 (August 2006).

§513. Verification Process for School Meals

A. Verification is confirmation of eligibility for free and reduced price benefits under the NSLP or SBP. Verification must include confirmation of income eligibility or confirmation that the child is included in a certified food stamp household or FITAP assistance unit. At state or local discretion, verification may also include confirmation of any other information on the application that was required as a condition of eligibility. (Refer to §505.Application Process.)

B. Direct Certification

1. Food Stamp households are excluded from the verification process when the households are approved through direct certification. SFAs should determine the minimum number of applications required to be verified based on the number of approved applications on file as of October 1 that are not directly certified.

C. Implementation

1. Verification must take place after the application has been approved. The SFA must complete verification of the minimum required sample size by November 15. Any additional applications may be verified anytime during the school year after applications have been approved. Any verification that is done for cause is in addition to the required sample.

D. Sample Size Requirement

1. Except as otherwise noted in §513.E (Alternative Sample Size), each SFA must verify the lesser of:

a. three percent of all applications approved by the SFA for the school year as of October 1 of the school year, selected from error prone applications; or

b. 3,000 error prone applications approved by the SFA for the school year, as of October 1 of the school year.

2. Error prone applications are defined as approved household applications that indicate a monthly income that is within \$100, or an annual income that is within \$1,200, of the income eligibility limitation for free or reduced price meals. When applications have been approved based on weekly, biweekly, or bimonthly income figures, the SFA may use rounded thresholds of \$24 for weekly income, \$44 for bi-weekly income, and \$50 for twice monthly income.

3. SFAs may verify more than the required minimum sample, up to 100 percent of all approved applications, as long as the selection does not involve discrimination against anyone on the basis of race, color, national origin, age, sex, or disability. For the purpose of meeting the federal minimum verification requirement, the total number of approved applications on file in the SFA is determined on October 1. Verification may begin prior to this date. SFAs may, based on experience, project the number of approved applications that will be on file on October 1.

E. Alternative Sample Size

1. If the SFA meets either of the following conditions, the SFA may choose to implement traditional random or focused verification.

a. The nonresponse rate for the SFA for the preceding school year is less than 20 percent.

b. The SFA has more than 20,000 children approved as eligible for free or reduced price meals for the school year, as of October 1 of the school year, and:

i. the nonresponse rate for the preceding school year is at least 10 percent below the nonresponse rate for the second preceding school year; or

ii. the SFA attempts to verify all approved household applications selected for verification through the use of public agency records from at least two of the programs or sources described in §515 (Direct Verification).

F. Sample Selection Process

1. The sample size is three percent of all approved applications on file on October 1 or 3,000 applications, whichever is less. To calculate the minimum required sample size, multiply the total number of approved applications, including both income and categorical applications, by 0.03. At least one application must be verified.

2. SFAs should randomly select the required number of applications from those applications that are error prone. If there are not enough error prone applications to meet the sample size requirements, the remaining applications may be chosen randomly from the entire application pool (income and categorical applications).

G. Alternative Sample Selection Process

1. Focused Sample Selection Process

a. SFAs should focus their sampling targets for verification on applications with a high likelihood of containing errors: that is, households providing income information on the application and reporting income just below the minimum eligibility level.

b. SFAs should count all approved applications on file to determine the total. They should separate the applications into two groups:

i. the non-categorically eligible applicants, applicants who were approved on the basis of income information; and

ii. the categorically eligible applicants, applicants who provided a FITAP or food stamp case number.

c. Income Eligible Sample

i. SFAs should use the following procedures to determine sample sizes for income eligible applicants.

(a). For applications that provide income information, the sample size is 1 percent of total approved applications (income and categorical) on file or 1,000 applications, whichever is less: e.g., total applications x 0.01.

(b). From the group that reported income information, SFAs should select those applications with monthly incomes within \$100, or annual income within \$1,200, of the income eligibility limits.

(i). If there are more applications with monthly income reported within \$100 (\$1,200 yearly) of the eligibility levels than needed to meet the minimum sample size, SFAs should select the income application sample using any method that is equitable and that ensures that the same households will not be selected year after year.

(ii). If there are not enough applications with monthly income reported within \$100/\$1,200 (yearly) of the eligibility levels to meet the required minimum sample size, SFAs should select from those applications with monthly incomes closest to the eligibility levels.

(iii). If there are not enough applications containing income information to meet the required minimum sample size, SFAs should verify all the applications approved on the basis of income information.

(iv). Zero income applications may be verified for focused sampling in addition to the required number to be verified.

d. Categorically Eligible Sample

i. SFAs should use the following procedures to determine sample sizes for categorically eligible applicants.

(a). They should determine the number required to fill the sample size by multiplying the total number of the categorically eligible applications by 0.005. The sample size is the lesser of 500 or .5 percent of all applications approved on the basis of food stamp or FITAP case numbers.

(b). From the categorically eligible group, SFAs should select the sample using the method that is equitable and should ensure that the same household is not selected each year.

2. Random Sample Selection Process

a. The random sample size is three percent of all approved applications on file on October 1 or 3,000 applications, whichever is less. To calculate the minimum required sample size, multiply the total number of approved applications, including both income and categorical applications, by 0.03. At least one application must be verified.

b. SFAs should randomly select the required number of applications. Using the random sample method, SFAs should ensure that each application must have an equal chance of being selected, including all categorical and income applications.

H. Preliminary Review. Prior to conducting any other verification activity for approved household applications selected for verification, the SFA shall ensure that the initial eligibility determination for each approved household application is reviewed for accuracy by an individual other than the individual making the initial eligibility determination. This requirement shall be waived for SFAs using a technology-based solution that demonstrates a high level of accuracy in processing an initial eligibility determination in accordance with the income eligibility guidelines of the school lunch program.

1. If the review indicates that the initial eligibility determination is correct, the SFA shall verify the approved household application.

2. If the review indicates that the initial eligibility determination is incorrect, the SFA shall:

a. correct the eligibility status of the household;

b. notify the household of the change;

c. in any case in which the review indicates that the household is not eligible for free or reduced-price meals, notify the household of the reason for the ineligibility and that the household may reapply with income documentation for free or reduced-price meals; and

d. in any case in which the review indicates that the household is eligible for free or reduced-price meals, verify the approved household application.

I. Household Notification

1. When a household is selected for verification and is required to submit documents or other forms of evidence to verify eligibility, the household must be sent a notice/letter informing it of its selection and the types of information acceptable. The letter/notice to the household should include:

a. the notice of selection for verification;

b. notification of the types of acceptable information that can be provided to confirm income include such documents as pay stubs, award letters from Food

Stamp/FITAP departments, Social Security offices, and support payment decrees from courts;

c. a request for proof that the child is a member of a currently certified food stamp household or FITAP assistance unit may be provided instead of income information;

d. a request for Social Security numbers must be provided for all adult household members of families whose eligibility is based on the submission of income information;

e. notification that information must be provided, and failure to do so will result in termination of benefits;

f. the name and toll-free telephone number of a school official who can answer questions and provide assistance; and

g. notification that the household is required to submit the requested information by a specified date, as determined by the SFA.

2. When the SFA uses agency records to verify eligibility, the letter/notice of selection is not required, since the household will not have to provide documents and household cooperation will not be necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2130 (December 2001), amended LR 29:2025 (October 2003), LR 32:1425 (August 2006).

§515. Verification Methods

A. - A.3.b. ...

c. The LDOE will disseminate the October computer listings of food stamp participants to all SFAs that are required to participate in verification. Since regulations require the verification of current or previous month's income, this listing must be utilized before the end of November.

d. ...

4. Direct Verification

a. To verify eligibility for free or reduced price meals for approved household applications selected for verification without contacting the household, an SFA may obtain and use income and program participation information from a public agency administering the following programs:

i. the food stamp program;

ii. the food distribution program on Indian reservations (FDPIR);

iii. the temporary assistance for need families program (TANF/FITAP);

iv. the state Medicaid program (contact the state agency);

v. a similar income-tested program or other source of information (contact the state agency).

b. The state agency must cooperate with the SFA by confirming the household is participating in the program using the most current data within 180 days, measured from the date of the household's free and reduced price application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2132 (December 2001), amended LR 32:1427 (August 2006).

§517. Confirmation of Eligibility Based on Income Information

A. Notification

1. The notification of selection for verification should include a request for the household to submit written evidence of the most recent month's income and provide Social Security numbers for all adult household members.

2. ...

3. If the initial income documentation does not support the eligibility determination, the SFA must request documentation of income eligibility from the family for any month between the month prior to the application to the time the household is required to provide the income documentation. If the written evidence confirms the eligibility determination previously made, the verification requirement has been satisfied. If the written evidence confirms a higher or lower income and changes the eligibility determination previously made, the verification requirement has been satisfied.

B. Follow-Up

1. If the household submits insufficient or obsolete written evidence, school officials must make at least one attempt to contact the household to request the missing written evidence of current income and advise the household that failure to comply or designate a collateral contact will result in termination of benefits. If the household subsequently submits sufficient written evidence, the verification requirement has been satisfied.

C. Notification of Adverse Action

1. If the household still does not submit sufficient written evidence or if the household failed to respond to the verification request, the SFA must send the 10-calendar day advance notice of adverse action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2132 (December 2001), amended LR 29:2026 (October 2003), LR 32:1427 (August 2006).

§519. Confirmation of Categorical Eligibility

A. Food Stamp/FITAP Office

1. When verification of eligibility involves use of computer listings of the names and case numbers of food stamp participants for September, the lists must be used before the end of October. Source information used must be current. In addition, the verification of eligibility must be accomplished so that there is sufficient time to acquire other verification from applicants identified as not currently receiving food stamp benefits.

B. Household Documentation

1. ...

2. Every time a household is approved for food stamps, it is furnished with a written letter of determination or notice of eligibility. The verifying official should examine this notice of certification to ensure that the child for whom application was made is part of a household currently participating in the Food Stamp Program. If the initial documentation does not support the eligibility determination, the SFA must request documentation of food stamp eligibility from the family for any month between the month prior to the application to the time the household is required

to provide the food stamp documentation. The notice of eligibility or the notice of certification is preferred for verification purposes.

3. - 4. ...

5. A household that does not have satisfactory food stamp/FITAP documentation may request a signed, dated letter from the Food Stamp/FITAP Office certifying that the child is part of a household currently receiving benefits or that the household previously received benefits. If the household does not currently receive benefits, the beginning and ending dates of the benefits must be specified in the letter.

C. Follow-Up

1. If the household submits insufficient or obsolete written evidence, school officials must make at least one attempt to contact the household to request the missing written evidence of current or prior (as defined in Subsection B.) participation in the food stamp/FITAP program and advise the household that failure to comply or designate a collateral contact will result in termination of benefits. If the household subsequently submits sufficient written evidence, the verification requirement has been satisfied.

D. Advance Notice

1. When it is determined that the child is not part of a household that currently receives food stamps/FITAP benefits, or that received benefits during the appropriate time period, the household must be given 10 calendar days advance notification of termination and be informed that they must submit an application. The application must include household members and income information, a Social Security number for each adult household member, and written evidence that confirms household income to establish continued eligibility for school meal benefits.

E. Acceptable Verification Confirmation

1. Verification is complete when:

a. the local Food Stamp/FITAP Office certifies that the child is in a currently certified food stamp household or is receiving FITAP funds;

b. the local Food Stamp/FITAP Office certifies that the child is in a household that received food stamp or FITAP benefits at any point in time between the month prior to application and the time the household is required to provide income documentation;

c. adequate documentation of current or prior (as defined in Subparagraph b) participation in either program has been submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2133 (December 2001), amended LR 32:1427 (August 2006).

§521. Completion of Verification

A. Completion Date

1. Verification activities must be completed by November 15 of each year. Completion means that the required number of applications has been selected, notices

have been sent to parents, Social Security numbers have been obtained for all adult household members for households providing income information, eligibility for the approved level of benefits for each applicant selected for verification has been confirmed or not confirmed, parents have been notified of changes or termination, and all changes/terminations have been implemented on or before November 15.

B. Confirmation of Eligibility, Changes/Termination

1. Verification of a household's income eligibility for free or reduced price meals must result in one of the following options.

a. No Change in Benefit Level. The household's income or food stamp or FITAP eligibility supports the level of benefits for which the household has been approved.

b. Reduction in Benefit Level. The household's income is too high for the benefits for which the household has been approved; therefore, the household's eligibility must be changed from free to reduced price, free to paid, or reduced price to paid immediately following the 10 calendar days from the date of the advance notice of adverse action, but no later than 10 operating days from the date of the final determination.

c. Increase in Benefit Level. The household's income or food stamp or FITAP eligibility qualifies the household for free meals rather than reduced price meals. Therefore, the household's eligibility must be changed from reduced price to free meals as soon as possible, but no later than three operating days from the date of the final determination, or.

d. Termination of Benefits. Households that do not cooperate with verification efforts or whose income does not support eligibility for either free or reduced price meals must be changed as outlined in §521.C, Notification of Adverse Action, below.

B2. - F.2. ...

G. Recordkeeping

1. SFAs must maintain a written description of their verification efforts. The description must include the following elements:

a. a summary of the verification efforts, such as the selection process, and the source of information used;

b. enough information for the process to be duplicated;

c. the total number of applications on file on October 1; and

d. the percentage or number of applications verified.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2133 (December 2001), amended LR 29:2026 (October 2003), LR 32:1428 (August 2006).

§523. Appendices

**FOR ALTERNATIVE SAMPLING SIZE
Focused Sampling Worksheet
SFA Guidance/Acceptable Income Documentation**

- Appendix A. ...
- Appendix B. SFA Guidance/ Acceptable Income Documentation

**Louisiana Department of Education
Division of Nutrition Assistance
School Food Service Section
* * ***

Suggested Sources of Acceptable Evidence * * *	Written Types of Income * * *
13. Zero Income. On occasion, a household may report no income on the application. Zero income might be reported if a parent is a live-in housekeeper and receives only room and board as compensation for work done, or if a household is being supported by non-monetary means provided by religious or civic organizations because of illness or disability. A household can be asked to provide a written statement describing the household's circumstances: i.e., how the household pays for food, housing, etc., when no income is reported. In lieu of requesting such a written statement, you may want to use a collateral contact approach to verify the application. A foster child or institutionalized household may also report zero income on the application.	Written statement from household describing how it subsists Collateral contact

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2134 (December 2001), amended LR 32:1429 (August 2006).

Chapter 11. Personnel

§1117. Exam Administration Procedures

A. The Phase I and II examinations will be administered twice a year at various locations. The Phase III examination will be administered at the conclusion of Phase III training.

B. A person who fails the Phase III examination may retake the examination within six months without repeating the Phase III training.

C. Upon successful completion of Phase III, the applicant will be assigned a certification number and issued a certification card.

D. Applicants not currently employed as acting managers shall complete the Manager Certification Program within five years from the date they first take the Phase I examination. These individuals may take the Phase I, II, and III examinations as many times as necessary to complete the Manager Certification Program, as long as all three phases are completed within five years from the date the first exam is taken. If all three phases are not passed within five years, the applicant must begin a new five-year cycle and completely start over with Phase I, unless exempt from Phase I. The second five year cycle does not begin until the applicant has passed Phase I.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2166 (December 2001), amended LR 32:1429 (August 2006).

Chapter 13. Equipment

§1303. Initial Equipment

A. The School Food Authority (SFA), with funds other than school food service funds, shall furnish initial food service equipment for each school. Initial equipment is the equipment that a sponsor is required to have to begin a School Food Service Program. This equipment is necessary for the basic preparation, storage and service of meals to children. It is not permissible for school food service funds to be used to repay the SFA for initial equipment. After the SFA has been granted approval for participation in NSLP and SBP, school food service funds may be used to replace worn out initial equipment or to purchase additional equipment.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2168 (December 2001), amended LR 32:1429 (August 2006).

§1315. Appendix

A. - B. ...

* * *

Appendix A. Table of Authorized Large Equipment Number of Lunches Served per Day
* * *

**Table of Authorized Large Equipment (Cont'd.)
Number of Lunches Served per Day**

	25-75	76-150	151-150	251-500	501-750	751-1000	1001-1250
* * *	* * *						
Central Office: Computer Printer Scanner Computer hardware Computer software Audio-visual equipment Calculator/adding machine Chairs Conference table and chairs Copier Desk Desk lamp Facsimile machine Telephone	The size and amount of equipment purchased should be determined by the number of employees, student participation and usage. The type and number of computers and printers purchased should be determined by the size and complexity of the SFA.						

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2169 (December 2001), amended LR 32:1429 (August 2006).

Chapter 17. Commodities

§1703. Allocations

A. SFAs are eligible for a certain dollar level of USDA commodity assistance based on the number of lunches served multiplied by the mandated rate of assistance. This commodity assistance is referred to as planned assistance level (PAL). USDA commodities that are offered to SFAs against the dollar amount of their PAL are considered entitlement foods. Other foods that are offered to SFAs, which are not offered against the PAL, are considered bonus commodities. The SFA may refuse up to 100 percent of the USDA commodities offered to their program through an offer/acceptance system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2192 (December 2001), amended LR 32:1430 (August 2006).

§1705. Use and Sale of Commodities

A. - B.1. ...

2. workshops, demonstrations, and tests relating to the utilization of USDA commodities by the SFA.

C. Records of the kinds and quantities of USDA commodities that are used must be maintained. These USDA commodities shall not be replaced by the LDAF.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2192 (December 2001), amended LR 32:1430 (August 2006).

§1707. Further Processing of Commodities

A. Federal and state procurement regulations must be followed when contracting for the processing of commodities. All contracts exceeding the sum of \$20,000 shall be advertised and awarded to the lowest responsible bidder. Purchases less than \$20,000 shall be made by obtaining no fewer than three telephone, facsimile, or hand

written quotations. Bids shall be accepted from only approved or pre-approved USDA commodity processors as determined by the Louisiana Department of Agriculture and Forestry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2193 (December 2001), amended LR 32:1430 (August 2006).

Chapter 21. Civil Rights—Handling Complaints

§2101. Responsibilities of the SFA

A. - A.2. ...

3. The nondiscrimination poster, which must be displayed in a prominent place in each school, must be visible to all. (Refer to §2111.A)

A.4. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2197 (December 2001), amended LR 29:2034 (October 2003), LR 32:1430 (August 2006).

Chapter 23. Ethics

§2311. Purchasing

A. - B. ...

C. Breaking up purchases with the intent of circumventing formal advertising procedures is contrary to federal procurement regulations. Any change in the SFA's normal purchasing practices which results in the aggregate amount purchased becoming less than \$20,000 must be documented for review and audit purposes.

D. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2200 (December 2001), amended LR 32:1430 (August 2006).

Chapter 25. Summer Food Service Program

§2505. Feeding Sites

A. Governmental sponsors and private nonprofit sponsors may use school facilities for operating feeding sites. SFAs are not obligated to allow other SFSP sponsors to use equipment or schools.

B. Description of Feeding Sites

Your Site is:	If:	Based on:
Open	At least half the children in the area are eligible for free and reduced-price school meals.	Area eligibility data from the local school or census block group
Enrolled	At least half the children enrolled in the program are eligible for free and reduced-price school meals. or At least half the children in the area are eligible for free and reduced-price school meals.	Income eligibility statements describing the family's size and income or Area eligibility data from the local school or census block group
Camp	It offers a regularly scheduled food service as part of a residential or day camp program.	An individual child's eligibility for free and reduced-price meals
Migrant	It serves primarily children of migrant workers.	Appropriate certification from a migrant organization
NYSP	It is a college or university participating in the NYSP. or Upward Bound Programs.	A child's enrollment in NYSP or Upward Bound Programs

C. Open Feeding Sites

1. There are two primary methods that may be used to determine whether the area that will be served is eligible: use of school data or census tract data.

a. **School Data.** By identifying the parish(es) the sponsor will serve on the web based SFSP sponsor application, the percentage of free and reduced price meals for each school in the (parish(es) served will be displayed on the facility application(s). The sponsor will select a school in the same attendance zone as the prospective site with at least 50 percent of the enrolled children eligible for free and reduced price meals.

b. **Census Tract Data.** Sponsors may also document the area eligibility of their proposed sites on the basis of census tract data. However, census data should be used only when relevant, current-year information on free and reduced price eligibility in neighborhood schools is unavailable.

c. Sponsors of open sites are reimbursed for program meals served to all attending children.

D. Enrolled Sites

1. Enrolled sites serve only identified groups of children on a daily basis. Sponsors may document an enrolled site's eligibility based on eligibility forms submitted by the parents or guardians of the children enrolled at each site. If at least half of the children enrolled in the program are eligible for free or reduced price meals, the site is an eligible closed enrolled site. Alternately, an enrolled site may also meet eligibility requirements based on area eligibility data from the local school or census block data. Enrolled sites provide free reimbursable meals only to children who are enrolled in an activity program.

2. Sponsors of enrolled sites are reimbursed for program meals served to all enrolled children in attendance.

E. Residential and Nonresidential Camps

1. Residential summer camps and nonresidential day camps that offer a regularly scheduled food service as part of

an organized camping program for enrolled children may participate. In addition, nonresidential day camps must offer a continuous schedule of organized cultural or recreational programs for enrolled children; they can participate as sites only under eligible sponsoring organizations. Sponsors must collect eligibility forms and make individual determinations for all enrollees, since the sponsor is reimbursed for SFSP meals served to only those children eligible for free or reduced price school meals.

2. Camp sponsors receive reimbursement for meals served only to campers who have been individually determined eligible for free or reduced price school meals. Three reimbursable meals per eligible individual may be claimed each day.

F. Migrant Sites

1. To confirm migrant status and to document a site's eligibility, sponsors must submit information obtained from a migrant organization that certifies that the site serves children of migrant workers. If the site also serves non-migrant children, the sponsor must certify that the site predominantly serves migrant children.

2. Sponsors of migrant sites are reimbursed for program meals served to all attending children. Three reimbursable meals may be claimed each day.

G. National Youth Sports Program Sites

1. NYSP sites may qualify for the program in one of two ways: by enrollment or by a child's area of residence. All children participating at a NYSP site may receive reimbursable meals if at least 50 percent of the children enrolled in the program reside in geographical areas where poor economic conditions exist, or if at least 50 percent are individually determined to meet income eligibility guidelines that were in effect on the preceding July 1. NYSP sites may also qualify for the program by certifying in writing that the children enrolled meet the income eligibility guidelines of the Department of Health and Human Services (DHHS), which is the primary grantor for NYSP.

2. Homeless feeding sites that serve primarily homeless children may participate regardless of their location.

H. Upward Bound Program Sites

1. Sponsors can use documentation of income-eligible Upward Bound participants, provided and certified by an Upward Bound grantee to document eligibility of the SFSP closed enrolled sites, residential or non-residential camps.

2. Upward Bound income applications may be used in lieu of the SFSP meal application to determine income eligibility for all SFSP participants; both programs have an income eligibility threshold of 185 percent of the national poverty guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2201 (December 2001), amended LR 32:1430 (August 2006).

§2507. Meal Requirements

A. The SFSP meal requirements differ from those of the National School Lunch Program and School Breakfast Program. However, school sponsors of the SFSP may, with prior state agency approval, use the meal requirements of the SBP and the NSLP instead of the SFSP meal patterns.

B. According to the SFSP meal requirements, a reimbursable lunch/supper includes the following:

1. one serving of milk;
2. two fruit/vegetable servings;
3. one enriched grain/bread serving; and
4. one meat/meat alternative serving.

C. A reimbursable SFSP breakfast includes the following:

1. one serving of milk;
2. one fruit/vegetable serving; and
3. one enriched grain/bread serving.

D. A reimbursable SFSP snack includes two of the following components with the exception that milk and juice cannot be served together:

1. one milk serving;
2. one fruit/vegetable serving;
3. one enriched grain/bread serving; and
4. one meat/meat alternative serving.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2202 (December 2001), amended LR 32:1431 (August 2006).

§2509. Age Limitations

A. Children age 18 and under may receive meals through SFSP. Special permission must be granted by the state agency to feed children below the age of one year. Persons over 18 years of age who are determined by a state or local educational agency to be mentally or physically handicapped, and who participate during the school year in a public or nonprofit private school program established for the mentally or physically disabled may also participate in the SFSP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2202 (December 2001), amended LR 32:1432 (August 2006).

§2523. Audit Requirements for the Summer Food Service Program

A. Refer to §333 for specific audit requirements that also apply to approved, participating sponsoring institutions.

B. Reporting to the Louisiana Department of Education. If a participating sponsoring institution's federal expenditures are less than \$500,000 in a fiscal year, that sponsoring institution shall annually report this information to the Louisiana Department of Education, to ensure compliance with federal audit requirements.

1. Circular A-133 Subpart A §105 defines recipient or sub-recipient. The main criteria for determining if a sponsoring institution is a recipient or a sub-recipient of federal funds is compliance with federal program requirements as a criteria of receiving and expending the federal funds.

C. While a sponsoring institution that does not meet the annual federal expenditure threshold of \$500,000 is not required to have an audit of such funds, records must be available for review or audit by appropriate officials of any federal, state, or local government agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1737 (August 2002), amended LR 29:2034 (October 2003), LR 32:1432 (August 2006).

Chapter 31. Disaster Feeding

§3109. Disaster Relief Feeding Plan

A. The state recommends that a Disaster Relief Feeding Plan be developed and written by the CNP director along with other local Emergency Preparedness Organizations.

B. The disaster plan should be distributed to all schools and should include the following information:

1. names and emergency telephone numbers of suppliers, school officials, local government agencies, law enforcement, etc.;

2. organizational line chart indicating names and telephone numbers of emergency relief officials;

3. names and telephone numbers of contact people from the Red Cross, Salvation Army, or other agencies that will assist in managing shelters;

4. a list of buildings to be used as shelters with their addresses, telephone numbers; the order in which shelters will be opened; the names/positions/telephone numbers of managing personnel; layout of the school indicating which areas may be used to place evacuees; electrical, water and gas shut-off; and emergency telephone procedures, keys, etc.;

5. emergency shut down procedures for SFS;

6. emergency procedures to secure school food service vehicles as well as to locate refrigerated vendor trucks for a possible storage, if needed;

7. - 20. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2206 (December 2001), amended LR 32:1432 (August 2006).

Weegie Peabody
Executive Director

0608#008

RULE

Board of Elementary and Secondary Education

Re-Employment within State and
Statewide Retirement Systems
(LAC 58:IV.101)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education repealed Title 58, Part IV, Chapter 1, §101, from the *Louisiana Administrative Code*. Title 58, Part IV, Chapter 1, §101 references Louisiana Revised Statutes pertaining to retired teachers returning to work. The provisions regarding Teachers' Retirement System of Louisiana (TRSL) retirees returning to work in the field of education are found in R.S. 11:710 and should not be a part of the *Louisiana Administrative Code*.

Title 58

RETIREMENT

Part IV. Board of Elementary and Secondary Education Chapter 1. General Provisions

§101. Re-Employment with Respect to State and Statewide Retirement Systems

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 42:697.7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 14:81 (February 1988), repealed LR 32:1432 (August 2006).

Weegie Peabody
Executive Director

0608#009

RULE

Tuition Trust Authority Office of Student Financial Assistance

START Savings Program
(LAC 28:VI.107, 305, 309, and 311)

The Louisiana Tuition Trust Authority (LATTA) has amended Rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091 et seq.)(ST0671R).

Title 28 EDUCATION

Part VI. Student Financial Assistance—Higher Education Savings—Tuition Trust Authority

Chapter 1. General Provisions

Subchapter A. Student Tuition Trust Authority

§107. Applicable Definitions

* * *

Independent Student—is a person who is defined as an independent student by the Higher Education Act of 1965 (20 U.S.C. 1088) (HEA), as amended, and if required, files an individual federal income tax return in his/her name and designates him/herself as the beneficiary of an ESA.

1. The HEA defines independent student as a student who:

a. reached 24 years of age prior to January of the year preceding the academic year for which the student is applying for aid;

b. is a veteran of the U.S. Armed Forces, including a student who was activated to serve in Operation Desert Storm or is currently serving on active duty in the Armed Forces for other than training purposes;

c. is an orphan, in foster care, or a ward of the court or was in foster care or was a ward of the court until the individual reached the age of 18;

d. has legal dependents other than a spouse;

e. is a graduate or professional student;

f. is married; or

g. has been determined independent by a financial aid officer exercising professional judgment in accordance with applicable provisions of the HEA.

2. An independent student may only open an account as an account owner if he/she is 18 years or older.

* * *

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November

2002), LR 29:556 (April 2003), LR 30:786 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 31:639 (March 2005), LR 32:1433 (August 2006).

Chapter 3. Education Savings Account

§305. Deposits to Education Savings Accounts

A. - A.2. ...

3. An initial deposit is not required to open an Education Savings Account; however, a deposit of at least \$10 must be made within 60 days from the date on the letter of notification of approval of the account.

A.4 - C. ...

1. All deposits must be rendered in amounts of at least \$10 and must be made in cash, check, money order, automatic account debit or payroll deduction, defined as any of the deposit options listed in §305.B.1.

C.2. - D.2. ...

3. The account owner shall select one investment option in completing the owner's agreement.

4. The investment option can be changed no more than once in any 12-month period.

5. Once a selection is made, all deposits shall be directed to the investment option selected.

6. Requests for the transfer of funds from the variable earnings option in which they are currently deposited to a different option shall be assigned a trade date as follows:

a. if an on-line request for a change from a variable earnings option is completed before 7 p.m. Central Standard Time or Central Daylight Savings Time, as applicable, on a trade day, the trade date shall be the date of the request;

b. for all other requests, the trade date shall be one business day after the business day of receipt of the transfer request.

E. - E.2.a. ...

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

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

E.3. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1270 (July 1998), LR 26:2263 (October 2000), LR 27:1880 (November 2001), LR 30:788 (April 2004), LR 30:1169 (June 2004), LR 30:2305 (October 2004), LR 32:1433 (August 2006).

§309. Disbursement of Account Funds for Payment of Qualified Higher Education Expenses of a Beneficiary

A. - A.6. ...

7. Disbursements from investment options with variable earnings shall be assigned a trade date as follows:

a. if an on-line request for a disbursement is completed before 7 p.m. Central Standard Time or Central Daylight Savings Time, as applicable, on a trade day, the trade date shall be the date of the request;

b. for all other requests for disbursement, the trade date shall be one business day after the business day of receipt of the transfer request.

B. - G. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:716 (June 1997), amended LR 24:1272 (July 1998), LR 24:2238 (December 1998), LR 26:2265 (October 2000), LR 27:1881 (November 2001), LR 30:789 (April 2004), LR 30:1169 (June 2004), LR 32:1433 (August 2006).

§311. Termination and Refund of an Education Savings Account

A. - B.2. ...

3. The LATTA may terminate an account if no deposit of at least \$10 dollars has been made within 60 days from the date on the letter of notification of approval of the account.

B.4. - C.4. ...

5. Refunds from investment options with variable earnings shall be assigned a trade date as follows.

a. If an on-line request for a refund is completed before 7 p.m. Central Standard Time or Central Daylight Savings Time, as applicable, on a trade day, the trade date shall be the date of the request.

b. For all other requests for refund, the trade date shall be one business day after the business day of receipt.

D. - H. ...

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

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

George Badge Eldredge
General Counsel

0608#017

RULE

**Tuition Trust Authority
Office of Student Financial Assistance**

**START Savings Program—Education Savings Account
(LAC 28:VI.315)**

The Louisiana Tuition Trust Authority has amended its START Savings Program Rules (R.S. 17:3091 et seq.) (ST0670R).

**Title 28
EDUCATION**

**Part VI. Student Financial Assistance—Higher
Education Savings—Tuition Trust Authority
Chapter 3. Education Savings Account**

§315. Miscellaneous Provisions

A. - B.12. ...

13. For the year ending December 31, 2005, the Louisiana Education Tuition and Savings Fund earned an interest rate of 3.64 percent.

14. For the year ending December 31, 2005, the Earnings Enhancements Fund earned an interest rate of 4.92 percent.

C. - R. ...

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006).

George Badge Eldredge
General Counsel

0608#018

RULE

**Office of the Governor
Division of Administration
Office of Risk Management**

**Reporting of Claims
(LAC 37:I.Chapter 1-25)**

Under the authority of R.S. 39:1535, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Risk Management has repealed LAC 37, Part I Structured Settlements, which is only relevant to political subdivisions of the state of Louisiana and not subject to the Louisiana Office of Risk Management's rules and regulations. Additional changes were made to renumber the existing Sections in accordance with LAC uniform system of codification.

**Title 37
INSURANCE**

**Part I. Risk Management
Subpart 1. Structured Settlements**

Chapter 1. Definitions

§101. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:234 (April 1986), amended LR 31:56 (January 2005), repealed LR 32:1434 (August 2006).

Chapter 3. Structured Settlement Services

§301. Qualifying Criteria for Acceptable Structured Settlement Firms

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:235 (April 1986), amended LR 12:832 (December 1986), LR 16:614 (July 1990), LR 17:1206 (December 1991), LR 31:57 (January 2005), repealed LR 32:1434 (August 2006).

§303. Application, Investigation, Verification, List-Keeping of Qualified Structured Settlement Firms

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:235 (April 1986), amended LR 31:58 (January 2005), repealed LR 32:1434 (August 2006).

§305. Grounds for Removal from List

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:235 (April 1986), amended LR 31:58 (January 2005), repealed LR 32:1435 (August 2006).

§307. Selection of Structured Settlement Firm for Structured Settlement Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:236 (April 1986), amended LR 12:832 (December 1986), LR 31:58 (January 2005), repealed LR 32:1435 (August 2006).

§309. Qualified Plan Offerors and Providers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5114 and 39:1527.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:236 (April 1986, amended LR 12:832 (December 1986), LR 16:615 (July 1990), LR 17:1207 (December 1991), LR 31:59 (January 2005), repealed LR 32:1435 (August 2006).

§311. Selection of Plan Providers from among Plan Offerors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:236 (April 1986), amended LR 31:59 (January 2005), repealed LR 32:1435 (August 2006).

§313. Disqualification of Plan Offerors and Providers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:237 (April 1986), amended LR 31:60 (January 2005), repealed LR 32:1435 (August 2006).

Chapter 5. Insurance Policies, Trust Contracts, and Other Evidence of Obligations Implementing Structured Payment Plans

§501. Depositary for Annuities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:237 (April 1986), amended LR 31:61 (January 2005), repealed LR 32:1435 (August 2006).

Chapter 7. Administrative Procedures

§701. Dissatisfaction with Structured Settlement Firms and/or Plan Providers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management,

LR 12:237 (April 1986), amended LR 31:61 (January 2005), repealed LR 32:1435 (August 2006).

§703. Appeals from Decisional Acts of the Office of Risk Management

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:237 (April 1986), amended LR 31:61 (January 2005), repealed LR 32:1435 (August 2006).

§705. Appeals from the Commissioner

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:238 (April 1986), amended LR 31:61 (January 2005), repealed LR 32:1435 (August 2006).

Editor's Note: The following Sections have been renumbered in accordance with the LAC uniform system of codification.

Subpart 1. Insurance and Related Matters

Chapter 1. Underwriting

§101. Underwriting

A. All coverages which are self-insured by the Office of Risk Management are mandatory for all Louisiana state departments, agencies, boards, and commissions.

B. If any department, agency, board, or commission requires or wishes to procure any insurance coverages which are not written through the Louisiana Self Insurance Program, request is to be made to the Office of Risk Management to procure said coverage. It is the responsibility of the department, agency, board, or commission to provide the underwriting information required to procure or underwrite the risk.

C. All leases for real and movable property (including vehicles) which are entered into by any state department, agency, board, or commission are to be forwarded to the Office of Risk Management for review in compliance of insurance requirements.

D. All inquiries regarding interpretation of insurance coverages are to be addressed to the Underwriting Unit and are to be in a written form.

E. Boiler and machinery equipment at new locations are to be reported to the Underwriting Unit.

F. Builder's risk projects are to be reported to the Underwriting Unit when the construction contract has been awarded or the "Notice to Proceed" has been issued.

G. All newly constructed state-owned buildings are to be reported to the Underwriting Unit upon acceptance/completion.

H. All newly acquired state-owned aircraft are to be reported to the Underwriting Unit immediately but in no event more than 30 days after acquisition. All newly leased or borrowed aircraft are to be reported to the Underwriting Unit immediately but in no event more than 30 days after possession or lease.

I. Any newly acquired, constructed, leased, or borrowed airport or heliport facilities are to be reported to the Underwriting Unit before coverage will be effective.

J. All newly acquired state-owned marine vessels which are over 26 feet in length are to be reported to the Underwriting Unit immediately but in no event more than 30 days after acquisition. All newly leased or borrowed marine

vessels which are over 26 feet in length are to be reported to the Underwriting Unit immediately but in no event more than 30 days after possession or lease.

K. Applications for new crime policies are to be submitted to the Underwriting Unit. Coverage does not become effective until the insurance company has accepted the new risk.

L. All departments, agencies, boards, and commissions are to provide the name, address, telephone number, and job title of the following:

1. the department, agency, board, or commission head;
2. the person(s) to receive insurance premium billings;
3. the safety coordinator or person(s) responsible for loss prevention matters;
4. the person(s) responsible for handling and disposition of claims matters;
5. the person(s) responsible for reporting exposure information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:19 (January 1987), amended LR 31:61 (January 2005), LR 32:1435 (August 2006).

Chapter 3. Auditing and Statistics

§301. Auditing and Statistics

A. The exposure data requested by the Office of Risk Management (ORM) are to be submitted in a timely manner and in the form specified. The exposures may include, but are not limited to:

1. payroll;
2. maritime payroll;
3. number of board and commission members;
4. mileage of all licensed vehicles which are state-owned or leased, and all mileage on personal vehicles driven in the course and scope of state employment;
5. number of licensed vehicles;
6. acquisition or appraised value of property including, but not limited to, buildings, improvements, and inventory (includes contents, all equipment including mobile equipment and watercraft 26 feet and under), and boiler and machinery;
7. medical malpractice exposures including, but not limited to, patient days, clinic visits, emergency room visits, number of residents/ interns, and miscellaneous categories;
8. number of employees, and miscellaneous or special classes not falling within these definitions as required.

B. Billed units are to allocate premiums to subunits if required. It is not the ORM's responsibility to provide breakdowns at a lower level than the level to which premiums were budgeted or billed.

C. The Office of Risk Management is to receive immediate written notification of the abolishment, transfer, and/or merger of any department, agency, board or commission.

D. The state agencies are to provide or allow access to ORM representatives to records or information necessary to the effective operation of the risk management program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management,

LR 13:19 (January 1987), amended LR 15:85 (February 1989), LR 31:62 (January 2005), LR 32:1436 (August 2006).

Chapter 5. Billing

§501. Billing and Collection of Insurance Premiums

A. After an agency receives a billing invoice from the Office of Risk Management for payment of insurance premiums, the agency is to render payment in full within 30 days from the billing date.

B. Every agency shall timely pay premiums billed by the Office of Risk Management. In the event any agency fails to pay any premiums due the Office of Risk Management within 120 days of the effective date of the appropriated insurance coverages, the commissioner of administration may upon request by the Office of Risk Management draw a warrant against budgeted funds of any delinquent agency directing the treasurer to pay the Office of Risk Management for the unpaid premiums. If an agency is a non-depository agency, the commissioner of administration may direct the head of such agency to render payment of insurance premiums due and owing to the Office of Risk Management.

C. All billing inquiries are to be directed to the Office of Risk Management, Accounting Unit, Accounts Receivable Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:20 (January 1987), amended LR 31:62 (January 2005), LR 32:1436 (August 2006).

Chapter 7. Reporting of Claims

§701. Reporting of Property Damage Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states..."you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance coverage for damage to state-owned property which includes damage to buildings and improvements, contents, inventories, mobile equipment, heating and air conditioning systems, and marine hulls 26 feet and under.

C. All claims for damage to property owned by the state are to be reported to the Office of Risk Management's Property Claim Unit in writing. If a loss or claim is serious in nature, it is to be reported by telephone to the Office of Risk Management's Property Claim Unit.

D. Claims are to be submitted, in writing, to the Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. Information required to be submitted when a claim is reported to the Office of Risk Management's Property Claim Unit includes the following:

1. name of insured, location of property or unit;
2. date of loss;
3. description of loss;

4. location of item, state building ID/property control tag number;
5. size, model, and serial number of item, if applicable;
6. name of person reporting claim, listing job title, and telephone number; and
7. proof of ownership.

F. After a loss has occurred, all property which has been damaged is to be protected against further damage and is to be made available for inspection by a claims adjuster assigned by the Office of Risk Management.

G. If a loss occurs or a claim arises, the agency is not to assume any obligation or incur any expenses without authorization from the Office of Risk Management, but should act to protect property and minimize the loss.

H. If repair or replacement is not accomplished within 36 months of the loss date; or, if approval is not obtained from the commissioner of administration to use the funds for some other purpose, or to extend the 36 month prescriptive period, the claim file will be closed.

I. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management, Property Claims Unit for further handling.

J. Any objects and/or products which may have caused, contributed to, or which are suspect of causing an accident are to be retained and preserved as evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:20 (January 1987), amended LR 15:85 (February 1989), LR 31:62 (January 2005), LR 32:1436 (August 2006).

§703. Reporting of Boiler and Machinery Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance coverage for bodily injury and third party property damage claims where such losses result from state-owned boiler and machinery equipment, and for property damage to state-owned boiler and machinery equipment.

C. All claims for damage to boiler and machinery equipment are to be reported to the Office of Risk Management's Property Claim Unit in writing. Any claim involving bodily injury is to be reported by telephone to the Office of Risk Management's Property Claims Unit.

D. Claims are to be submitted in writing to the Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. Information required to be submitted when a claim is reported to the Office of Risk Management's Property Claim Unit includes the following:

1. name of insured, location of property or unit;

2. date of loss;
3. description of item, to include size, model, serial number, and tonnage or capacity;
4. name, job title, and telephone number of person reporting claim;
5. name and phone number of person to be contacted by adjuster assigned by ORM.

F. After a loss has occurred, the property which has been damaged is to be protected against further damage and is to be made available for inspection by a claims adjuster.

G. If replacement, repair, reconstruction, or rebuilding is not commenced within 36 months of the loss date for all state property losses; or if a claim remains inactive for 36 months after replacement, repair, reconstruction or rebuilding is commenced; or if approval is not obtained from the commissioner of administration within the same period of time for expenditure of insurance proceeds for some other purpose, the claim file will be closed.

H. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management's Property Claim Unit for further handling.

I. Any objects and/or products which may have caused, contributed to, or which are suspect of causing an accident are to be retained and preserved as evidence.

AUTHORITY NOTE: Promulgated in accordance with R. S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:20 (January 1987) amended LR 15:85 (February 1989), LR 31:63 (January 2005), LR 32:1437 (August 2006).

§705. Reporting of Comprehensive General Liability Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides Comprehensive General Liability coverage for bodily injury and property damage claims resulting from operations for which the agency could be held legally liable.

C. All general liability claims are to be submitted, in writing, to the Office of Risk Management on a General Liability Claim Reporting Form or in a narrative format. The General Liability Claim Reporting Form can be found on the Office of Risk Management's web site, www.doa.louisiana.gov/orm.

D. Claims are to be submitted, in writing, to the Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. If a loss is serious in nature, it is to be reported by telephone to the Office of Risk Management for review to determine if coverage is applicable.

F. Claims which are made against a state agency by a third party are to be submitted to the Office of Risk

Management for review to determine if coverage is applicable.

G. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management's Claim Office for further handling.

H. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be removed from service, retained and preserved as evidence.

I. If a loss occurs or a claim arises the agency is not to assume any obligation or incur any expenses without authority from the Office of Risk Management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:20 (January 1987), amended LR 15:85 (February 1989), LR 31:63 (January 2005), LR 32:1437 (August 2006).

§707. Reporting of Worker's Compensation and Maritime Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance coverage for Worker's Compensation and Maritime Claims.

C. All accidents or occupational diseases involving state employees while in the course and scope of their employment with the state are to be reported to the Office of Risk Management within five days from the date of injury or knowledge. The forms used for this purpose are the Employer's Report of Occupational Injury or Disease Form (E-1, completed at the time of the accident), and the Pre-Existing Condition Form (E-2, which was completed when hired). The Office of Risk Management will accept electronic filing of the Employer's Report of Occupational Injury or Disease Form. Access www.doa.louisiana.gov/orm and click on Agency Claims Reporting System.

D. Employer's Report of Occupational Injury or Disease Forms can be obtained from the Office of Risk Management's web address cited in the above paragraph. The Pre-Existing Condition Form can be obtained from the Office of Risk Management, Claims Section, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. A copy of the Employer's Report of Occupational Injury or Disease Form and a copy of the Pre-Existing Condition Form for a claim in which lost time exceeds seven days, is to be submitted to the Office of Worker's Compensation Administration, P.O. Box 94040, Baton Rouge, LA 70804-9040 within 10 days of actual knowledge of injury or death.

F. All Employer's Report of Occupational Injury or Disease Forms and Pre-existing Condition Forms are to be accurately and completely filled out.

G. Information required to be submitted when a worker's compensation claim is reported on the Employer's Report of Occupational Injury or Disease Form includes:

1. agency's location code number (located in a block below the Employer's Federal Tax I.D. Number);

2. the occupation of the employee, inclusive of his/her classified or unclassified job title. A classified job title is to include the civil service job classification code number;

3. an injured employee's weekly wages are to be reported on the Employer's Report of Occupational Injury or Disease Form.

H. Information which is to be contained on the Preexisting Condition Form includes:

1. complete name, age, Social Security number, residential address, and civil service position being applied for;

2. check list of possible pre-existing diseases, disabilities, and/or conditions before employment;

3. description of particulars relative to any checked pre-existing permanent disabilities;

4. name and address of employer at time of previous injury;

5. witnessed and dated signature of applicant as to the completeness, accuracy, and validity of the information contained on the Pre-Existing Condition Form.

I. If an injured employee returns to work after having lost time, the Office of Risk Management, Worker's Compensation Claims Unit, is to be notified immediately by telephone or electronic mail, and an Employer's Supplemental Report of Injury is to be submitted confirming the return to work date. Also, an Employer's Supplemental Report of Injury Form is to be submitted to the Office of Risk Management at any time the injured employee's work status changes.

J. All lawsuits, demands, notices, summons, or other legal documents pertaining to claims are to be forwarded immediately to the Office of Risk Management's Claim Office for further handling.

K. Any objects and/or products which may have caused, contributed to, or which are suspected of causing any accident are to be retained and preserved as evidence.

L. Any claim paid by legislative appropriation is to be reported to the Office of Risk Management by Appropriations Control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:21 (January 1987) amended LR 15:85 (February 1989), LR 16:401 (May 1990), LR 31:64 (January 2005), LR 32:1438 (August 2006).

§709. Reporting of State Automobile Liability and Physical Damage Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate

the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance coverage for liability and physical damage to state-owned and leased licensed vehicles and excess liability coverage for employee's private automobiles while being operated with proper authorization during the course and scope of state employment.

C. All claims for liability or physical damage to state-owned and leased licensed vehicles are to be reported to the Office of Risk Management's Transportation Claims Unit in writing. If a loss involves property damage estimated at \$5,000 or more or if a loss involves any bodily injury, the loss is to be reported by telephone to the Office of Risk Management Transportation Claims Unit.

D. All claims are to be submitted to the Office of Risk Management, Transportation Unit, P.O. Box 91106, Baton Rouge, LA 70821-9106 on a DA 2041 (revised 12/98) accident report form. This form must be completed within 48 hours after an automobile accident. These forms are available through DOA/Forms Management and the Office of Risk Management's web site, www.doa.louisiana.gov/orm.

E. The Automobile Accident Form (DA 2041) must be completed and submitted to the Office of Risk Management, Transportation Unit, P.O. Box 91106, Baton Rouge, LA 70821-9106 or faxed to (225) 342-4470 within 48 hours after the accident occurred.

F. Automobile accident reports are to be submitted with as much information as possible; however, if certain information is unavailable, the report is to still be submitted. Information which is unavailable can be obtained at a later date.

G. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be submitted immediately to the Office of Risk Management's Claim Office for further handling.

H. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be retained and preserved as evidence.

I. If a loss occurs or a claim arises, do not assume any obligation or incur any expenses without authority from the Office of Risk Management.

J. If repair or replacement of a state vehicle is not completed within 12 months of the loss date, or if approval is not obtained from the commission of administration within the same period of time for expenditure of insurance proceeds for some other purpose, the claim file will be closed.

K. More information relative to the reporting of state automobile liability and physical damage claims such as reimbursement of collision deductible on employees' personally-owned vehicle used on state business, towing of state vehicles, reduction of automobile liability limit in a special circumstance, rented motor vehicles and/or courtesy vehicles, and guidelines for in-house repairs to state owned licensed vehicles can be found on the Office of Risk Management's web site, www.doa.louisiana.gov/orm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management,

LR 13:21 (January 1987) amended LR 15:85 (February 1989), LR 31:65 (January 2005), LR 32:1438 (August 2006).

§711. Reporting of Aviation Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance coverage for aviation losses which includes liability and hull coverage. All claims are to be reported to the Office of Risk Management's Transportation Claims Unit.

C. Claims are to be submitted within 48 hours after an accident/incident to the Office of Risk Management, Transportation Unit, P.O. Box 91106, Baton Rouge, LA 70821-9106 on the Aviation Accident Report form furnished by the Office of Risk Management. Please contact the transportation unit supervisor for these forms.

D. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management's Transportation Claims Unit for further handling.

E. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be retained and preserved as evidence.

F. If a loss occurs or a claim arises, the agency is not to assume any obligations or incur any expenses without authority from the Office of Risk Management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:21 (January 1987) amended LR 15:85 (February 1989), LR 31:65 (January 2005), LR 32:1438 (August 2006).

§713. Reporting of Wet Marine Claims (Over 26 Feet)

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance for liability and hull damage for marine vessels over 26 feet in length.

C. All claims involving vessels in excess of 26 feet are to be reported, in writing, to the Office of Risk Management's Transportation Unit. All bodily injury claims are to be reported by telephone to the Office of Risk Management's Transportation Unit.

D. Claims are to be submitted in writing within 48 hours after an accident/incident to the Office of Risk Management, Transportation Unit, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E.1. Information required to be submitted when a claim is reported to the Office of Risk Management's Transportation Unit includes the following:

- a. complete description of vessel, including hull identification and coast guard certificate number;
- b. name of captain or master and passengers;
- c. exact location of incident;
- d. date and time of incident;
- e. names and addresses of third parties involved if known;
- f. description of damages;
- g. contact persons who can assist in investigation;
- h. circumstances surrounding and/or cause of accident.

2. All accidents/incidents involving ferry boats are to be reported to the Office of Risk Management on the Department of Transportation (DOTD) accident report forms: DOTD 03-18-3023 for private vehicles and DOTD 03-18-3024 for passenger(s) injured.

F. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management's Transportation Claims Unit for further handling.

G. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be retained and preserved as evidence.

H. If a loss occurs or a claim arises, the agency is not to assume any obligation or incur any expenses without authority from the Office of Risk Management.

I. Refer to the Office of Risk Management's web site, www.doa.louisiana.gov/orm, for procedures for repairing water vessels (over 26 feet) covered by the commercial insurance market.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:21 (January 1987), amended LR 15:85 (February 1989), LR 31:65 (January 2005), LR 32:1439 (August 2006).

§715. Reporting of Bond and Crime Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance coverage for bond and crime which includes performance, money and securities. All claims are to be reported, in writing, to the Office of Risk Management's Property Claims Unit, P.O. Box 91106, Baton Rouge, LA 70821-9106.

C. Information required to be submitted includes the following:

1. name of insured agency;
2. date of loss;
3. location of loss;
4. circumstances surrounding the occurrence;
5. approximate value of loss; and
6. name of person reporting claim, listing job title and telephone number.

D. Claims are to be submitted, in writing, to the Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be retained and preserved as evidence.

F. If a loss occurs or a claim arises, the agency is not to assume any obligation or incur any expenses without authority from the Office of Risk Management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:22 (January 1987), amended LR 15:85 (February 1989), LR 31:66 (January 2005), LR 32:1440 (August 2006).

§717. Reporting of Medical Malpractice Liability Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. Prior to July 1, 1988 the State of Louisiana provided medical malpractice coverage in accordance with the provision of R.S. 40:1299.39 which details coverage and liability provisions. Effective July 1, 1988, the State of Louisiana became self-insured for medical malpractice. Medical malpractice coverage is extended to state health care facilities and individuals acting in a professional capacity in providing health care services by or on behalf of the state, including medical, surgical, dental, or nursery treatment of patients.

C. Coverage excludes the following:

1. premises liability;
2. bodily injury to employees arising out of employment by the insured;
3. all obligations under worker's compensation or similar laws; and
4. bodily injury in handling or maintenance of automobiles, aircraft, watercraft, or transportation of mobile equipment by an auto owned, operated, rented, or loaned to any insured.

D. Claims are to be submitted, in writing, to the Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. If a loss is serious in nature, it is to be reported by telephone to the Office of Risk Management for review to determine if coverage is applicable.

F. Claims which are made against a state agency by a third party are to be submitted to the Office of Risk Management for review to determine if coverage is applicable.

G. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management's Medical Malpractice Claim Unit for further handling.

H. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be retained and preserved as evidence.

I. If a loss occurs or a claim arises, the agency is not to assume any obligation or incur any expenses without authority from the Office of Risk Management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:22 (January 1987), amended LR 15:85 (February 1989), LR 31:66 (January 2005), LR 32:1440 (August 2006).

§719. Reporting of Road and Bridge Hazard Claims (Department of Transportation and Development)

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an 'occurrence' or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides road and bridge hazard liability coverage for bodily injury and property damage claims resulting from the establishment, design, construction, existence, ownership, maintenance, use, extension, improvement, repair, or regulation of any state bridge, tunnel, dam, street, road, highway, or expressway for which the agency could be held legally liable.

C. All road and bridge hazard claims are to be submitted, in writing, to the Office of Risk Management on the DOTD/ORM Report of Road Hazard Incident form. Forms can be obtained from the Office of Risk Management's Road and Bridge Hazard Claims Unit or on the ORM web site, www.doa.louisiana.gov/orm.

D. Claims are to be submitted, in writing, to the Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. If a loss is serious in nature, it is to be reported by telephone to the Office of Risk Management for review to determine if coverage is applicable.

F. Claims which are made against a state agency by a third party are to be submitted to the Office of Risk Management for review to determine if coverage is applicable.

G. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management's Claim Office for further handling.

H. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be retained and preserved as evidence.

I. If a loss or a claim arises, the agency is not to assume any obligation or incur any expenses without authority from the Office of Risk Management.

J. It would be the responsibility of the district office of the Department of Transportation and Development to verify the following:

1. that the alleged accident occurred on a state maintained highway/road;
2. existence of the damage;
3. whether the state had knowledge of the defect prior to the alleged accident;
4. the existence of any contract which may exist between the state and any municipality, contractor or other party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of the Governor, Division of Administration, Office of Risk Management, LR 15:85 (February 1989), amended LR 31:67 (January 2005), LR 32:1441 (August 2006).

§721. Claims Unit Contacts

A. For further information on reporting a claim or requesting information regarding a specific claim, contact the Office of Risk Management, in writing, at P.O. Box 91106, Capitol Station, Baton Rouge, LA 70821-9106 or telephone the appropriate claims unit.

Unit	Contact the Following Telephone Number(s)
Claims-Administrative	(225) 219-0012 or (225) 219-0168
Property	(225) 342-8399
<ol style="list-style-type: none"> 1. Buildings and Improvements. Contents and equipment, excluding Boiler and Machinery. 2. Boiler and Machinery 3. Bonds and Crime 	
Transportation	(225) 342-8466
<ol style="list-style-type: none"> 1. Auto Liability 2. Automobile Comprehensive and Collision 3. Aviation 4. Wet Marine 	
General Liability-All Comprehensive General Liability	(225) 342-8463
Medical Malpractice	(225) 342-8442 (225) 219-0868
Workers' Compensation	(225) 342-7390 or (225) 342-8451 or (225) 342-8458 or (318) 487-5411
<ol style="list-style-type: none"> 1. Statutory and Employer's Liability 2. Maritime Compensation 	
Road and Bridge Hazards-All Road and Bridge Hazards	(225) 342-5441 or (225) 219-4846
Subrogation	(225) 342-8446

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 15:86 (February 1989), amended LR 31:67 (January 2005), LR 32:1441 (August 2006).

Chapter 9. Risk Analysis and Loss Prevention

§901. Risk Analysis and Loss Prevention

A. R.S. 39:1543 requires the development of a comprehensive loss prevention program, for implementation by all state agencies, including basic guidelines and standards of measurement.

B. In order to fully comply with this statute a comprehensive loss prevention plan has been developed, and the following are to be implemented by every state department, agency, board, or commission that employs 15 or more employees.

Any Other Loss Prevention Program—developed by the Office of Risk Management, Loss Prevention Unit in conjunction with the Interagency Advisory Council for the prevention and reduction in accident events that may cause injury, illness, or property damage.

Aviation Safety Program—program to provide a systematic method of screening, training, and accountability for employees and supervisors required to assign or operate state-owned aircraft in the scope of their employment.

Driver Safety Program—program to provide a systematic method of screening, training, and accountability for employees and supervisors required to assign or drive state-owned vehicles or personal vehicles in the course and scope of their employment.

Employee Training—training to establish a systematic method of training employees to perform the required tasks in a safe and efficient manner and to insure all employees receive periodic refresher training.

Equipment Management Program—written loss prevention maintenance program to include, but not limited to, a history of each piece of equipment, designate responsibility, schedule of when maintenance is to be performed, list of equipment to be maintained, how maintenance is to be performed.

First Aid—adoption of a first aid program which will provide a trained first aid person at each job site and shift. This policy covers all facilities and crews.

Hazard Control Program—program to establish a systematic method of recognizing, evaluating, and controlling hazards prior to them producing injury, illness, or property damage.

Housekeeping Program—program to provide a method for systematically inspecting and eliminating safety and fire hazards that result from uncontrolled sources. To establish clearly defined areas of responsibility for orderliness and cleanliness through each state-owned or operated grounds and facilities.

Inspections Program—a program to maintain a safe environment and control unsafe acts, roadway hazard inspection reports, and medical malpractice records.

Investigation Program—a program to thoroughly investigate and identify, as soon as possible, the actual causes and contributing factors of losses in an attempt to prevent recurrences.

Job Safety Analysis—a procedure to be used to review job methods and hazards that relate to the work environment. The job safety analysis should be performed on all tasks or processes that have a higher than normal rate of producing bodily injury or property damage.

Management Policy Statement—an expression of management, philosophies and goals toward safety.

Record Keeping—records to establish a procedure for the uniform development and maintenance of loss prevention and control documents to be retained for one year. This will include inspection reports, accident investigation reports, minutes of safety meetings, training records, boiler and machinery maintenance records, and/or conditions by regular and periodic facility equipment and roadway inspections.

Responsibility for Safety in an Organization—a written document to clearly define supervisory responsibilities at all levels.

Safety Meetings—meetings to be conducted by supervisors with employees on a quarterly basis, unless otherwise specified by ORM, to educate, inform, motivate and examine work practices for potentially unsafe acts that could produce bodily injury and provide a method to preclude recurrences.

Safety Rules—general instructions developed by agencies regarding the employees' responsibilities.

Water Vessel Operator Safety Program—program to provide a systematic method of screening, training, and accountability for employees and supervisors required to assign or operate state-owned water vessels in the scope of their employment.

C. The minimum requirements are in no way intended to require revisions of existing safety plans which meet or exceed these minimum requirements. However, these existing plans are subject to the Loss Prevention Unit for review and acceptance.

D. The Loss Prevention Unit will audit each department, agency, board, or commission to insure compliance of the development, implementation, and adherence to the program. Audits will be conducted once every three years with a re-certification review performed in subsequent years. The deadline for certification will be April 30 of each year for insurance premiums for the following fiscal year. Any agency, board or commission found to be in compliance with state law and loss prevention standards prescribed by the Office of Risk Management shall receive a credit to be applied to the agency's annual self-insured premium per line of insurance coverage, excluding the coverages for road hazards and medical malpractice, equal to 5 percent of the agency's total annual self-insured premium paid per line of coverage. An agency which has failed to receive certification after undergoing a loss prevention audit shall be liable for a penalty of 5 percent of the agency's total annual self-insured premium paid per line of coverage, excluding the coverages for road hazards and medical malpractice. Such compliance will be certified by major risk groups as follows:

1. workers compensation—regular;
2. workers compensation—maritime;
3. general liability;
4. auto liability and auto physical damage;
5. property and inland marine;
6. boiler and machinery;
7. bond and crime risk;
8. aviation;
9. marine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management,

Chapter 11. Law Enforcement Officers' and Firemen's Survivor Benefit Review Board
§1101. Survivors Benefits

A. Purpose

1. To establish an effective and efficient mechanism for fulfilling the provisions of R.S. 39:1533.A, 33:1981, 33:1947, and 33:2201.B.

2. To govern the submission, evaluation and determination of claims submitted pursuant to R.S. 33:1947, 33:2201, and 33:1981.

B. Application

1. The rules will apply to all claims arising from RS 33:1947, 33:2201, and 33:1981.

C. Definitions

Board—the Law Enforcement Officers and Firemen's Survivors Benefit Board.

Child—as defined in R.S. 33:1947.C.

Fireman—as defined in R.S. 33:1981.

Law Enforcement Officer—as defined in R.S. 33:2201.B.

Line of Duty—any activity performed in which a law enforcement officer suffers death as a result of:

a. an injury arising out of and in the course of the performance of his official duties; or

b. arising out of any activity while on or off duty, in his official enforcement capacity, involving the protection of life or property.

Qualifying Claim—those claims meeting the criteria of claims request documentation, and the meaning ascribed to line of duty.

Spouse—as defined in R.S. 33:1947.C.

D. Board Membership and Domicile

1. The board's official domicile will be located in Baton Rouge. All claims hearings, presentations etc. will be held in the board's official domicile. Claimant expenses related to claim preparation and presentation are not allowable for reimbursement. Board members serve on a gratuitous basis. The chairman of the board shall be on a rotation basis as follows: attorney general, legislative auditor, and state risk director. The term of each chairman is limited to two years. The attorney general's term shall begin effective September 19, 1989.

2. The board will be comprised of those individuals or their designees as stated in R.S. 33:1947.

E. Claims Requests

1. All claims shall be submitted to the chairman of Louisiana Law Enforcement and Firemen's Survivors Benefit Board through the Department of Justice-Attorney General.

2. All claim requests must include the following documentation:

a. notarized affidavit for decedent's date of employment, rank, duty assignment, routine work schedule, work responsibilities, brief statement outlining injuries;

b. copy of decedent's commission as police officer/fireman;

c. notarized affidavits from any witnesses to incident;

d. certified copy of investigative report, or uncertified copy accompanied by notarized affidavit of reporting investigative officer, which identifies copy of report as accurate reproduction of original report;

e. certified copy of decedent's death certificate and autopsy protocol report;

f. notarized affidavit from decedent's surviving spouse stating full their full name, address, date of marriage, and that they were not legally separated or divorced at time of death. Also, a certified copy of marriage license;

g. list of names and birth dates of each minor child born to or adopted by decedent, certified copies of birth certificates;

h. certified copy of letters of tutorship;

i. notarized affidavit of tutor or legal representative of surviving child stating child is unmarried and under the age of 18, or alternately, is unmarried, under the age of 23, and a student;

j. notarized affidavit of caretaker of surviving child which states the major child is physically and/or mentally handicapped, totally and permanently disabled, and solely dependent upon decedent for support. Also, copy of the major child's medical and /or psychological records; and

k. if decedent was not survived by a spouse, a notarized affidavit from parents which state that decedent was their child, the date and place of decedent's birth, and full name and address of each surviving parent. Also, a copy of decedent's birth certificate or other legal documents which indicate the name(s) of parent(s).

F. Procedures for Hearings

1. Upon receipt of a claim, the chairman will schedule the claim for board hearing within 60 days after all required documentation is received. Each claim shall be assigned a sequential number claim code which shall be utilized for official references.

2. The chairman shall notify the board members, claimant, and appointing authority of the claimant of the claim items up for consideration no later than 10 days prior to hearing.

3. At the hearing date described the board shall officially receive and act upon all claims received.

4. The board may, at its discretion, entertain additional oral presentations from outside parties regarding the claim.

5. The board shall have the following options with regards to the claim action:

a. approval of the qualifying claim;

b. denial of the claim;

c. deferral pending receipt of additional data.

6. The board shall inform the claimant, in writing, of its determination.

7. If approved, the board chairman shall certify to the commissioner of administration and request payment in accordance with R.S. 39:1533.

G. Appeals

1. Claimant may appeal within 60 days of being advised of the board's decision;

2. This appeal shall be filed in the 19th JDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:1947, R.S. 33:1981, R.S. 33:2201, and R.S. 39:1533.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management,

Subpart 2. Worker's Compensation Fee Schedule

Chapter 25. Fees

§2501. Fee Schedule

A. The director, Office of Risk Management, Division of Administration, pursuant to notice of intent published December 20, 1987, and pursuant to provisions of R.S. 23:1034.2 and R.S. 39:1527 et seq., adopted effective April 1, 1988 a fee schedule for medical, surgical, and hospital services due under the Louisiana Worker's Compensation Act, R.S. 23:1021-1361, and which arise in the state self-insured worker's compensation cases. Effective, July 1, 1994, the Office of Risk Management began utilizing the Medical Fee Schedule promulgated by the Office of Workers' Compensation in accordance with R.S. 23:1034.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527 et seq.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Risk Management, LR 14:148 (March 1988), amended LR 16:401 (May 1990), LR 31:69 (January 2005), LR 32:1444 (August 2006).

J.S. "Bud" Thompson, Jr.
State Risk Director

0608#001

RULE

Office of the Governor

**Board of River Port Pilot Commissioners and Examiners
Calcasieu River Waterway**

Pilot Apprentice Applicant Requirements,
Pilotage Certification, Charges and Fees
(LAC 46:LXX.9107, 9111 and 9117)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of River Port Pilot Commissioners and Examiners Calcasieu River Waterway hereby adopts rules regarding LAC 46:LXX.9107, Minimum Requirements, Applicants, Examination, Appointments, §9111, Pilotage Certification, and §9117, Pilot Charges and Fees. The proposed Rule amendments have no known impact on family formation, stability, or autonomy as described in R.S. 49:972.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXX. River Pilots

**Subpart 10. Board of River Port Pilot Commissioners
and Examiners**

**§9107. Minimum Requirements, Applicants,
Examination, Appointments**

A. ...

B. Candidates seeking to participate in a pilot apprentice training program shall hold a U.S. Coast Guard issued license authorizing service as master, steam or motor vessels of at least 1600 gross tons upon oceans or near coastal and be reasonably expected to be able to eventually comply with federal regulatory requirements specified at 46 CFR Subpart G; Professional Requirements for Pilot Licenses which are considered by the board to be minimum requirements for commissioning pilots under the board's jurisdiction. These

requirements include time-in-service, route familiarization, examination, physical requirements, tonnage service requirements and capability to acquire and maintain knowledge of waters to be navigated. Prospective candidates of good character who meet the aforementioned requirements may submit applications evidencing these requirements to the Apprentice Pilot Review Committee, 4902 Isle Road Lake Charles, LA 70605. A copy of the application shall also be submitted to the Board of Commissioners and Examiners, c/o Port of Lake Charles, P.O. Box 3753, Lake Charles, LA 70602. Applications should be accompanied by a personal résumé, photograph, birth certificate, three letters of recommendation, health profile conducted by a recognized health professional evidencing probable ability to comply with 46 CFR 10.205(d) and a U.S. Coast Guard Information Release Form signed and notarized, in any format, to authorize personnel involved in the selection process to investigate and/or obtain applicant's records from the U.S. Coast Guard or from any other person or entity deemed appropriate, including but not limited to licenses, casualty involvement, or any disciplinary information. Applications will be kept on file until an opening for an apprentice pilot is anticipated, or a maximum of two years, unless updated. When the association anticipates openings for apprentice pilots, the Apprentice Pilot Review Committee will review all current applications and contact best-qualified selected applicants to appear for interviews. The Apprentice Pilot Review Committee, subsequent to reviewing applications and interviewing applicants, will present their findings and recommendations to association members for their vote on apprentice candidate acceptance. The board shall provide oversight and final approval over the pilot candidate application and selection process and shall approve and make recommendations to the governor for subsequently awarding pilot commissions.

C. - H.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1478 (June 2002), amended LR 32:1444 (August 2006).

§9111. Pilotage Certification

A. Commissioned pilots shall comply with all requirements to maintain current their Louisiana State Commission and such other certifications and continuing educational classes, training, or programs as determined necessary by the board.

B. Commencing January 1, 2006, every commissioned pilot in order to maintain a valid pilot's commission must attend 40 hours of continuing professional education classes and programs every five years. In addition each commissioned pilot must attend a continuing ship simulator-training program every five years. Classes, programs, and simulator-training received prior to January 1, 2006 shall not be counted toward this requirement.

C. The professional education classes and programs required by the board include, but are not limited to, the following:

1. electronic ship simulation training;
2. small scale ship simulation training;
3. ARPA training (Automatic Radar Plotting Aid);

4. emergency ship handling training;
5. bridge resource management training for pilots;
6. radar certificate renewal;
7. tractor tug training;
8. portable pilot system lap top computer training;
9. any other class, course or program that the board deems appropriate.

D. Any required continuing professional education class, training or program or required ship simulator-training program shall be a class or program which has been appropriately certified, as determined by the board, and is one generally utilized and participated in by other commissioned pilots.

E. On or before January 10 of each year, commencing January 2007, each pilot shall submit to the board evidence of his attendance and completion of the above required continuing education classes and programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1072.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, LR 28:1479 (June 2002), amended LR 32:1444 (August 2006).

§9117. Pilot Charges and Fees

A. Pilotage charges and rates shall be fixed, without board involvement, in accordance with established procedures of the Board of Louisiana River Pilot Review and Oversight, pursuant to R.S. 34:1121 et seq., as may be necessary following disputes.

AUTHORITY NOTE: Promulgated in accordance with R. S. 34:1072.

HISTORICAL NOTE: Promulgated by the Board of River Port Pilot Commissioners and Examiners, Calcasieu River Waterway, L.R. 28:1481 (June 2002), amended LR 32:1445 (August 2006).

Brett Palmer
Chairman

0608#049

RULE

Office of the Governor Real Estate Commission

Reorganization of the Real Estate Commission
(LAC 46:LXVII.Chapters 3-37, 53, and 55)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950, et seq., the Louisiana Real Estate Commission has amended LAC 46:LXVII, Real Estate, Chapters 3-37, 53 and 55. The purpose of the amendments is to (1) provide an organized, concise, clear-cut body of information that is free of obscurity and ambiguity, (2) better describe the licensing, certification, and registration processes administered by the agency, and (3) remove arbitrary time constraints that serve to (a) disqualify otherwise qualified applicants and (b) nullify certain education hours and test scores.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXVII. Real Estate

Subpart 1. Real Estate

Chapter 3. Initial License Applications

§301. Forms

A. Initial license applications shall be in such form and detail as prescribed by the commission and shall be accompanied by the fees prescribed in R.S. 37:1443.

B. Initial license applications shall be classed in the following categories:

1. Salesperson;
2. Broker—Individual;
3. Broker—Corporation, Partnership, Limited Liability Company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:37 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1445 (August 2006).

§303. Sponsorship

A. Applicants for a salesperson license shall be sponsored by an active licensed broker and shall submit the Affidavit of Sponsorship Form (Part B) prescribed by the commission as proof of sponsorship.

B. The Affidavit of Sponsorship Form (Part B) may be submitted with the initial license application, but no later than 90 days after passing the license examination.

C. If the Affidavit of Sponsorship Form (Part B) is not received within the prescribed 90 days, an inactive license shall be issued to the salesperson applicant who shall then be subject to the Louisiana Real Estate License Law and the commission rules and regulations regarding inactive licensees. An active license shall not be issued until such time as the Transfer to Active Status Form prescribed by the commission is received.

D. Applicants for a broker license who elect to be sponsored by an active licensed broker shall be exclusively affiliated as an associate broker of the sponsoring broker.

E. Active licensed brokers who elect to sponsor an applicant for a real estate license shall be subject to the duties and penalties prescribed for sponsoring brokers in the Louisiana Real Estate License Law and commission rules and regulations and shall bear the responsibility for the license activity of any sponsored licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:37 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1445 (August 2006).

§305. Documentation

A. All initial license applications for an individual real estate broker or salesperson license shall be submitted with the following documentation:

1. proof of completion of the real estate instruction hours prescribed by R.S. 37:1437:

a. real estate pre-license instruction hours obtained in other jurisdictions may be accepted for full or partial credit at the discretion of the commission and shall be based on the applicability of the subject matter to current pre-license education requirements;

b. real estate pre-license instruction hours obtained from nationally recognized institutes may be accepted for full or partial credit at the discretion of the commission and shall be based on the applicability of the subject matter to current pre-license education requirements;

c. every applicant for a Louisiana real estate license shall provide proof of at least thirty classroom hours of pre-license instruction that includes the Louisiana Real Estate License Law, rules and regulations of the commission, Louisiana Civil Law, as it relates to real estate, and any other instruction hours the commission deems necessary and appropriate.

2. license history verification from each jurisdiction in which the applicant has held or currently holds a real estate license;

3. verification of passing an equivalent real estate license examination, if the applicant is currently or was previously a resident licensee in another jurisdiction;

4. copy of any trade name or trademark registration issued by the secretary of state for use by the individual broker or salesperson applicant in real estate license activities.

B. Every application for a corporation, partnership or limited liability company broker license shall be submitted by the designated qualifying broker with the following documentation:

1. copy of the resolution or other document executed by a principal of the corporation, partnership or limited liability company designating an individual real estate broker as the qualifying broker;

2. copy of the registration certificate issued by the secretary of state;

3. copy of any trade name or trademark registration issued by the secretary of state for use by the corporation, partnership or limited liability company in real estate license activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 32:1445 (August 2006).

Chapter 5. Examinations

§501. Authorization

A. The commission shall issue an examination authorization to each eligible applicant. The examination authorization shall be valid for one examination and shall expire ninety days after the date it is issued.

B. It shall be the responsibility of each applicant that has received an examination authorization from the commission to contact the designated national testing service for an appointment to take the examination.

C. An applicant whose examination authorization expires prior to the applicant taking the examination shall receive a new examination authorization upon submission of a written request and the processing fee prescribed in R.S. 37:1443.

D. The commission shall provide each applicant with a license information bulletin that contains the examination procedures established by the commission and the

designated testing service. Failure to comply with the procedures contained in the license information bulletin may result in disqualification from the examination and the forfeiture of all fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1446 (August 2006).

§503. Disqualification of Applicants

A. Any applicant who copies or communicates, or attempts to copy or communicate examination content shall be considered in violation of examination security, which shall be grounds for denial of a license and the forfeiture of all fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1446 (August 2006).

§505. Prohibited Activities

A. Licensees, certificate holders, registrants, school owners or school directors, and persons employed by or associated with a licensee, certificate holder, registrant, school owner or school director, shall not obtain or attempt to obtain by deceptive or fraudulent means any copyrighted test questions and/or confidential test material used by or belonging to any national testing service currently or previously contracted with the commission. Violations of this Section shall be cause for censure, suspension, or revocation of a license, certificate, or registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1446 (August 2006).

§507. Failure of Examination

A. Any applicant who fails an examination may apply to retake the examination by submitting a copy of the fail notice and a new examination processing fee to the commission within 90 days of the failed examination. Failure to reapply for an examination within the 90 day period shall result in closure of the applicant's file and forfeiture of all fees. Thereafter, the applicant shall be required to submit a new application and remit all prescribed fees to be eligible for the licensing examination.

B. An applicant who does not pass both portions of the examination shall be required to retake the failed portion only; however, the score on the passed portion shall remain valid for a period of one year, after which time the applicant shall be required to retake it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1446 (August 2006).

§509. Partial Failure of Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1446 (August 2006).

§511. Examination Requirement for Out-of-State Applicants

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006).

Chapter 7. Fees

§701. Duration of Fees

A. Fees for licenses, certificates, and registrations shall cover a period of one calendar year and shall not be prorated.

B. Except as otherwise provided in these rules and regulations all fees submitted to the commission are non-refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006).

§703. Duration of Fees for Licenses, Certificates and Registrations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006).

§705. Returned Checks

A. Payment of any fee with a check that is returned by a financial institution, wherein the reason for not paying the check is not a fault of the financial institution, shall be grounds for cancellation of the transaction for which the fee was submitted and/or the suspension or revocation of a license, registration or certificate.

B. Persons issuing checks that are returned to the commission by a financial institution for any reason shall be notified by certified mail at the most current address of record. Within 10 days from the date of the notification, the person issuing the check shall remit a certified check, cashier's check, or money order, to the commission in the amount of the returned check, plus the processing fee prescribed in R.S. 37:1443.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006).

Chapter 9. Renewal of Licenses, Registrations and Certificates

§901. Timely Submission of Renewal Applications

A. The timely submission of a renewal application and payment of the required fees shall be the responsibility of the individual licensee, registrant, or certificate holder.

B. The renewal license of a salesperson or associate broker shall not be issued before the license of the sponsoring broker is renewed.

C. A licensee, registrant, or certificate holder who fails to renew by December 31 is prohibited beginning January 1 from engaging in any activities requiring a license, registration, or certificate until such time as the license, registration, or certificate is renewed.

D. A licensee whose sponsoring broker fails to renew by December 31 is prohibited beginning January 1 from engaging in any activities requiring a license until such time as the sponsoring broker has renewed or the licensee transfers to a new sponsoring broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006).

§903. Non-Renewal of Real Estate Licenses

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006).

§905. Renewal Application

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006).

§907. Education Hours Required for Renewal

A. Any active licensee who fails to comply with the applicable post-license or continuing education requirement prescribed in R.S. 37:1437 shall not be issued a renewal license until such time as the requirement is met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006).

Chapter 11. Delinquent Renewal

§1101. Application for Delinquent Renewal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006).

§1103. Loss of Renewal Eligibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1447 (August 2006).

Chapter 13. Broker Affiliation

§1301. Associate Broker

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1448 (August 2006).

§1303. Notification by Broker Applicants

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1448 (August 2006).

§1305. Notification by Individual Real Estate Broker

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1448 (August 2006).

§1307. Escrow Accounts Prohibited

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1448 (August 2006).

Chapter 15. Transfers and Terminations

§1501. Forms

A. A request to terminate sponsorship of a licensee or to transfer a licensee to a new broker shall be submitted on forms prescribed by the commission and shall be accompanied by the fees prescribed in R.S. 37:1443.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1448 (August 2006).

§1503. Fee Exemptions

A. A request for license transfer that is submitted within sixty days of any of the following circumstances shall be exempt from the transfer fee or delinquent renewal fee prescribed in R.S. 37:1443:

1. the sponsoring broker has died;
2. the sponsoring broker has failed to renew his license;
3. the license of the sponsoring broker has been suspended or revoked;
4. the license of the sponsoring broker has been transferred to the inactive status;
5. the sponsoring broker elects to discontinue the sponsorship of a licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1448 (August 2006).

§1505. Purchase or Acquisition of Agencies

A. When a licensed agency purchases or otherwise acquires another licensed agency, the sponsoring or qualifying broker of the acquiring agency shall notify the commission in writing no later than the second working day following the date of acquisition.

B. The notice shall specify the date of acquisition and shall request a transfer to the acquiring agency for all licensees sponsored by the acquired agency.

1. The sponsoring broker for the acquired agency shall return the licenses of all sponsored licensees to the commission no later than the second working day following the date of acquisition.

2. The commission shall issue new licenses to the acquiring agency for each licensee sponsored by the acquired agency. The effective date of transfer to the acquiring agency shall be the date of acquisition specified in the notification.

C. The notification of acquisition shall certify continuous errors and omissions insurance coverage for all licensees that are transferred to the acquiring agency. If the transfer of licensees necessitates payment to the commission for coverage under the commission group errors and omission insurance policy, a listing of all licensees for which coverage is requested and all applicable fees shall accompany the notification.

D. The sponsoring broker of the acquiring agency shall give written notice to all licensees transferred to the acquiring agency within two working days following the date of acquisition.

E. Any licensee of the acquired agency who elects to transfer from the acquiring agency shall do so in accordance with the provisions of R.S. 37:1441.A and §1501.A of this Chapter.

F. Any licensee of the acquired agency who is terminated by the acquiring agency shall be transferred in accordance with the provisions of R.S. 37:1441.A and §§1501.A and 1503.A.5 of this Chapter.

G. The acquiring agency shall provide a written report to the commission on the status of all former licensees of the acquired agency within 15 days following the acquisition.

1. The notification shall include a listing by category that identifies:

- a. each licensee that requested the return of their license to the commission;
- b. each licensee that is being terminated by the acquiring agency;
- c. each licensee that will remain with the acquiring agency.

2. The notification shall include the following documentation and fees:

- a. the license of each licensee that will not remain with the acquiring agency;
- b. copies of the written notification to and/or from each licensee as required by §1505.D of this Chapter;
- c. payment of the transfer fee prescribed in R.S. 37:1443 for each licensee who was sponsored by the acquired agency and who will remain with the acquiring agency;
- d. payment of the errors and omissions insurance fee prescribed in §1505.D of this Chapter, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1448 (August 2006).

§1507. Change of Licensing Status

A. A request to transfer a license from active to inactive status or from inactive to active status shall be submitted on forms prescribed by the commission and shall be accompanied by the fees prescribed in R.S. 37:1443, unless exempt as prescribed in §1503 of this Chapter.

B. Corporate, partnership and limited liability company broker licenses shall remain in the active license status.

C. An individual broker that elects to become exclusively affiliated with a sponsoring broker shall submit a request to transfer on forms prescribed by the commission, which shall be accompanied by the fees prescribed in R.S. 37:1443.

D. A licensee may transfer to inactive status without completing the 30-hour post-license education requirement; however, the commission shall not transfer the licensee to active status until such time that the post-license education requirement is complete.

E. The post-license education hours may be used to satisfy the continuing education hours, or a portion of the continuing education hours required for active status as follows:

1. one to three years of inactive status—30 hours of post-license education in lieu of the required 20 hours of continuing education. Any licensee remaining in the inactive status for more than one year shall also complete a four-hour continuing education course covering the Louisiana Real Estate License Law and commission rules and regulations within one year prior to the date of the transfer to active status;

2. three to five years of inactive status—30 hours of post-license education and at least 10 hours of continuing education. Any licensee remaining in the inactive status for more than one year shall also complete a four-hour continuing education course covering the Louisiana Real Estate License Law and commission rules and regulations within one year prior to the date of the transfer to active status;

3. more than five years of inactive status—30 hours of post-license education and at least 50 hours of continuing education. Any licensee remaining in the inactive status for more than one year shall also complete a four-hour continuing education course covering the Louisiana Real Estate License Law and commission rules and regulations within one year prior to the date of the transfer to active status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:485 (March 2002), amended LR 32:1449 (August 2006).

Chapter 17. Termination Responsibilities

§1701. Relinquishment of Business Related Property and Data

A. A licensee whose business relationship with a sponsoring broker has been terminated for any reason shall immediately relinquish all business related property to the sponsoring broker, including:

1. the keys to any and all properties listed with the broker;

2. any documents that in any way pertain to real estate transactions wherein a broker or licensees sponsored by the broker has appeared in a licensing capacity. This does not preclude the licensee from retaining copies of such documents.

B. A sponsoring broker who alleges the failure of a former sponsored licensee to comply with §1701.A of this Chapter shall submit a signed written report of such failure to the commission. The signed report shall constitute a written complaint filed with the commission and shall list the specific business related data and property that was not relinquished to the sponsoring broker. The sponsoring broker shall provide a copy of the report to the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1449 (August 2006).

§1703. Financial Obligations; Commissions and Dues; Disputes

A. The commission shall not intervene or become otherwise involved in employment disputes or disputes pertaining to financial obligations that are the result of a business relationship between a broker and a sponsored licensee or a timeshare developer and timeshare sales registrant, including the payment of commissions and dues to professional organizations. Such disputes shall be settled by the respective parties or by a court of competent jurisdiction.

B. Employment disputes or disputes over financial obligations, commissions, or dues shall not be cause for the failure of a sponsoring broker to return a license or registration to the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1449 (August 2006).

§1705. Personal Obligations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1449 (August 2006).

§1707. Report of Alleged Failure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1449 (August 2006).

Chapter 19. Names on Licenses, Registrations, and Certificates; Trade Names

§1901. Names on Licenses, Registrations and Certificates

A. All licenses, registrations and certificates issued by the commission shall be issued in the name of the legal entity of the applicant.

1. Licenses, registrations and certificates issued to individual real estate brokers, real estate salespersons, timeshare registrants, and real estate school instructors shall be issued in the name of the individual person.

2. Licenses, registrations and certificates issued to a corporation, partnership or limited liability company for any purpose shall be issued in the identical name as registered with the secretary of state. A license, registration or certificate shall not be issued to any corporation, partnership, or limited liability company not registered with the secretary of state.

3. Names on licenses, registrations and certificates issued by the commission shall not include a trade name unless the trade name is registered with the secretary of state and a copy of the registration is on file at the commission.

4. The name of a licensee whose real estate license has been revoked by the commission shall not appear on any license in a manner that represents, suggests, or implies that the former licensee is licensed by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1450 (August 2006).

§1903. Trade Names

A. Names on licenses, registrations and certificates issued by the commission shall not include a trade name unless the trade name is registered with the secretary of state and a copy of the registration is on file at the commission.

B. Any name or trade name used by a licensee, registrant or certificate holder in any manner shall be a clearly identifiable entity that can be distinguished from that of another licensee, registrant or certificate holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:830 (April 2002), amended LR 32:1450 (August 2006).

§1905. Symbols and Trademarks

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1450 (August 2006).

Chapter 21. Concurrent Licenses and Registrations

§2101. Broker or Salesperson License; Timeshare Interest Salesperson Registration

A. A broker may be concurrently licensed as an individual and as the designated qualifying broker of one or more corporations, limited liability companies, and/or partnerships.

B. Associate brokers and salespersons shall not be sponsored by more than one sponsoring broker.

C. A real estate license and a timeshare interest salesperson registration shall not be issued concurrently to any person. A broker shall not concurrently conduct real estate activities as an individual real estate broker and as an associate broker exclusively affiliated with another real estate broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1450 (August 2006).

Chapter 23. Branch Offices

§2301. Branch Office License; Supervision; Duties and Penalties

A. An office established by a broker or sponsored licensee for conducting any real estate license activity at a separate address from the registered address of the broker, wherein the name and telephone number of the broker or agency is advertised in any way, shall be considered a branch office and shall be licensed as such.

B. An application for a branch office shall be submitted on the forms prescribed by the commission and accompanied by the fees prescribed in R.S. 37:1443.

C. Every branch office shall be under the direct supervision of a licensed individual broker who shall be designated in writing as the branch office manager. A copy of the designation shall be submitted to the commission within five days following the date of the original designation or any changes thereto.

D. A broker designated as a branch office manager shall be subject to the duties and penalties prescribed for sponsoring brokers in R.S. 37:1430 et seq.; however, this shall not relieve the sponsoring broker of the ultimate responsibility for the branch office operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:829 (April 2002), amended LR 32:1450 (August 2006).

Chapter 25. Advertising; Disclosures; Representations

§2501. Disclosures and Representations

A. Agreements between brokers to allow property data to be shared and disseminated to clients, customers, or prospective clients, including but not limited to web-based or email multiple listing service property data, IDX or VOW property data does not constitute advertising or advertisement as to the property data shared; however,

§2515 of this Chapter, shall apply to the area of such electronic communication that displays the property data on websites or email communications.

B. All advertising, disclosures, or representations by any licensee shall include the phone numbers and the identity of the sponsoring broker or firm through the use of the identical name under which the sponsoring broker or firm is licensed or a registered trade name that is a clearly identifiable entity which will distinguish the sponsoring broker or firm from other licensees, registrants, or certificate holders.

C. Any trade name used by a licensee, registrant or certificate holder in advertising shall be a trade name that is a clearly identifiable entity that will distinguish itself from other licensees, registrants or certificate holders.

D. All advertising of a licensed individual, partnership, firm, or corporate broker shall include their licensed business name, which for the purpose of these rules shall mean the name in which that individual, partnership, firm or corporation is on record with the commission as doing business as a real estate broker or, in the case of a trade name, that which is registered with the secretary of state and on record with the commission.

E. A salesperson or associate broker is prohibited from advertising under only his or her name.

F. All advertising by a salesperson or associate broker must be under the direct supervision of his or her sponsoring broker.

G. In all advertising, the salesperson or associate broker must include the name and telephone number of his or her broker as defined in this Section. The broker's name and telephone number must be conspicuous, discernible, and easily identifiable by the public.

H. If allowed by the sponsoring broker, the salesperson or associate broker may include in the advertisement:

1. the salesperson's or associate broker's personal logo or insignia, which cannot be construed as that of a company name;

2. the salesperson's or associate broker's contact information;

3. a group or team name, as long as the name(s) of the salesperson(s) and/or associate broker(s) are included near the team reference and cannot be construed as that of a company name; and

4. a slogan that may not be construed as that of a company name.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, LR 32:1450 (August 2006).

§2513. Appraisals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1451 (August 2006).

Chapter 27. Escrow and Trust Accounts

§2701. Resident Broker Requirements

A. A resident broker, including corporations, partnerships and limited liability companies, engaged in the

sale of real estate on behalf of clients shall open and maintain a sales escrow checking account in a financial institution in the state of Louisiana. All sales escrow accounts shall be titled in the identical wording as stated on the broker's license and the wording "Sales Escrow Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds received by a broker in connection with the sale of real estate shall be deposited in this account.

B. A resident broker, including corporations, partnerships and limited liability companies, engaged in the collection of rental payments on behalf of clients shall open and maintain a rental trust checking account in a financial institution in the state of Louisiana. All rental trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Rental Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds collected as rental payments from or on behalf of clients shall be deposited into this account.

C. A resident broker, including corporations, partnerships and limited liability companies, engaged in property management activities on behalf of clients shall open a security deposit trust checking account in a financial institution in the state of Louisiana. All security deposit trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Security Deposit Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds collected as rental security deposits from or on behalf of clients shall be deposited into this account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1451 (August 2006).

§2703. Non-Resident Broker Requirements

A. Non-resident brokers shall be subject to the provisions of §2701 of this Chapter.

B. The sales escrow checking accounts, rental trust checking accounts and security deposit trust checking accounts of a non-resident broker may be opened and maintained in a Louisiana financial institution and/or a financial institution located in the resident state of the broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1451 (August 2006).

§2705. Change in License Status; Associate Broker and Inactive Broker Requirements

A. Associate brokers are prohibited from opening and maintaining a sales escrow checking account, rental trust checking account, or security deposit trust checking account. All funds received by an associate broker in any real estate transaction shall be placed in the custody of the sponsoring broker.

B. An associate broker previously licensed as an individual broker or an active broker transferring to inactive status:

1. shall maintain all sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts for the limited and specific purpose of completing pending transactions and disbursing all deposits contained therein;

2. shall not deposit additional funds in sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts as of the effective date of affiliation with a sponsoring broker or transfer to inactive status;

3. shall have five working days from the date of affiliation with a sponsoring broker or transfer to inactive status to notify the commission in writing of the amount of funds in each escrow or trust account and the approximate date that each account will be closed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1451 (August 2006).

§2707. Branch Office Accounts

A. A broker may open additional sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts to accommodate business transacted out of a branch office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Louisiana Real Estate Commission, LR 32:1452 (August 2006).

§2708. Signatory Rights on Checking Accounts

A. An individual real estate broker shall be an authorized signatory on each sales escrow checking account, rental trust checking account, or security deposit trust checking account and shall be responsible for the proper maintenance and disbursement of any funds contained therein. The addition of sponsored licensees and/or employees of the broker as signatories on the accounts shall not relieve the individual real estate broker of this responsibility.

B. The qualifying broker of a licensed corporation, partnership or limited liability company shall be an authorized signatory on sales escrow checking accounts, rental trust checking accounts and security deposit trust checking accounts maintained by the licensed entity and shall be responsible for the proper maintenance and disbursement of any funds contained therein. The addition of sponsored licensees, principals and/or employees of the licensed entity as signatories on the accounts shall not relieve the qualifying broker of this responsibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 32:1452 (August 2006).

§2709. Additional Accounts

A. Where the interest of the principal parties to a transaction or series of transactions would be served thereby, and with the prior written consent of the principal parties, a broker or non-resident broker may open an additional sales escrow checking account, rental trust checking account or

security deposit trust checking account, as prescribed in §§2701 and 2703 of this Chapter, and shall deposit therein all funds received in trust on behalf of the parties to the transaction or series of transactions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1452 (August 2006).

§2711. Non-Interest Bearing Checking Accounts

A. Every sales escrow checking account, rental trust checking account or security deposit trust checking account shall be opened as a non-interest bearing checking account unless all parties having an interest in the funds to be deposited therein have agreed otherwise in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1452 (August 2006).

§2713. Personal Funds in Escrow and Trust Checking Accounts

A. A sum not to exceed \$2,500 may be kept in each sales escrow checking account, rental trust checking account, and security deposit trust checking account, which sum shall be specifically identified and deposited to cover bank service charges relating to the accounts.

B. A broker engaged in property management activities may keep funds in excess of \$2,500 in a rental trust checking account for the temporary, limited, and specific purpose of enabling the broker to satisfy financial obligations for or on behalf of clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1452 (August 2006).

§2715. Withdrawal

A. Funds deposited into a sales escrow checking account, rental trust checking account, or security deposit trust checking account shall not be withdrawn for any purposes except:

1. upon the mutual written consent of all parties having an interest in the funds;
2. upon commission order;
3. upon court order;
4. to deposit funds into the registry of the court in a concursus proceeding;
5. to deposit funds with the commission pursuant to Chapter 29;
6. to disburse funds upon a reasonable interpretation of the contract that authorizes the broker to hold such funds, provided that the disbursement is not made until 10 days after the broker has notified all parties and licensees in writing;
7. to return the funds to a buyer at the time of closing;
8. to cover the payment of service charges on sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts;
9. upon approval by the commission in connection with the sale or acquisition of a licensed entity;

10. to comply with the provisions of R.S. 9:3251 or any other state or federal statute governing the transfer of rents, security deposits or other escrow funds.

B. Deposits shall be disbursed within 30 days of an agreement between the principles in a real estate transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1452 (August 2006).

§2717. Deposits

A. Funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1453 (August 2006).

§2719. Account Closing

A. No sales escrow checking account, rental trust checking account, or security deposit trust checking account may be closed until such time as all deposits therein have been properly disbursed.

B. Bankruptcy and/or the revocation, suspension, or lapse of a broker license for any reason shall not be cause to close or discontinue maintenance of any sales escrow checking account, rental trust checking account, or security deposit trust checking account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1453 (August 2006).

§2721. Transfer of Trust Funds on Sale or

Acquisition of Agency

A. When a licensed agency is sold or otherwise acquired by another licensed agency the sponsoring broker of the acquiring agency shall notify the commission in writing of the acquisition and the anticipated date of the transfer of trust funds. The notice shall specify the name of the acquired agency and account numbers of the sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts from which the funds will be transferred and the account numbers of the accounts into which the funds will be deposited.

B. A letter requesting approval to transfer the funds shall be jointly signed by the sponsoring brokers of the acquired agency and the acquiring agency and shall accompany the notification to the commission.

C. The transfer of funds shall not occur without written approval from the commission, as prescribed in §2715.A.9 of this Chapter.

D. Within five working days following the transfer of funds a letter jointly signed by the sponsoring brokers of the acquired agency and the acquiring agency shall be forwarded to the commission certifying that all trust funds have been transferred. The letter shall include the following:

1. certification that all sales escrow checking account, rental trust checking account, and security deposit trust checking account funds have been transferred to and received by the acquiring agency;

2. certification that supporting documents for all trust funds have been delivered to and received by the acquiring agency;

3. a listing of all sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts from which a transfer was made and the amount of funds transferred from each account;

4. a listing of all sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts into which funds were deposited and the amount of funds deposited into each account.

E. Within 10 days following the transfer of funds, the sponsoring broker of the acquired agency shall close the escrow accounts and trust accounts from which the funds were transferred and shall advise the commission in writing when such action has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1453 (August 2006).

§2723. Deposits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000); amended by the Office of the Governor, Real Estate Commission, LR 32:1453 (August 2006).

§2725. Account Closing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1453 (August 2006).

§2727. Maintaining Accounts

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1453 (August 2006).

§2729. Corporations, Partnerships and Limited Liability Companies

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1453 (August 2006).

§2731. Transfer of Trust Funds on Sale or Acquisition of Agency

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:46 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1453 (August 2006).

§2733. Change of Licensing Status

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:46 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006).

Chapter 29. Disbursement of Escrow Deposits

§2901. Escrow Disputes

A. When a dispute exists in a real estate transaction regarding the ownership or entitlement to funds held in a sales escrow checking account, the broker holding the funds shall send written notice to all parties and licensees involved in the transaction. Within 90 days of the scheduled closing date or knowledge that a dispute exists, whichever occurs first, the broker shall do one of the following:

1. disburse the funds upon the written and mutual consent of all of the parties involved;
2. disburse the funds upon a reasonable interpretation of the contract that authorizes the broker to hold the funds. Disbursement may not occur until 10 days after the broker has sent written notice to all parties and licensees;
3. place the funds into the registry of any court of competent jurisdiction and proper venue through a concursus proceeding;
4. place the funds, including original promissory notes, with the Louisiana Real Estate Commission, with a request for an escrow disbursement order. This request shall include the names and last known address of the parties to the transaction, a copy of the purchase agreement, all forms required by the commission, and copies of any other documents relative to the dispute. The licensees and sponsoring brokers involved in the transaction shall appear when the dispute is brought before the commission;
5. disburse the funds upon the order of a court of competent jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006).

§2903. Escrow Disbursement Order

A. Funds submitted to the commission with a request for an escrow disbursement order shall be immediately deposited in an interest bearing escrow checking account pending final disposition.

B. At the discretion of the commission, the following action may be taken:

1. the commission may order an investigation;
2. the commission may call an adjudicatory hearing;
3. the commission may place the funds into the registry of any court of competent jurisdiction and proper venue through a concursus proceeding;
4. the commission may issue an escrow disbursement order providing for the disposition and allocation of disputed funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006).

Chapter 31. Change of Address or Telephone Number; Website Address

§3101. Reporting Change of Address or Telephone Number; Website Address

A. The commission shall be notified in writing within 10 days of any changes in the business address and/or telephone number, including any website address, or residence address and/or telephone number of a licensee, certificate holder, or registrant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006).

Chapter 33. Compensation

§3301. Full Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006).

Chapter 35. Disclosure by Licensee

§3501. Licensee as Principal in a Real Estate Transaction

A. The license status of a principal in a real estate transaction, whether individually or through an entity in which an interest is held by the licensee, shall be disclosed in writing to all other principals in the real estate transaction prior to entering into any real estate contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006).

Chapter 37. Agency Disclosure

§3703. Agency Disclosure

A. Licensees shall provide the agency disclosure informational pamphlet or the agency disclosure form to all parties to a real estate transaction involving the sale or lease of real property.

B. Licensees are responsible for ensuring that the pamphlets and forms are the most current version prescribed by the commission and that reproductions of the pamphlet and form contain the identical language prescribed by the commission.

C. Licensees will provide the agency disclosure informational pamphlet or the agency disclosure form to prospective sellers/lessors and buyers/lessees at the time of the first face-to-face contact when performing any real estate related activity involving the sale or lease of real property, other than a ministerial act as defined in R.S. 9:3891(12).

D. Licensees providing agency disclosure informational pamphlets or agency disclosure forms to prospective sellers/lessors and buyers/lessees shall ensure that the recipient signs and dates the pamphlet or form. The licensee providing the pamphlet or form shall sign as a witness to the

signature of the recipient, and the licensee shall retain the signed pamphlet or a copy of the form for a period of five years.

E. In any circumstance in which a seller/lessor or a buyer/lessee refuses to sign the agency disclosure informational pamphlet receipt or the agency disclosure form, the licensee shall prepare written documentation that includes the nature of the proposed real estate transaction, the time and date the pamphlet or form was provided to the seller/lessor or buyer/lessee, and the reasons given by the seller/lessor or buyer/lessee for not signing the pamphlet or form. This documentation shall be retained by the licensee for a period of five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000), amended LR 29:349 (March 2003), amended by the Office of the Governor, Real Estate Commission, LR 32:1454 (August 2006).

§3705. Dual Agency Disclosure

A. The dual agency disclosure form will be used by licensees acting as a dual agent under R.S. 9:3897.

B. Licensees are responsible for ensuring that the form is the most current version prescribed by the commission and that reproductions of the form contain the identical language prescribed by the commission.

C. Licensees shall ensure that the dual agency disclosure form is signed by all clients at the time the brokerage agreement is entered into or at any time before the licensee acts as a dual agent. A copy of this documentation shall be retained by the licensee for a period of five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000), amended LR 29:349 (March 2003), amended by the Office of the Governor, Real Estate Commission, LR 32:1455 (August 2006).

Chapter 53. Real Estate Schools; Real Estate Education Vendors; Instructors

§5301. Definitions

A. Real estate school is defined as any individual or entity certified by the Louisiana Real Estate Commission to provide real estate pre-license education, post license education and continuing education courses.

B. Real estate education vendor is defined as any individual or entity certified by the Louisiana Real Estate Commission to provide post license and/or continuing education.

C. State certified real estate instructor is defined as any individual certified by the Louisiana Real Estate Commission to provide real estate instruction for a certified real estate school or certified real estate education vendor.

D. Guest lecturer is defined as a non-certified instructor who provides no more than two presentations of pre-license education for a certified real estate school in a calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1455 (August 2006).

§5303. Certification; Applications and Procedures

A. Certifications issued under this Chapter shall be classed in the following categories:

1. real estate schools;
2. real estate education vendors;
3. real estate instructors.

B. Any individual or entity desiring to conduct business in this state as a real estate school, real estate education vendor, or real estate instructor shall file an application for certification with the commission.

C. The application shall be in such form and detail as prescribed by the commission and shall be accompanied by the certification fee(s) prescribed in R.S. 37:1443.

D. The commission shall approve or deny an application within 45 calendar days after it is received. Incomplete applications or a request from the commission for additional information may be cause for delay beyond 45 calendar days.

E. The commission may deny an application for certification for any of the following reasons:

1. the applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or theft, or has been convicted of a felony or crime involving moral turpitude in any court of competent jurisdiction;
2. an application contains a false statement of material fact;
3. a professional license or certification held by an applicant has been revoked.

F. The commission shall issue a certificate and assign a certification number to approved applicants that shall be included on all forms, documents, reports, and/or correspondence filed with the commission.

G. Applicants for certification under this Chapter shall obtain a surety bond issued by an insurance company that is authorized to conduct business in this state.

1. Real estate school applicants shall file proof of a \$10,000 surety bond with the commission within 10 calendar days of initial approval.

2. Real estate education vendors shall file proof of a \$5,000 surety bond with the commission within 10 calendar days of initial approval.

3. Real estate instructors shall be exempt from the provisions of this Part and shall not be required to obtain a surety bond.

4. Bonds shall be in favor of the state of Louisiana and conditioned for the protection of the contractual rights of students who attend real estate courses offered by the real estate school or real estate education vendor.

5. Bonds shall remain effective and in force throughout the certification period of the real estate school or real estate education vendor.

6. Proof of bond renewal shall be provided to the commission annually.

7. Failure to maintain a bond shall be cause for revocation or suspension of a certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1455 (August 2006).

§5305. Certifications; Exemptions and Exclusions

A. Colleges, universities, and state vocational-technical schools that provide courses in real estate shall not be required to apply for certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:486 (March 2002), LR 29:2073 (October 2003), LR 32:1456 (August 2006).

§5307. Certification; Certificate of Authority

A. The certification to operate as a real estate school, real estate education vendor, or real estate instructor shall be in the form of a Certificate of Authority. No Certificate of Authority shall be issued or renewed for any school applicant holding a real estate broker license whose school is designed, intended and/or primarily used for instruction of that same broker/owner's future salesperson or broker affiliates.

B. A Certificate of Authority shall be issued for a maximum period of one year and shall expire annually on December 31 unless an application for renewal is submitted.

1. Renewal of an instructor Certificate of Authority shall require completion of eight hours of approved continuing education completed during the current certification period. The eight hours shall include four hours in the mandatory course specified by the commission.

2. The renewal of a Certificate of Authority for a real estate school or real estate education vendor shall be exempt from the continuing education requirements of this Section.

C. Failure to renew a Certificate of Authority by December 31 shall result in the following action.

1. All course approvals issued under the Certificate of Authority shall be automatically suspended, and the commission shall not accept any pre-license education, post-license education, or continuing education courses for credit, if the courses were offered after the expiration of the Certificate of Authority.

2. Applications for delinquent renewal of a Certificate of Authority shall not be accepted by the commission after January 31. Failure to renew an expired Certificate of Authority during the prescribed delinquent period shall result in the forfeiture of renewal rights. Any real estate school, real estate education vendor, or real estate instructor that becomes ineligible to renew a Certificate of Authority shall apply as an initial applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1456 (August 2006).

§5309. Real Estate Schools and Real Estate Education Vendors; Owners and Directors

A. All real estate schools and real estate education vendors shall designate a director, whose duty it shall be to ensure that the operations of the school or vendor, and all training locations, adhere to the requirements of the Louisiana Real Estate License Law and the rules and regulations of the commission, and who shall be held responsible to the commission for any violations thereof.

B. Directors shall coordinate and disseminate information pertaining to amendments in the license law, rules and regulations, or policies and procedures of the commission to all staff, instructors, and employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1456 (August 2006).

§5311. Real Estate Schools and Real Estate Education Vendors; Facilities and Inspections

A. The commission may inspect any facility used by a real estate school or real estate education vendor at any time during regular business hours.

B. Real estate schools and real estate education vendors shall be subject to periodic audits and review, as determined by the commission, to ensure that courses are conducted in accordance with the provisions set forth in this Chapter, Chapter 55 of the commission rules and regulations, and R.S. 37:1460. This may include the observation and evaluation of classroom activities, course content, instructor proficiency, and/or the audit of reporting/attendance records.

C. If the real estate school or real estate school vendor is found deficient in any part of this Section, the commission shall prepare a report specifying the areas of deficiency.

D. Any real estate school or real estate education vendor that receives a report of deficiencies shall correct the deficiencies by the date designated by the commission and shall submit a report to the commission that outlines the corrective action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:53 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1456 (August 2006).

§5313. Real Estate Schools and Real Estate Education Vendors; Record Keeping

A. Real estate schools and real estate education vendors shall maintain accurate and properly indexed records on all students for at least five years after course completion and shall produce those records for inspection upon request of the commission. Electronic records shall be maintained in a readily available format that does not prohibit, delay, or otherwise impede inspection.

B. Real estate schools and real estate education vendors shall maintain the following records on each student:

1. complete name and address;
2. total classroom hours taken and course title;
3. dates of attendance;
4. test scores or pass/fail indications;
5. copy of student contract.

C. Real estate schools and real estate education vendors shall provide any student who requests it with a duplicate copy of his/her course completion records. The real estate school or real estate education vendor shall determine any fee associated with providing the records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54

(January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1456 (August 2006).

§5315. Real Estate Schools and Real Estate Education Vendors; Tuition, Fees, and Contracts

A. Each real estate school shall enter into a written contract with each student that shall clearly set forth the tuition and fees charged by the school for a specific course of instruction and the school refund policy.

B. A copy of the contract, signed by an authorized representative of the school, shall be provided to the student immediately after both parties sign the contract.

C. Any additional fees charged for supplies, materials, or required books shall be clearly itemized in the school contract, and such supplies, materials, or books shall become the property of the student upon payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1457 (August 2006).

§5317. Instructor Qualifications; Guest Lecturers

A. Applicants for instructor certification shall be required to pass the real estate instructor assessment examination specified by the commission and shall satisfy at least one of the following qualifications:

1. bachelor's degree with a major in real estate from an accredited college or university;

2. bachelor's degree from an accredited college or university and at least two years experience in the real estate business;

3. real estate broker license and a minimum of five years experience in the area of proposed instruction;

4. Juris Doctorate degree or the equivalent from an accredited law school and a minimum of three years experience in the area of the proposed instruction;

5. two years experience as a qualified instructor or professor in the business, finance or economics department of an accredited college or university;

6. any qualifications determined by the commission to be the equivalent of at least one of the qualifications prescribed in Paragraphs 1-5 of this Section.

B. A guest lecturer shall meet at least one of the following qualifications:

1. a college or university professor in real estate, finance, economics, or a related field;

2. a specialist with a degree or professional designation with expertise in the specific topic of instruction;

3. a real estate licensee with at least five years experience in the area of proposed instruction.

C. Guest lecturers shall not instruct pre-license courses pertaining to the Louisiana Real Estate License Law or the commission rules and regulations.

D. Guest lecturers shall not provide more than two presentations of pre-license education for a certified real estate school in a calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1457 (August 2006).

§5319. Prohibitions

A. Any activity that is designed to influence or solicit a pre-license education student to work under the sponsorship of any real estate broker shall be considered recruiting and is prohibited while on the premises of a real estate school.

B. In addition to the main location of the school, and any other facility in which the school provides pre-license education courses, the premises of a real estate school shall include Websites and any online and/or distance education courses provided by the school.

C. It shall be prohibited for any real estate brokerage firm to operate a real estate school under the same legal entity as the real estate brokerage firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1457 (August 2006).

§5321. Change of Address

A. The commission shall be notified within 10 calendar days of any change in the address and/or telephone number of any real estate school or real estate education vendor.

B. The commission shall be notified within 10 calendar days of any change in the residence or business address and/or telephone number of any real estate school or real estate education vendor owner, director, or instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, LR 32:1457 (August 2006).

§5323. School Advertising

A. Advertising by real estate schools and real estate education vendors shall not be false or misleading.

B. The commission may require a real estate school or real estate education vendor to furnish proof of any advertising claims. The commission may order the retraction of advertising that violates the provisions of this Section. Such retractions shall be published in the same manner as the original claim and be paid for by the real estate school or real estate education vendor.

C. Certified real estate schools shall not guarantee the passing of the state real estate licensing examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000); amended by the Office of the Governor, Real Estate Commission, LR 28:487 (2002), LR 32:1457 (August 2006).

Chapter 55. Real Estate Courses

§5501. Course Approval; Applications and Procedures

A. Courses approved by the commission shall be classed in the following categories:

1. pre-license education;
2. post license education;
3. continuing education.

B. Real estate schools and real estate education vendors shall file a course approval application with the commission for each course that will be offered for credit toward an initial or renewal real estate license.

C. The course approval application shall be in such form and detail as prescribed by the commission and shall be

accompanied by the processing fee prescribed in R.S. 37:1443.

D. The commission shall approve or deny a course approval application within 45 calendar days after it is received. Incomplete applications or a request from the commission for additional information may be cause for delay beyond 45 calendar days.

E. Each course approved by the commission shall remain active for three years and shall expire on December 31 of the third year unless a renewal application for course approval is filed with the commission. The commission shall not accept credit for a non-renewed course that is presented after the date of expiration.

F. The commission shall assign a tracking number to each approved course that shall be used with the approved course title on all forms, documents, reports, and/or correspondence filed with the commission.

G. Real estate schools and real estate education vendors shall not amend the title or outline of any approved course without first obtaining the written approval of the commission.

1. All requests to amend a course shall be accompanied by the new course outline and the processing fee prescribed in R.S. 37:1443.

2. It shall be the responsibility of the real estate school or real estate education vendor to amend each course as necessary so as to provide for any applicable law or rule change that is enacted during the course approval period. A fee shall not be required when a real estate course is amended to accommodate law or rule changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:55 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1457 (August 2006).

§5503. Pre-License Education Courses

A. Salesperson pre-license education courses offered by real estate schools shall be structured in the following manner:

1. salesperson 90-hour course that shall include:

- Real Estate Principles and Practices;
- Louisiana Real Estate License Law;
- Commission Rules and Regulations;
- Law of Agency, as contained in Title 9 of the Louisiana Revised Statutes;
- Civil Law, as it pertains to real estate transactions.

B. Broker pre-license education courses offered by real estate schools shall be structured in the following manner:

- 90-hour course on basic real estate fundamentals;
- 30-hour course that shall include, and be limited to, the following topics:
 - Louisiana Real Estate License Law;
 - Commission Rules and Regulations;
 - Law of Agency, as contained in Title 9 of the Louisiana Revised Statutes;
 - Civil Law, as it pertains to real estate transactions;
 - Ethics and Professionalism;
- 30-hour course on broker responsibilities.

C. Real estate schools shall not issue pre-license education credit for attendance at post license education courses or continuing education courses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:55 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1458 (August 2006).

§5505. Post License Education Courses

A. Post-license courses offered by real estate schools and real estate education vendors shall be developed in accordance with the content outline prescribed by the commission.

B. Real estate schools and real estate education vendors shall not issue credit for any post-license education course unless the student has passed an examination on the course content. Salesperson post-license hours shall be secured through and reported by one approved vendor.

C. Real estate schools shall not incorporate post-license education with pre-license education instruction.

D. The commission may consider course work completed at colleges and universities, national appraisal organizations, the societies, institutes and councils of the National Association of REALTORS®, National Association of Real Estate Brokers, and federal, state, and local governmental entities for post-license education credit.

E. Post-license education courses shall be open to all licensees regardless of broker affiliation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1458 (August 2006).

§5507. Continuing Education Courses

A. Real estate schools and real estate education vendors may offer continuing education course topics that include, but are not limited to, appraisal, finance, taxes, zoning, Louisiana Real Estate License Law/commission rules and regulations, environmental quality, property management, and federal laws affecting real estate such as HUD and fair housing regulations.

B. Continuing education courses offered by real estate schools and real estate education vendors shall be a minimum of two hours.

C. Real estate schools shall not incorporate continuing education with pre-license education instruction.

D. The commission shall mandate a four hour topic for continuing education credit that licensees shall complete as a requirement for license renewal.

E. The commission may consider course work completed at colleges and universities, national appraisal organizations, the societies, institutes and councils of the National Association of REALTORS®, National Association of Real Estate Brokers, and federal, state, and local governmental entities for continuing education credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1458 (August 2006).

§5509. Methods of Instruction; Classroom Training, Correspondence, Distance Education

A. Classroom training that is led by an instructor and held in a physical location, or delivered via a network, may be used to present pre-license, post license, and continuing education courses and shall be in such format and detail as prescribed by the commission.

B. Correspondence courses shall be in such format and detail as prescribed by the commission for post license or continuing education credit hours. Passage of an examination on course content is a requirement for all correspondence courses.

C. Distance education, for the purpose of this Chapter, shall mean interactive Internet-based instruction and may be used for pre-license, post license, and continuing education courses. Real estate schools and real estate vendors that offer distance education courses shall apply for course approval as follows:

1. Distance education courses shall be submitted to the commission for content approval prior to any course offering.

2. Distance education courses that have been approved by the commission for course content shall be submitted to the Association of Real Estate License Law Officials (ARELLO) for certification of the delivery method prior to any course offering. Loss of ARELLO certification for courses approved under this Section shall automatically suspend commission approval of the course content.

D. Final examinations for correspondence and distance education courses shall consist of multiple choice questions with four possible answers (a, b, c and d) as follows:

1. a minimum of 20 questions for each two hours of continuing education credit; or

2. a minimum of 30 questions for each three hours of post licensing credit;

3. the examination that a student submits for grading shall include a signed and dated statement that the student has personally completed the course and examination.

E. All courses submitted for approval shall be in the exact format in which they will be sold to licensees for post licensing or continuing education credit.

F. Real estate schools and real estate education vendors shall obtain the student's name, drivers license or identification number, address, and payment prior to the student receiving the course.

G. Real estate schools and real estate education vendors shall not grade any written assignment or examination if it is presented for grading before the time frame for course completion has been reached.

H. Real estate schools and real estate education vendors shall not grade any examination that does not contain the signed certification required in Paragraph D.3 of this Section.

I. Real estate schools and real estate education vendors shall certify students as successfully completing a course only if the student completes any written assignments and passes the required examination on course content.

J. Real estate schools and real estate education vendors shall issue certificates containing the following information to students:

1. complete name of the real estate school or real estate education vendor and the Certificate of Authority number;
2. name and drivers license or identification number of the student;
3. course title;
4. number of credit hours completed;
5. date of course completion;
6. signature of verifier of course completion;
7. acknowledgment of student's successful completion of examination;
8. indication of correspondence study denoted as "correspondence" or "C".

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1459 (August 2006).

§5511. Course Reporting; Schedules and Attendance

A. Real estate schools shall submit pre-license education course schedules to the commission.

B. Real estate schools and real estate education vendors shall submit continuing education and post license education course schedules and attendance verification reports to the commission.

C. Course schedules shall be received by the commission at least ten calendar days prior to the beginning of each month.

D. Course schedules and attendance verification reports shall be submitted in such form and detail as prescribed by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:1459 (August 2006).

§5513. Certificate Renewal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1459 (August 2006).

§5515. Eligibility of Courses

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000); amended by the Office of the Governor, Real Estate Commission, LR 28:485 (March 2002), LR 29:2067 (October 2003), repealed LR 32:1459 (August 2006).

§5517. Requirements for Submission of Additional Course Approval Requests by Approved Vendors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:57

(January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1459 (August 2006).

§5519. Post Licensing and Continuing Education Course Work by Correspondence or Other Distance Learning Methods

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:57 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1460 (August 2006).

§5521. Post Licensing and Continuing Education Instructor Qualifications

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:58 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 29:2067 (October 2003), repealed LR 32:1460 (August 2006).

§5523. Prohibition of Recruiting

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:58 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1460 (August 2006).

§5525. Course Fees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:58 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1460 (August 2006).

§5527. Course Completion Verification and Reporting Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:58 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1460 (August 2006).

§5529. Record Keeping

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1460 (August 2006).

§5531. Inspection or Monitoring of Approved Vendors/Courses

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1460 (August 2006).

§5533. Pre-licensing Schools Offering Post Licensing and Continuing Education Courses

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1459 (August 2006).

§5535. Advertisement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:485 (March 2002), repealed LR 32:1460 (August 2006).

§5537. Change of Address

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1460 (August 2006).

§5539. Post Licensing and Continuing Education on an Individual Basis

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:486 (March 2002), repealed LR 32:1460 (August 2006).

§5541. Commission Sponsored Seminars—Continuing Education Only

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1460 (August 2006).

§5543. Seminar Instructor Qualifications

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:1460 (August 2006).

§5545. Minimum Length of Courses

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 29:2068 (October 2003), repealed LR 32:1460 (August 2006).

Julius C. Willie
Executive Director

0608#021

RULE

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

Family Planning Waiver
(LAC 50:XXII.Chapters 21-27)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XXII.Chapters 21-27 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXII. 1115 Demonstration Waivers

Subpart 3. Family Planning Waiver

Chapter 21. General Provisions

§2101. Purpose

A. The family planning waiver, called Take Charge, will increase access to family planning services for women who currently are not eligible for such services, but who would be eligible for Medicaid coverage, based on their income, if they became pregnant.

B. The primary goals of this family planning waiver are to:

1. increase access to services which will allow management of reproductive health;
2. reduce the number of unintended pregnancies; and
3. decrease Medicaid expenditures from prenatal and delivery related services for women in the targeted population.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1461 (August 2006).

§2103. Enrollment

A. Family planning waiver services will be available to eligible women according to the following enrollment caps.

1. For the first year, priority will be set to enroll up to 25,000 women whose pregnant woman certifications are being closed.

a. On a first-approved basis, up to 50,000 additional women who are not eligible for participation in the priority group established in Paragraph A.1 above may be enrolled until a cap of 75,000 enrollees has been reached for the first waiver year. Enrollment caps cannot be exceeded.

2. For the second year, priority will be set to enroll up to 22,250 women whose pregnant woman certifications are being closed.

a. On a first-approved basis, additional enrollees, including those established in Paragraph A.2 above, will be allowed to enroll until a cap of 110,250 enrollees has been reached for the second waiver year. Enrollment caps cannot be exceeded.

B. Additional enrollment caps for subsequent years will be published in Potpourri notices.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1461 (August 2006).

Chapter 23. Eligibility

§2301. Recipient Qualifications

A. Family planning waiver services shall be provided to women who:

1. are 19 through 44 years of age;
2. have family income at or below 200 percent of the federal poverty level;
3. are not eligible for inclusion in any other Medicaid program or State Children's Health Insurance Program (SCHIP); and
4. do not have Medicare or other private health insurance coverage other than a single coverage policy which provides limited benefits, such as a dental or vision 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 32:1461 (August 2006).

Chapter 25. Services

§2501. Covered Services

A. Services provided in this family planning waiver include:

1. annual physical exams;
2. necessary lab tests; and
3. contraceptive services, including sterilizations and Food and Drug Administration (FDA) approved family planning pharmaceuticals, devices, methods or supplies.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1461 (August 2006).

§2503. Service Limits

A. There is a limit of four visits per calendar year for services rendered by a physician, nurse practitioner, physician assistant, or nurse.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1461 (August 2006).

§2505. Service Delivery

A. Family planning waiver services may be delivered through any enrolled Medicaid provider whose scope of practice includes family planning services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1461 (August 2006).

Chapter 27. Reimbursement

§2701. Reimbursement Methodology

A. All Medicaid providers, including federally qualified health centers, rural health clinics and tribal 638 facilities, shall be reimbursed for family planning waiver services at the Medicaid fee-for-service rates.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1461 (August 2006).

Implementation of this Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

0608#070

RULE

**Department of Insurance
Office of the Commissioner**

**Regulation 33—Medicare Supplement
Insurance Minimum Standards
(LAC 37:XIII.525)**

In accordance with R.S. 49:953(A) of the Administrative Procedure Act, the Department of Insurance has amended Section 525, Medicare Select Policies and Certificates, of Regulation 33:Medicare Supplement Insurance Minimum Standards (LAC 37:XIII.Chapter 5). The amendments are designed to define the geographical service areas within which Medicare Select policies can be sold; to restrict the sale of Medicare Select policies to persons residing in the issuer's service area; and, to provide notice to policyholders of the potential effects on benefits payable under Medicare Select policies when policyholders move their residence outside of the service area. The amendments are put forth to alleviate confusion regarding Medicare Select policy benefits available to policyholders once the policyholder moves his or her residence outside of the insurer's network service area.

This regulation shall be effective upon final publication in the *Louisiana Register*.

**Title 37
INSURANCE**

Part XIII. Regulations

**Chapter 5. Regulation 33—Medicare Supplement
Insurance Minimum Standards**

§525. Medicare Select Policies and Certificates

A.1. - B. ...

* * *

Primary Residence—the policyholder's residence as listed on the policyholder's application for insurance or any other residence given by the policyholder to the issuer subsequent to the application date for the purpose of changing the policyholder's residence.

* * *

Service Area—the 50 mile geographical radius or area approved by the commissioner within which a policyholder's primary residence must be located in relation to an issuer's network provider and within which an issuer is authorized to offer a Medicare Select policy.

C. ...

D.1. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

2. After September 1, 2006, issuers shall be prohibited from selling new Medicare Select policies to those persons whose primary residence is located outside of the issuer's service area.

3. Medicare Select issuers shall provide notice, within 30 days after the publication of this rule, to all Medicare Select policyholders that:

a. if the policyholder changes his primary residence to a residence located outside of the issuer's service area:

i. the policyholder shall have the right to convert his current Medicare Select policy to a Medicare Supplement policy; and

ii. the issuer cannot cancel the policyholder's Medicare Select policy on the basis that the policyholder did not convert his Medicare Select policy to a Medicare Supplement policy.

iii. the terms of the policy shall govern with respect to benefits available to the policyholder after moving his primary residence outside of the service area.

b. The policyholder may incur a penalty in the form of some or all of the benefits under the Medicare Select policy not being payable if the policyholder requires medical services outside of the service area after the policyholder changes his primary residence to a residence located outside of the service area without converting his policy to a Medicare Supplement policy.

4. After October 1, 2006, upon the Medicare Select issuer obtaining actual knowledge that a policyholder has changed his primary residence to a residence located outside of the service area, the issuer shall mail to the policyholder the same notice, or one substantially similar, required in the above Paragraph D.3. The issuer shall mail this notice within 30 days after obtaining actual knowledge of the policyholder's change of residence.

E. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:224 and 42 U.S.C. 1395 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1108 (June 1999), repromulgated LR 25:1488 (August 1999), amended LR 29:2442 (November 2003), LR 31:2910 (November 2005), LR 32:1462 (August 2006).

James J. Donelon
Commissioner

0608#038

RULE

**Department of Public Safety and Corrections
Division of Youth Services
Office of Youth Development**

Probationary Period (LAC 22:I.707)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 36:405, the Department of Public Safety and Corrections, Division of Youth Services, Office of Youth Development hereby promulgates §707, Probationary Period. The deputy secretary is promulgating this Rule to supplement the information provided in the Employee Manual regarding probationary appointments and the attainment of permanent status and to increase the probationary period for Youth Services employees to 12 months.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT
Part I. Corrections

Chapter 7. Youth Services
Subchapter A. Administration

§707. Probationary Period

A. Purpose. This rule will supplement the Employee Manual regarding probationary appointments and the attainment of permanent status and increase the probationary period to 12 months.

B. Applicability. The undersecretary or designee, unit heads, Youth Services (YS) Central Office's Human Resources Manager, Unit Human Resources staff, all newly hired classified employees and their supervisors. Unit heads shall ensure compliance with this policy.

C. Policy. It is the deputy secretary's policy that probationary periods for YS employees will be for a period of 12 months. If an employee performs assigned duties in a satisfactory manner during the 12-month period, the employee will attain permanent status. If the employee does not perform assigned duties satisfactorily, the employee will be separated from employment.

D. Definitions

Agency Preferred Re-Employment List—a list of names of permanent employees who were laid off or demoted in lieu of a layoff.

Appointing Authority—Deputy Secretary of YS.

Classified Employee—an employee who is hired under the Civil Service system on a probational appointment and attains permanent status.

ISIS—Integrated Statewide Information Systems.

Permanent Appointment—the appointment of a probationary employee after certification by the appointing authority or designee, signifying that the employee has met the required standard of work during the probationary period.

Probational Appointment—an essential part of the examination process; used for the most effective adjustment of a new employee and for the elimination of any probationary employee whose performance does not meet required work standards. Employees who are required to serve probationary periods are those appointed to the following: permanent positions following certification from an open competitive employment list; original appointments to permanent positions in non-competitive classes; non-competitive re-employments based on prior service, except those hired from the agency's preferred re-employment list in a position which was filled with a probational appointment; and those employees who have an interruption of a probationary period for military purposes.

Unit Head—facility directors, probation and parole program director, and the deputy secretary or designee for YS Central Office.

YS Central Office—Offices of the deputy secretary, undersecretary or designee of the Office of Management and Finance, assistant secretaries and their support staff.

E. General. The appointing authority may separate a probationary employee at any time under Civil Service Rule No. 9.1(e).

F. Probational Appointments

1. All newly hired employees appointed on probational appointments shall serve a 12-month probationary period as a test period of satisfactory work performance as outlined in their job descriptions and determined by their supervisors.

2. A probationary employee who is absent for military training or active duty in excess of 30 consecutive calendar days shall return to work in the probationary status at the point reached in the probationary period before leaving. Absences of 30 consecutive calendar days or less shall be counted as part of the probationary period.

3. A former employee who is on the agency preferred re-employment list and is re-employed in a position that must be filled with a probational appointment must serve a 12-month probationary period.

4. An employee who is permanently transferred, reassigned, or demoted to another position shall be eligible for permanent status in the new position after completing the probationary period that began prior to the change in position(s).

5. The probationary period of a part-time employee is computed on the same calendar basis as though employed full-time.

6. While on probationary status, an employee earns and can use annual, sick, and compensatory leave. The employee also gets paid for holidays and is eligible for health care and retirement benefits.

G. Permanent Appointments. Employees with permanent status who are promoted, transferred, reassigned, or demoted to another position are not required to serve a probationary period in the new position.

H. Permanent Appointment Action Following Probationary Period

1. A permanent appointment of a probationary employee shall begin upon certification by the appointing authority or designee to Civil Service that the employee has met the required standard of work while on probationary status.

2. A permanent appointment must be reported to Civil Service through the ISIS Human Resources System.

I. Monitoring Procedures

1. The Human Resources (HR) staff will run reports from the ISI Human Resources System of employees who are eligible for permanent status.

2. When an employee is eligible, HR staff will complete a "tickler" and forward to the employee's supervisor.

3. The supervisor will make a recommendation regarding permanent status and forward the recommendation to the appointing authority for approval.

4. The appointing authority will return the approval to the HR staff for entering into the ISIS Human Resources System.

5. The HR staff will notify the employee of the action taken with a copy of the "Employee Notification Form."

AUTHORITY NOTE: Promulgated in accordance with Civil Service Rules Nos. 8:10(b) and 17:25(a).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Youth Services, Office of Youth Development, LR 32:1463 (August 2006).

Simon G. Gonsoulin
Deputy Secretary

0608#025

RULE

Department of Social Services Office of Family Support

CCAP—Job Search and Repair and Improvement Grants (LAC 67:III.Chapter 51)

The Department of Social Services, Office of Family Support, amended LAC 67:III.5102, 5103, 5104, 5107, and 5109 in the Child Care Assistance Program (CCAP).

The amendment at §5107 will allow for the receipt of two Repair and Improvement Grants for state fiscal year 2005/2006 for child care providers in designated parishes.

The agency expanded the eligibility criteria at §§5102, 5103, 5104, and 5109 to include job search as a qualifying activity for child care assistance. These amendments will help insure that adequate child care is available and decrease the chance that the children will be left alone or in substandard care facilities.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance Program

Subchapter A. Administration, Conditions of Eligibility, and Funding

§5102. Definitions

Training or Employment Mandatory Participant (TEMP)—a household member who is required, to meet criteria described in §5103.B.4 including the head of household, the head of household's legal spouse or non-legal spouse, the MUP age 16 or older whose child(ren) need child care assistance, and the MUP under age 16 whose child(ren) live with the MUP and the MUP's disabled parent/guardian who is unable to care for the MUP's child(ren) while the MUP goes to school/work.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:1484 (July 2004), LR 31:2262 (September 2005), LR 32:1464 (August 2006).

§5103. Conditions of Eligibility

A. - A.1. ...

B. Low-income families not receiving FITAP cash assistance, including former FITAP recipients who are given

priority consideration, must meet the following eligibility criteria.

1. - 3. ...

4. Effective September 1, 2002, unless disabled as established by receipt of Social Security Administration Disability benefits, Supplemental Security Income, Veterans' Administration Disability benefits for a disability of at least 70 percent, or unless disabled and unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination, the TEMP must be:

a. employed or conducting job search for a minimum average of 25 hours per week and all countable employment hours must be paid at least at the Federal minimum hourly wage; or

b. ...

c. engaged in some combination of employment which is paid at least at the federal minimum hourly wage or job search, or job training, or education as defined in §5103.B.4.b that averages, effective April 1, 2003, at least 25 hours per week;

d. ...

e. participation in Job Search as a countable TEMP activity can only be used for four calendar months per state fiscal year.

5. - 6. ...

7. The family requests child care services, provides the information and verification necessary for determining eligibility and benefit amount, and meets appropriate application requirements established by the state. Required verification includes birth verification for all children under 18 years of age, proof of all countable household income, proof of the hours of all employment or education/training or job search, and effective October 1, 2004, proof of immunization for each child in need of care.

B.8. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193, Act 58 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1106 (July 2003), LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005), LR 32:1464 (August 2006).

§5104. Reporting Requirements Effective February 1, 2004

A. ...

B. A Low Income Child Care household that is included in a Food Stamp semi-annual reporting household is subject to the semi-annual reporting requirements in accordance with §2013. In addition, these households must report the following changes within 10 days of the knowledge of the change:

1. ...

2. an interruption of at least three weeks or termination of any TEMP's employment or training or job search; or

3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, 7 CFR Part 273, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:1487 (July 2004), amended LR 31:2263 (September 2005), LR 32:1464 (August 2006).

Subchapter B. Child Care Providers

§5107. Child Care Provider

A. - H.2....

I. CCAP offers Repair and Improvement Grants to either licensed or registered providers, or to those who have applied to become licensed or registered, to assist with the cost of repairs and improvements necessary to comply with DSS licensing or registration requirements and/or to improve the quality of child care services.

1. - 1.c. ...

2.a. A provider can receive no more than one such grant for any state fiscal year. Exception: For the State Fiscal Year 2005/2006, providers in the following parishes will be eligible to receive two repair and improvement grants: Orleans, Plaquemines, Jefferson, St. Bernard, St. Tammany, Washington, Calcasieu, and Cameron.

b. To apply, the provider must submit an application form indicating that the repair or improvement or purchase is needed to meet DSS licensing or registration requirements, or to improve the quality of child care services. Two written estimates of the cost of the repair or improvement or purchase must be provided and the provider must certify that the funds will be used for the requested purpose. If the provider has already paid for the repair or improvement or purchase, verification of the cost in the form of an invoice or cash register receipt must be submitted. Reimbursement can be made only for eligible expenses incurred no earlier than six months prior to the application. If a provider furnishes estimates to receive a grant, the grant must be spent for the requested purpose within three months of the date the grant is issued.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484, 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:1465 (August 2006).

§5109. Payment

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

3. The number of hours authorized for payment is based on the lesser of the following:

a. ...

b. the number of hours the head of household, the head of household's spouse or non-legal spouse, or the minor unmarried parent is working and/or attending a job training or educational program and/or conducting job search, each week, plus one hour per day for travel to and from such activity; or

B.3.c. - E. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February

1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:149 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), LR 31:2265 (September 2005), LR 32:1465 (August 2006).

Ann Silverberg Williamson
Secretary

0608#055

RULE

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

**Electronic Disbursement of Child Support
(LAC 67:III.2518)**

The Department of Social Services, Office of Family Support, amended the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Support Enforcement Services (SES), by amending §2518, Electronic Disbursement of Child Support Payments. The agency made it mandatory that all child support payments be distributed electronically pursuant to Section 454A(g) of the Social Security Act.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

**Subchapter D. Collection and Distribution of Support
Payments**

**§2518. Electronic Distribution of Child Support
Payments**

A.1. Effective April 1, 2006, electronic disbursement of child support payments shall be mandatory except in the following situations:

- a. payments are forwarded to private collection agencies;
- b. physical or other disabilities impose a hardship to receive payments via electronic disbursement;
- c. the custodial parent is receiving FITAP benefits;
- d. payments are forwarded to the Non-Custodial parent;
- e. payments received are in excess of FITAP benefits; and
- f. any other exceptions as shall be determined by Support Enforcement Services to be necessary for effective program operations.

2. Electronic disbursement of child support includes direct deposits to the custodial parent's bank account (checking or savings) or payments to a stored value card account.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with section 454A(g) of the Social Security Act and PIQ-04-02.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:442 (March 2006), amended LR 32:1465 (August 2006)

Ann S. Williamson
Secretary

0608#056

RULE

**Department of Treasury
Board of Trustees of the Louisiana
State Employees' Retirement System**

Emergency Refunds (LAC 58:I.1301)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System (LASERS) has amended LAC 58:I.1301. This amendment will allow LASERS to more efficiently administer refunds of accumulated employee contributions.

Title 58

RETIREMENT

Part I. Louisiana State Employees' Retirement System

Chapter 13. Emergency Refunds

§1301. Conditions Giving Rise to an Emergency Refund

A. A refund of accumulated employee contributions may be made in less than 30 calendar days after the date of separation from state service in the following situations:

1. the refund results from the death of the member; or
2. the member has significant expenses for medical care for himself, spouse, or child; or
3. an emergency situation of the member, which shall consist of the foreclosure on a member's domicile, repossession of the member's vehicle, or eviction of the member from his or her apartment. A document filed in the official legal proceeding for foreclosure or repossession or a notice of eviction shall be required as proof to qualify under this provision.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:537(B).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:1710 (December 1997), LR 31:107 (January 2005), LR 32:1466 (August 2006).

Cindy Rougeou
Executive Director

0608#016

Notices of Intent

NOTICE OF INTENT

Department of Civil Service Board of Ethics

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

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

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

Title 52 ETHICS

Part I. Board of Ethics

Chapter 13. Records and Reports

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

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

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

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

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

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

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

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

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

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

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

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

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

§2114. Registration, Disclosure

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

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

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

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

R. Gray Sexton
Ethics Administrator

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

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

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

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

The proposed rules/amendments will have no anticipated effect on revenue collections of state or local governmental units.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Kathy M. Allen
Deputy General Counsel
0608#051

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Civil Service
Civil Service Commission**

Extraordinary Qualifications/Credentials

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

Consideration will be given to the following:

Rule 6.5 (g) Extraordinary Qualifications/Credentials

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

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

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

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

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

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

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

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

Anne S. Soileau
Director

0608#026

NOTICE OF INTENT

**Department of Civil Service
Civil Service Commission**

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

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

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

11.1 Full-Time Employees

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

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

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

11.5 Earning of Annual and Sick Leave.

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

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

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

11.10 Payment for Annual Leave Upon Separation.

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

1. ...
2. ...

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

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

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

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

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

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

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

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

11.19 Transferring Annual and Sick Leave Between Departments.

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

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

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

11.34 Crisis Leave Pool

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

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

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

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

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

Anne S. Soileau
Director

0608#023

NOTICE OF INTENT

Board of Elementary and Secondary Education

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

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

Title 28

EDUCATION

Part LXXIX. Louisiana Handbook for Nonpublic School Administrators

Chapter 1. Operation and Administration

§109. Initial Classification for Existing Schools

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

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

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

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

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

§110. Initial Classification for New Schools

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

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

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

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

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

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

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

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

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

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

Chapter 3. Certification of Personnel

§303. Instructional Staff

A. - A.3. ...

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

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

C. - I.1. ...

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

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

Family Impact Statement

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

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

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

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

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

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

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

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

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

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

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

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

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

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.3908, 3919, and 3931 (Log #OS071).

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

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

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

Subchapter A. General

§3908. Modeling

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

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

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

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

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

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

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

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

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

Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

§3931. Reportable Quantity List for Pollutants

A. - A.2.

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

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

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

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

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

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

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

¹ Chemical Abstracts Service Registry Number.

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

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

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

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

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

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

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

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

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

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

A public hearing will be held on September 26, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS071. Such comments must be received no later than October 3, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS071. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

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

**RULE TITLE: Notification and Reportable Quantity
List**

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

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

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

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

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

There are no estimated significant economic benefits to directly affected persons or non-governmental groups by the proposed rule.

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

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

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

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

Herman Robinson, CPM
Executive Counsel
0608#044

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

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

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.1105, 1109, and 1113 (Log #WQ068).

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

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

Title 33
ENVIRONMENTAL QUALITY

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 11. Surface Water Quality Standards

§1105. Definitions

* * *

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

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

* * *

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

* * *

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

* * *

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

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

Freshwater Swamps and Marshes—Repealed.

Intermediate Marshes—Repealed.

* * *

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

* * *

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

* * *

Saline Marshes—Repealed.

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

* * *

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

* * *

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

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

§1109. Policy

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

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

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

1. - 3. ...

4. Wetlands

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

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

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

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

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

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

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

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

§1113. Criteria

A. - B.11. ...

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

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

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

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

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

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

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

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

A public hearing will be held on September 26, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ068. Such comments must be received no later than October 3, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or

money order is required in advance for each copy of WQ068. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Herman Robinson, CPM Robert E. Hosse
Executive Counsel Staff Director
0608#045 Legislative Fiscal Officer

NOTICE OF INTENT

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

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

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

Title 22
CORRECTIONS, CRIMINAL JUSTICE, and LAW
ENFORCEMENT

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

Subpart 6. Program Operational Policies

Chapter 63. POST Equipment and Training Grants

§6301. Adoption

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

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

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

§6303. Eligible Agencies

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

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

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

§6305. Eligible Purchases

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

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

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

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

§6307. Funding Restrictions

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

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

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

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

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

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

§6309. Renovation

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

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

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

§6311. Training

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

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

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

§6313. Liquidation Period

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

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

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

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

Michael A. Ranatza
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

RULE TITLE: General Subgrant Guidelines

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Michael A. Ranatza
Executive Director
0608#033

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

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

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

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 23. Local Government Assistance Program

§2301. Purpose

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§2303. Application Process

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

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

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

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

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

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

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

§2305. Payments and Reimbursement

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

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

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

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

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

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

§2307. Programmatic Assurances

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

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

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

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

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

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

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

Family Impact Statement

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

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

Michael Taylor
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Local Government Assistance Program**

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

Michael Taylor
Director
0608#034

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

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

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

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

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

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

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

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

Subchapter A. General Provisions

§105. Performance-Based Energy Efficiency Contracting

A. Preparation of Requests for Proposals

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

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

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

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

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

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

B. Evaluation of Submitted Proposals

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

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

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

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

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

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

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

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

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

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

C. Negotiation of Performance Contracts

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

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

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

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

i. the detailed scope of work to be performed pursuant to the performance contract;

ii. the initial price to be paid by the user agency;

iii. the annual energy cost savings guaranteed by the ESCO;

iv. the annual maintenance savings guaranteed by the ESCO, including, but not limited to, services, parts, materials, labor and equipment;

v. the annual new maintenance costs, including operating expenses added as a result of new equipment installed or service performed by the ESCO; and

vi. the total annual savings guaranteed by the ESCO. *Total annual savings* means annual energy cost savings plus annual maintenance savings minus annual new maintenance costs.

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

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

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

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

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

D. Audits of Performance Contracts

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

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

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

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

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

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

iv. the total annual savings guaranteed by the ESCO;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Grandfathered Performance Contracts

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

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

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

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

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

Jerry W. Jones
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Performance Based Energy Efficiency Contracting

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no expected impact upon competition and employment.

Jerry W. Jones
Director
0608#047

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Office of Information Technology

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

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

**Title 4
ADMINISTRATION**

Part XV. Information Technology

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

§701. General Provisions

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

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

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

2. contain the electronic address of the public entity.

C. Online Service Provider Minimum Requirements

1. Compliance with applicable law and rules:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Ensure secure digital signature.

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

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

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

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

Family Impact Statement

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

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

Rizwan Ahmed
Chief Information Officer

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment.

Rizwan Ahmed
Chief Information Officer
0608#052

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Louisiana Recovery Authority**

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

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

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 25. Louisiana Recovery Authority

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§2505. Meetings

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

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

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

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

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

§2507. Committees and Task Forces

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

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

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

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

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

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

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

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

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

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

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

§2509. Rules of Order

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

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

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

§2511. Manner of Acting

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

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

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

§2513. Voting

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

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

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

§2515. Order of Business, Public Comments

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

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

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

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

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

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

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

Andy Kopplin
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Louisiana Recovery Authority

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The Proposed rules will not effect competition and employment.

Andy Kopplin
Executive Director
0608#035

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

Corporate Title
(LAC 10:I.1101)

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

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

Title 10

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

Part I. Financial Institutions

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

§1101. Corporate Title

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

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

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

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

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

John Ducrest
Commissioner

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

RULE TITLE: Corporate Title

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

John Ducrest
Commissioner
0608#071

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

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

Title 10

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

Part XIII. Investment Securities

Subpart 1. Securities

**Chapter 13. Investment Adviser Registration
Procedure**

§1301. Definitions

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

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

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

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

§1303. Examination Requirements

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

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

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

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

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

§1305. Waivers

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

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

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

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

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

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

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

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

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

§1307. Continuing Education

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

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

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

§1309. Grandfather Provision

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

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

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

§1311. Exemption

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

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

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

Family Impact Statement

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

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

John Ducrest, CPA
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Investment Adviser

Registration Procedure

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

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

John Ducrest, CPA
Commissioner
0608#050

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

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

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

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXIII. Dental Health Profession

Chapter 7. Dental Hygienist

§701. Authorized Duties

A. - D. ...

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

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

1. the dental hygienist has at least three years, or an equivalent amount of experience, in the practice of dental hygiene;
2. the dental hygienist has current CPR certification and complies with the established protocols for emergencies which the supervising dentist has established;
3. the supervising dentist has examined the patient of record not more than nine months prior to the date that the dental hygienist provides the dental hygiene services;
4. the dental hygienist provides dental hygiene services to the patient of record in accordance with a written treatment protocol prescribed by the supervising dentist for the patient;
5. the patient of record is notified in advance of the appointment that the supervising dentist will be absent from the location;
6. no licensed dental hygienist, under general supervision, may delegate or supervise any dental hygiene duties for an expanded duty dental assistant; and

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

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

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

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

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

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

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

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

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

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

Chapter 15. Anesthesia/Analgesia Administration

§1507. General Anesthesia/Deep Sedation

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

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

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

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

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

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

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

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

C. Barry Ogden
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Dental Hygienist/Anesthesia

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

C. Barry Ogden
Executive Director
0608#015

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

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

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

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

Title 50

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

Subpart 3. Adult Day Health Care

Chapter 21. General Provisions

§2105. Definitions

* * *

Participant—Title XIX applicant or recipient.

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

* * *

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

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

§2107. Request for Services Registry

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

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

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

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

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

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

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

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

Chapter 23. Provider Participation

§2305. Medical Certification Process

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

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

2. ...

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

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

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

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

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

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

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

for each approach;

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

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

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

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

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

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

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

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

§2309. Interdisciplinary Team Assessments

A. - D.2. ...

E. Repealed.

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

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

§2901. Recipient Rights/Privileges

A. - E.1. ...

2. Repealed.

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

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

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

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

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

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

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

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 06-07. It is anticipated that \$544 (\$272 SGF and \$272 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 06-07. It is anticipated that \$272 will be expended in FY 06-07 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

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

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

This rule has no known impact on competition and employment.

Jerry Phillips
Acting Medicaid Director
0608#061

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

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

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

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

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that the implementation of this proposed Rule will have a positive effect on family functioning, stability or autonomy as described in R.S. 49:972 as it will allow more flexibility and utilization of services for participants in the New Opportunities Waiver.

Title 50

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

Subpart 11. New Opportunities Waiver

Chapter 139. Covered Services

§13901. Individualized and Family Support Services

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

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

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

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

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

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

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

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

B. - G. ...

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

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

§13915. Transportation for Day Habilitation and Supported Employment Models

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

B. ...

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

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

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

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

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

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

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 06-07. It is anticipated that \$408 (\$204 SGF and \$204 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 06-07. It is anticipated that \$204 will be expended in FY 06-07 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Jerry Phillips
Acting Medicaid Director
0608#066

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

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

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

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

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

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 100. Nurse Aide Training and Competency Evaluation Program

Subchapter A. General Provisions

§10001. Definitions

Abuse—

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

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

Department—the Louisiana Department of Health and Hospitals.

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

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

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

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

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

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

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

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

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

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

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

D. Each training and competency evaluation program must:

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

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

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

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

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

§10013. Trainee Responsibilities

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

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

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

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

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

§10015. Training Curriculum

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

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

B. Core Curriculum

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

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

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

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

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

C. Minimum Curriculum

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

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

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

c. assist residents in attaining and maintaining functional independence;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. maintenance of range of motion;

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

d. transferring a resident;

e. bowel and bladder training; and

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

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

a. assisting a resident to vote;

b. providing privacy and maintaining confidentiality;

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

d. giving assistance in resolving grievances;

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

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

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

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

F. Curriculum Approval

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

a. a copy of the curriculum and final exam;

b. the name of the coordinator and instructors with:

i. a resume for each; and

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

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

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

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

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

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

§10017. Training Instructors

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

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

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

i. a nursing facility/unit;

ii. a geriatrics department;

iii. a chronic care hospital;

iv. other long-term care setting; or

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

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

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

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

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

a. registered nurses;

b. licensed practical/vocational nurses;

c. pharmacists;

d. dietitians;

e. social workers;

f. sanitarians;

g. fire safety experts;

h. nursing home administrators;

i. gerontologists;

j. psychologists;

k. physical and occupational therapists;

l. activities specialists; and

m. speech/language/hearing therapists.

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

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

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

1. Such experience is normally obtained through employment in:

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

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

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

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

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

§10019. Training Program Responsibilities

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

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

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

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

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

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

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

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

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

§10021. Competency Evaluation

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

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

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

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

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

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

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

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

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

i. the date of the performance; and

ii. the name of the instructor supervising the performance.

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

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

1. making an occupied bed;

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

3. orienting a new resident to the facility;

4. performing a range of motion exercises;

5. giving a bed bath;

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

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

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

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

1. secured from tampering;

2. standardized;

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

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

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

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

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

§10023. Compliance with Training and Competency Evaluation

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

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

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

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

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

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

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

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

§10025. Nurse Aide Responsibilities

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

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

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

Subchapter C. Nurse Aide Registry

§10033. General Provisions

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

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10035. Certification by Reciprocity

A. Nurse aides may become certified by reciprocity from other states. Applicants must submit to the Nurse Aide Registry the following information:

1. his/her name;
2. his/her Social Security number;
3. the certification number in the other state;
4. the address of the other state's registry;
5. his/her former place of employment; and
6. the date of employment and termination.

B. After verification of certification in the other state, the registry will certify the aide in Louisiana. Likewise, the registry will be responsible for granting reciprocity to other states.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

Subchapter D. Provider Participation

§10045. Provider Responsibilities

A. A person cannot be employed as a nurse aide or nurse aide trainee by a facility for more than four months unless he/she has satisfactorily completed an approved training and competency evaluation program.

B. A person cannot be employed as a nurse aide or nurse aide trainee if there is a final administrative or judicial court decision that the nurse aide or trainee has:

1. committed abuse, neglect or mistreatment of the elderly, infirm or nursing facility resident; or
2. misappropriated a resident's property.

C. The provider must complete and send the appropriate form to the Registry to notify the Registry of employment or termination of a certified nurse aide.

D. All facilities will continue to provide on-going training on a routine basis in groups and, as necessary in specific situations, on a one-to-one basis.

1. Each nurse aide must receive and be compensated for 12 hours of on-going training per year.

2. Training can be received in the unit as long as it is:
- directed toward skills improvement;
 - provided by appropriately trained staff; and
 - documented.

E. No nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide competency evaluation program may be charged for any portion of the program.

F. If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide competency evaluation program, the state must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

Subchapter E. Violations

§10055. Disqualification of Training Programs

A. The department prohibits nursing facilities from offering nurse aide training programs when the facilities have:

1. been determined to be out of compliance by the Medicaid or Medicare Programs until the end of a two-year period during which time no survey or investigation finds any deficiencies; or

2. operated under a waiver granted on the basis of a demonstration that the facility is unable to provide RN coverage in excess of 48 hours during a week.

B. The department may prohibit nursing facilities from offering nurse aide training programs when the facilities have been sanctioned with:

- civil monetary penalties of \$5,000 or more;
- termination of vendor payments;
- a ban on new admissions;
- placement under temporary management or closure of a facility with transfer of residents; or
- extended or partial extended survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10057. Allegations of Nurse Aide Wrong-Doing

A. The department, through its Bureau of Appeals, has provided for a process for the review and investigation of all allegations of wrong-doing by nurse aides employed in nursing facilities. Certified nurse aides and nurse aide trainees must not:

- use verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion on a resident in a nursing facility; or
- neglect a resident or commit misappropriation of a resident's property or funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10059. Notice of Violation

A. When there are substantiated charges against the nurse aide, either through oral or written evidence, the department will notify the individual(s) implicated in the investigation of the following information by certified mail:

1. the nature of the violation(s) and the date and time of each occurrence;

2. the department's intent to report the violation(s) to the Nurse Aide Registry; and

3. the right to request an informal dispute resolution and/or the right to an administrative hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10061. Informal Dispute Resolution

A. When a nurse aide feels that he/she has been wrongly accused, the following procedure shall be followed.

1. The nurse aide may request an informal dispute resolution (IDR) within 15 calendar days of the receipt of the agency's notice of violation. The request for an IDR must be made to the department in writing.

2. The IDR is designed:

- to provide an opportunity for the nurse aide to informally review the situation;

- for the agency to offer alternatives based on corrections or clarifications, if any; and

- for the nurse aide to evaluate the necessity for seeking an administrative hearing.

3. An IDR meeting will be arranged within 20 days of the request.

4. During the IDR, the nurse aide will be afforded the opportunity to:

- talk with agency personnel involved in the situation;

- review pertinent documents on which the alleged violation is based;

- ask questions;

- seek clarifications; and

- provide additional information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

Subchapter F. Administrative Hearings

§10071. General Provisions

A. Within 30 calendar days after receipt of the department's notice of violation or the notice of the results of an informal dispute resolution, the nurse aide may request an administrative hearing.

1. The request for an administrative hearing must be made in writing to the department's Bureau of Appeals.

2. The request must contain a statement setting forth the specific charges with which the nurse aide disagrees and the reasons for this disagreement.

3. Unless a timely and proper request is received by the Bureau of Appeals, the findings of the department shall be considered a final and binding administrative determination.

a. Notification of the finding of abuse, neglect and/or misappropriation will then be sent to the Nurse Aide Registry to be recorded.

B. When an administrative hearing is scheduled, the Bureau of Appeals shall notify the nurse aide, his/her representative and the agency representative in writing.

1. The notice shall be mailed no later than 15 calendar days before the scheduled date of the administrative hearing and shall contain the:

- a. date of the hearing;
- b. time of the hearing; and
- c. the place of the hearing.

C. The administrative hearing shall be conducted by an administrative law judge from the Bureau of Appeals as authorized by the Administrative Procedure Act, R.S. 49:950 et seq., and according to the following procedures.

1. An audio recording of the hearing shall be made.

2. A transcript will be prepared and reproduced at the request of a party to the hearing, provided he bears the cost of the copy of the transcript.

3. Testimony at the hearing shall be taken only under oath, affirmation or penalty of perjury.

4. Each party shall have the right to:

- a. call and examine parties and witnesses;
- b. introduce exhibits;
- c. question opposing witnesses and parties on any matter relevant to the issue, even though the matter was not covered in the direct examination;
- d. impeach any witness regardless of which party first called him to testify; and
- e. rebut the evidence against him/her.

5. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of such evidence improper over objection in civil or criminal actions.

a. Documentary evidence may be received in the form of copies or excerpts.

6. The administrative law judge may question any party or witness and may admit any relevant and material evidence.

7. Each party has the burden of proving whatever facts he/she must establish to sustain his/her position.

a. The burden of producing evidence to substantiate the written allegation(s) will be on the department and the provider of services.

b. When the charge of abuse, neglect or misappropriation is substantiated, the nurse aide may not rest on the mere denial in his/her testimony and pleading(s) but must set forth specific facts and produce evidence to disprove or contest the charge(s).

D. Any party may appear, and be heard, at any appeals proceeding through an attorney or a designated representative. The representative shall have a written authorization to appear on behalf of the provider.

1. A person appearing in a representative capacity shall file a written notice of appearance on behalf of a provider identifying:

- a. his/her name;
- b. address;
- c. telephone number; and
- d. the party being represented.

E. At the conclusion of the administrative hearing, the administrative law judge shall:

1. take the matter under advisement; and
2. shall prepare a written proposed decision which will contain:

- a. findings of fact;
- b. a determination of the issues presented;
- c. a citation of applicable policy and regulations;

and

- d. an order.

F. The written proposed decision is provided to the secretary of the department. The secretary may:

1. adopt the proposed decision;
2. reject the proposed decision based upon the record;

or

3. remand the proposed decision to the administrative law judge to take additional evidence:

a. if the proposed decision is remanded, the administrative law judge shall submit a new proposed decision to the secretary.

G. The decision of the secretary shall be final and binding upon adoption, subject only to judicial review by the courts. A copy of the decision shall be mailed to the nurse aide at his/her last known address and to any representative thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10073. Preliminary Conferences

A. Although not specifically required, the Bureau of Appeals may schedule a preliminary conference. The purposes of the preliminary conference include, but are not limited to:

1. clarification, formulations and simplification of issues;
2. resolution of controversial matters;
3. exchange of documents and information;
4. stipulations of fact to avoid unnecessary introduction of evidence at the formal review;
5. the identification of witnesses; and
6. other matters as may aid disposition of the issues.

B. When the Bureau of Appeals schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear on a specific date and at a specific time and place.

C. When the preliminary conference resolves all or some of the matters in controversy, a summary of the findings agreed to at the conference shall be provided by the administrative law judge. When the preliminary conference does not resolve all of the matters in controversy, an administrative hearing shall be scheduled on those matters still in controversy.

1. The hearing shall be scheduled within 30 calendar days following the completion of the preliminary conference or at a time mutually convenient to all parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10075. Witnesses and Subpoenas

A. Each party shall arrange for the presence of their witnesses at the hearing.

B. A subpoena to compel the attendance of a witness may be issued by the administrative law judge:

1. upon written request by a party and a showing of the need for such action; or
2. on his own motion.

C. An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda or other records shall be made in writing to the administrative law judge. The written application shall:

1. give the name and address of the person or entity upon whom the subpoena is to be served;
2. precisely describe the material that is desired to be produced;
3. state the materiality thereof to the issue involved in the proceeding; and
4. include a statement that, to the best of the applicant's knowledge, the witness has such items in his possession or under his control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10077. Continuances or Further Hearings

A. The administrative law judge may continue a hearing to another time or place, or order a further hearing on his own motion or at the request of any party who shows good cause.

B. Where the administrative law judge, at his/her discretion, determines that additional evidence is necessary for the proper determination of the case, he/she may:

1. continue the hearing to a later date and order the party(s) to produce additional evidence; or
2. close the hearing and hold the record open in order to permit the introduction of additional documentary evidence:

a. any evidence submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

C. Written notice of the time and place of a continued or further hearing shall be given. When a continuance of further hearing is ordered during an administrative hearing, oral notice of the time and place of the continued hearing may be given to each party present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

§10079. Failure to Appear at Administrative Hearings

A. If a nurse aide fails to appear at an administrative hearing, a notice/letter of abandonment may be issued by the

Bureau of Appeals dismissing the appeal. A copy of the notice shall be mailed to each party.

B. Any dismissal may be rescinded upon order of the Bureau of Appeals if the nurse aide:

1. makes written application within 10 calendar days after the mailing of the dismissal notice; and
2. provides evidence of good cause for his/her failure to appear at the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 28, 2006 at 9:30 a.m. in Room 188, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Nursing Facilities Licensing—Nurse Aide Training and Competency Evaluation Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 06-07. It is anticipated that \$2,652 (\$1,326 SGF and \$1,326 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 06-07. It is anticipated that \$1,326 will be expended in FY 06-07 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to repromulgate provisions governing the Nurse Aide Training and Competency Evaluation Program to clarify the regulations governing certified nurse aides (approximately 53,000 statewide) and nurse aide training, to ensure compliance and consistency with federal regulations and to place the provisions in the appropriate licensing section in the Administrative Code. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 06-07, FY 07-08 and FY 08-09.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Jerry Phillips
Acting Medicaid Director
0608#064

Robert E. Hosse
Executive Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Nursing Facilities
Nurse Aide Training and Competency Evaluation Program
(LAC 50:II.10143 and 10145)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to repeal LAC 50:II.10143 and 10145 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the Nurse Aide Training and Competency Evaluation Program (*Louisiana Register*, Volume 17, Number 8). In January 1996, the bureau promulgated the August 1991 Rule in a codified format in Title 50 of the Louisiana Administrative Code (*Louisiana Register*, Volume 22, Number 1).

The department now proposes to repeal the current provisions governing the Nurse Aide Training and Competency Evaluation Program in LAC 50:VII and repromulgate these provisions in LAC 48:I under the licensing standards for nursing facilities. This action is being taken to place the provisions in the appropriate section in the Administrative Code.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 3. Standards for Payment

Chapter 101. Nursing Facilities

Subchapter E. Nurse Aide Training and Competency

Evaluation Program

§10143. OBRA Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), repealed LR 32:

§10145. State Review of Compliance with Program Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), repealed LR 32:

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 28, 2006 at 9:30 a.m. in Room 188, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Nursing Facilities—Nurse Aide
Training and Competency Evaluation Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 06-07. It is anticipated that \$408 (\$204 SGF and \$204 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 06-07. It is anticipated that \$204 will be expended in FY 06-07 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The Department proposes to repeal the current provisions governing the Nurse Aide Training and Competency Evaluation Program in LAC 50:VII and repromulgate provisions in LAC 48:I under licensing standards. This action is being taken to place the provisions in the appropriate section in the Administrative Code. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or nongovernmental groups in FY 06-07, FY 07-08 and FY 08-09.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Jerry Phillips
Acting Medicaid Director
0608#063

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Personal Care Services—Long Term
(LAC 50:XV.12901 and 12905)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services proposes to amend LAC 50:XV.12901 and 12905 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing the coverage of personal care services as an optional service under the Medicaid State Plan (*Louisiana Register*, Volume 29, Number 6). The bureau amended the general provisions, standards for participation and the place of service requirements that were contained in the June 20, 2003 Rule (*Louisiana Register*, Volume 30, Number 12). The Office of Aging and Adult Services now proposes to amend the provisions governing long term personal care services to eliminate the need for physician prescription of the services and to eliminate the preadmission screening and annual resident review requirements.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12901. General Provisions

A. The purpose of personal care services is to enable an individual whose needs would otherwise require placement in a nursing facility to remain safely in that individual's own home. The mission of Medicaid-funded personal care services is to supplement the family and/or community supports that are available to maintain the recipient in the community. This service program is not intended to be a substitute for available family and/or community supports. Personal care services must be provided in accordance with an approved service plan and supporting documentation. In addition, personal care services must be coordinated with the other Medicaid services being provided to the recipient and will be considered in conjunction with those other services. Personal care services will be provided in a manner consistent with the basic principles of consumer direction as set forth in §12907.

B. ...

C. Authorization. Personal care services (PCS) shall be authorized by the Bureau of Health Services Financing or its designee. The department or its designee will review the completed assessment, supporting documentation, plan of

care or any other pertinent documents to determine whether the recipient meets the medical necessity criteria for personal care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:

§12905. Recipient Qualifications

A. - B. ...

1. meets the medical standards for admission to a nursing facility and requires assistance with at least one or more activities of daily living;

B.2. - 3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:

Implementation of the provisions of this proposed Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 28, 2006 at 9:30 a.m. in Room 188, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Personal Care Services—Long Term

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 06-07. It is anticipated that \$272 (\$136 SGF and \$136 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 06-07. It is anticipated that \$136 will be expended in FY 06-07 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule proposes to amend the provisions for long term personal care services to eliminate the need for physician prescription of the services and to eliminate the preadmission screening and annual resident review requirements (for approximately 400 long term personal care recipients). The Level of Care Eligibility Tool (LOCET) will replace preadmission screening and annual resident review. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 06-07, FY 07-08, and FY 08-09.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known impact on competition and employment.

Jerry Phillips
Acting Medicaid Director
0608#062

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Office of Aging and Adult Services**

**Nursing Facilities—Standards for Payment
Medical Eligibility Determination
Admission Review and Pre-Admission Screening
(LAC 50:II.10146 and 10157)**

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services proposes to amend LAC 50:II.10146 and 10157 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed the standards for payment governing nursing facility services and adopted revised provisions in LAC 50:II (*Louisiana Register*, Volume 22, Number 1). The bureau subsequently adopted LAC 50:II.10146 to establish medical eligibility determination requirements for nursing facility services and hospice care in a nursing facility (*Louisiana Register*, Volume 23, Number 10). The Office of Aging and Adult Services now proposes to amend the provisions governing medical eligibility determination and pre-admission screening for the purpose of clarification and to eliminate the use of the Title XIX Medical-Social Information form (Form 90-L).

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that the implementation of this proposed Rule will have no effect on family functioning as described in R.S. 49:942.

**Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Medical Assistance Program
Subpart 3. Standards for Payment**

**Chapter 101. Nursing Facilities
Subchapter F. Vendor Payment**

§10146. Medical Eligibility Determination

A. The following documentation requirements and procedures are required in order to determine medical eligibility for nursing facility services and hospice care in a nursing facility.

B. The following time frames must be met when requesting a medical eligibility determination for an individual admitted to a nursing facility. Conversion from Medicare status to Medicaid vendor payment is considered a new admission.

1. Appropriate documentation of admission information must be received within 20 working days of admission.

2. If incomplete information is received, certification of medical eligibility will be denied. The reason for denial will be given as incomplete information provided.

3. If additional information is subsequently received within the initial 20-working-day time frame, and the resident meets all requirements, the effective date of certification is the date of admission.

4. If the additional information is received after the initial 20-day time frame and the resident meets all of the requirements, the effective date of the certification shall be the date that all completed information is received.

C. Documentation Requirements for New Admissions

1. Notice of Admission or Change (Form 148) which:
a. verifies the individual's admission as a private pay resident or indicates that Medicaid or Medicare certification is being requested; and

b. provides the date of the resident's application for Medicaid if later than the date of admission;

2. a physician's order which specifies the applicant's current health status and the recommendation for nursing facility admission;

NOTE: The physician's order must be signed by a physician licensed in Louisiana and dated not more than 30 days prior to admission or application if the resident applies for Medicaid after admission; and

3. Pre-Admission Screening/Readmission Screening (Level I PAS/RAS) form which:

a. is signed and dated by a physician licensed in Louisiana; and

b. lists a diagnosis and medication on the Statement of Medical Status form that is consistent with PAS/RAS;

NOTE: If a second level screen is indicated due to a diagnosis or suspected diagnosis of mental illness or mental retardation, it must be completed prior to admission unless approved by the Office of Aging and Adult Services (OAAS) under a categorical determination.

D. Documentation Requirements for Readmission from the Hospital

1. A Form 148 which indicates:

a. the date Medicaid billing was discontinued if the bed was held; or

b. the date the resident was discharged to the hospital if the bed was not held; and

c. the date of the resident's readmission to the facility and whether they are readmitted as Medicare or Medicaid status.

2. A transfer form, discharge summary or physician's orders which specifies diagnosis, medication regime, level of care, and includes a dated physician's signature; and

3. - 3.c.Note ...

E. Documentation Requirements for Facility to Facility Transfer

1. ...

2. The receiving facility must complete:

a. A Form 148 indicating date of admission; and

b. A transfer form or physician's orders which includes the diagnosis, medication regime, level of care, physician's signature and date.

F. Documentation Requirements for New Admission to SNF 18 (Medicare) with Medicaid Co-Insurance

1. - 1.b. ...

2. A physician statement completed within 30 days of admission;

3. - 3.Note ...

G. Documentation Requirements for Readmission from the Hospital Directly to SNF 18 (Medicare)

1. A Form 148 which indicates the date that Medicaid co-insurance will be effective. No further information is required until the resident converts to Medicaid vendor payment.

H. Documentation Requirements for Termination of Medicare with Change from Medicaid Co-Insurance to Medicaid Vendor Payment

1. A Form 148 which indicates the date that the Medicare benefit period ends and the first date of Medicaid coverage;

2. A new or updated physician's statement. An updated physician's statement may be submitted in lieu of having a new one completed. An updated physician's statement is one that has been reviewed by the attending physician, includes any changes in diagnosis or treatment regimen, and has been re-signed and dated by the physician. This is viewed as a new admission because Medicare is a different payment source and the resident must be considered discharged from Medicare status in order to convert from Medicare to Medicaid. For this reason, another physician's statement is required and must be submitted within 20 working days of admissions; and

3. - 3.Note ...

I. Documentation Requirements Regarding the Death of a Resident. A Form 148 which specifies whether the death of the resident occurred in the nursing facility or in the hospital and the date of death.

J. Documentation Requirements for Admission to a Skilled Nursing/Infectious Disease (SN-ID) LOC

1. - 1.c. ...

d. Medical eligibility will be considered upon receipt of the following information.

i. For all new admissions, a Form 148, physician's order, and Form PAS/RAS must be completed as required for other nursing facility admissions. When requesting a level of care change, a Form 149-B may be submitted in lieu of the physician's order.

1.ii. - 2.b. ...

c. Medical eligibility will be considered upon receipt of the following information.

i. For all new admissions, a Form 148, physician's order, and Form PAS/RAS must be completed the same as for other nursing facility admissions. When requesting a level of care change, a Form 149-B may be submitted in lieu of the physician's order.

ii. - ii.(e). ...

K. The following time frames must be met when requesting a medical eligibility determination for hospice care in a nursing facility. These requirements are in addition to those previously published January 20, 1996 in the Medicaid Standards for Payment for Nursing Facilities (Chapter 25, Admission Review and Preadmission Screening).

1. - 4. ...

5. If additional information necessary to make a determination is received after the initial 20-day time frame, the effective date shall be no earlier than the date all completed information is received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1317 (October 1997), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:

Subchapter H. Admission Review and Pre-Admission Screening

§10157. General Provisions

A. Evaluative data for medical certification for IC I and IC II, skilled levels of care shall be submitted to the appropriate OAAS Regional Admission Review Office. This includes data for the following:

1. ...

2. applications for persons already in nursing facilities;

3. transfers of persons from one facility to another;

4. - 5. ...

B. A pre-admission Level of Care Eligibility Tool (LOCET) assessment shall be performed by an appropriate professional for Medicaid applicants or recipients requesting nursing facility admission.

C. Prior to admitting a resident to the facility, the following information is required for documentation into the medical record:

1. a physician's order which includes the applicant's medical history, diagnosis, history of mental illness, mental retardation, or developmental disability;

2. - 12. ...

13. the recommended level of care within the facility;

14. ...

NOTE: The medical/social evaluation shall not be completed more than 30 days prior to admission and a physician must personally approve a recommendation that an individual be admitted to a nursing facility.

D. Alternate Attending Physician. If the physician who performed the pre-admission examination does not provide continuing care after admission to the facility, the following steps shall be taken to secure an attending physician.

1. The resident or responsible party shall obtain an alternate physician within 48 hours after admission.

2. If they are unable to obtain a physician, the facility shall be responsible for obtaining one within two working days with the resident's or responsible party's approval. There shall be documentation of contact with the physician within the required time frame.

3. The new physician shall perform the following tasks in the course of his normal treatment regimen within seven days of assuming care:

- a. examine the resident;
- b. review the information provided by the physician who conducted the pre-admission examination; and
- c. furnish the facility with either a signed concurrence with the original physician's orders or submit alternate orders.

E. Tuberculosis Testing as Required by Public Health. Chapter II of the Public Health Manual, The Control of Diseases, Section 2:026 requires that any person admitted to a nursing facility shall have a complete history and physical examination by a licensed physician within 30 days prior to or 48 hours after admission. Any nursing facility resident who has complied with this provision shall be exempt from re-examination, i.e., upon transfer to another residential facility, the record of examination is transferred with the resident.

1. In compliance with the requirement for a complete history and physical examination, laboratory tests shall be completed and must include the following:

- a. purified protein derivative skin test for tuberculosis (PPD-5TU) given by the Mantoux method intradermally; and
- b. for residents over 35 years of age, a chest X-ray (completed no more than two weeks prior to admission).

2. The skin test and X-ray, if applicable, shall be evaluated by a licensed physician prior to the resident's admission to a nursing facility.

3. Office of Public Health (OPH) policy requires that a resident with evidence of active tuberculosis cannot be admitted to a nursing facility unless the examining physician states that the resident:

- a. is on an effective drug regimen;
- b. is responding to the prescribed treatment; and
- c. presents no imminent danger to the nursing facility's staff and other residents.

4. These statements shall be in writing, signed by the physician, and dated no more than two weeks prior to the resident's admission.

5. Additionally, no resident who has been diagnosed as having active tuberculosis or as being an asymptomatic carrier of this disease shall be admitted to a nursing facility, except under the supervision of the State Health Office (OPH). Tuberculosis is a reportable disease and shall be reported to the State Health Office through the public health unit in the parish where the nursing facility is located.

NOTE: A negative chest X-ray will allow the facility to admit the resident; provided, however, a Mantoux PPD test will be administered within 72 hours after admission. In a case where the medical record indicates resident has previously tested positive, a Mantoux PPD should not be performed.

F. Medical—Social Information. A physician's order and Form PASARR-1 shall be submitted for all applicants and recipients seeking initial certification. It is only required that Part A of the PASARR be completed by the facility.

1. The Form PASARR-1 shall be signed by the physician.

a. The physician shall date the Form PASARR-1 on the actual date he completes and signs the form. This will be the date medical certification begins.

2. A specific classification of care shall be indicated by the physician.

3. A transfer form, doctor's orders, or a statement signed by a physician who has knowledge of the case shall be completed on or before the date of transfer of a resident from one nursing facility to another.

4. Notification of Admission or Change (Form 148) shall be submitted to the OAAS regional office for admission or change in resident status.

a. Mental Status Evaluation. For persons with a mental health diagnosis, if either a current (within 30 days of application) mental status evaluation by a psychiatrist or a discharge summary from a mental health facility is available; it may be submitted with the Form PASARR-1. A psychiatrist shall sign and date these documents.

b. Psychological Evaluation. For persons with a diagnosis of mental retardation, if a psychological evaluation conducted by a psychologist is available, it may be submitted with Form PASARR-1. The evaluation shall not have been performed more than 90 days before the date certification is sought.

c. Insufficient Data. Additional documentation may be requested by letter if for any reason the data submitted is insufficient. If the PASARR-1 is not complete, it will be returned. The requested information must be received within 30 days from the date of the request.

d. Denial Due to Insufficient Data. If incomplete or insufficient data is submitted and the facility fails to respond to a request for additional data, a Notice of Medical Certification shall be issued indicating the person is not eligible due to insufficient documentation of the need for the requested services.

e. Screening for Active Treatment and Specialized Services. If the information on the Form PASARR-1 indicates the possibility of the need for active treatment for MR and/or specialized services for MI, an independent assessment will be completed by representatives of the Office of Mental Health (OMH) or the Office for Citizens with Developmental Disabilities (OCDD).

NOTE: Medical certification cannot be guaranteed for a Medicaid applicant or recipient admitted to a facility before a service determination from the appropriate state agency is obtained.

G. Pre-Admission Screening. The nursing facility may not admit an individual with a diagnosis of mental illness or mental retardation without a pre-admission screening. The purpose of the pre-admission screening annual resident review process (PASARR) is to identify persons who have mental illness (MI) or mental retardation (MR). The form used is PASARR-1 which addresses the specific identifiers of mental illness or mental retardation that indicate that a more in-depth evaluation is needed to determine the need for specialized services. The need for this in-depth assessment does not necessarily mean that the individual cannot be admitted to a nursing facility, only that the need for other services must be determined.

1. Mental Illness (MI). An individual is considered to have a serious mental illness (MI) if the individual has a major mental disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition (DSM III-R). A mental disorder may include schizophrenia, mood, paranoid, panic, or other severe anxiety disorder, somatoform disorder, personality disorder, other psychotic disorder, or another mental disorder that may lead to a chronic disability. Not inclusive would be a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis or dementia unless the primary diagnosis is a major mental disorder as previously defined.

2. Mental Retardation (MR) and Related Conditions. An individual is considered to have MR if he/she has a level of retardation (mild, moderate, severe, or profound) as described in the American Association of Mental Deficiency's Manual on Classification in Mental Retardation (1983), page 1. Mental retardation refers to significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. These provisions also apply to persons with "related conditions," as defined by federal regulations. *Person with related conditions* means an individual who has a severe, chronic disability that meets all of the following conditions:

- a. it is attributable to:
 - i. cerebral palsy or epilepsy; or
 - ii. any other condition, other than mental illness, found to be closely related to MR because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with MR, and requires treatment or services similar to those required for these persons (any other condition includes autism);
- b. it is manifested before the person reaches age 22;
- c. it is likely to continue indefinitely;
- d. it results in substantial functional limitations in three or more of the following areas of major life activity:
 - i. self-care;
 - ii. understanding and use of language;
 - iii. learning;
 - iv. mobility;
 - v. self-direction; and
 - vi. capacity for independent living.

H. Categorical Determinations. In order to arrange appropriate care for residents in nursing homes, the state of Louisiana has defined certain categories of resident care needs. Individuals who fall into these categories may have a determination made regarding their need for specialized services or nursing care without an elaborate assessment. In each case that specialized services is determined not to be necessary, however, it remains the responsibility of the nursing facility to notify the appropriate agency if the resident's mental illness or mental retardation service needs changes and becomes a barrier to utilizing nursing facility services, or they become a danger to themselves or others. The following advance group determinations are made by OAAS and are for nursing facility care only. The state's mental health or mental retardation authorities must still make a determination regarding the need for specialized services for MI or MR.

H.1. - I.2. ...

J. If an individual has been identified as having a diagnosis of mental illness and/or mental retardation, the following process is followed prior to admission.

1. The Form PASARR-1 is completed, signed, and dated by the attending physician.

2. The Form PASARR-1 is forwarded to the appropriate agency (OMH or OCDD) for a screening determination to be made. A copy of the Form PASARR-1 is also submitted to the OAAS regional office with an indication that a second level screening has been requested.

3. OMH or OCDD will either make the service determination upon receipt or if further evaluation is necessary the Form PASARR-1 will be forwarded within two working days to an independent assessment team for Level II screening and recommendation of services needed by the resident.

4. If Level II screening is required, an assessment team will visit the resident to complete the evaluations.

5. After all necessary screening is completed OMH or OCDD will submit a written service determination to the OAAS Regional Office and the facility indicating whether nursing facility services are appropriate. The OAAS Regional Office will issue a Form 142 approving or denying medical certification.

6. All evaluation material will be forwarded to the nursing facility by OMH or OCDD for each resident evaluated.

7. A PAS determination must be made in writing within eight working days of referral by the agency or facility which performs the Level I identification screen. If a facility feels that an applicant for admission qualifies for one of the advance group determinations the following procedure should be followed.

a. The facility will submit form PASARR-1 to the department for review.

b. If approved, a categorical determination will be issued to the facility with the applicable time limitation for that category.

c. Based upon this approval, the facility may admit the individual but is still required to forward a copy of the admit packet to the state mental health or mental retardation authority so that they may make a determination for specialized services in the facility. Part C is exempt from further referral for MI or MR unless the stay exceeds 30 days.

8. Annual Resident Review. All residents of a Medicaid SNF/NF with mental illness and/or mental retardation must be reviewed for services annually regardless of whether they were first screened under the PASARR requirements.

a. To the maximum extent practicable in order to avoid duplicate testing and effort, the PASARR must be coordinated with the routine resident assessment required.

K. - K.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 28, 2006 at 9:30 a.m. in Room 188, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Nursing Facilities—Standards for
Payment—Medical Eligibility Determination
Admission Review and Pre-Admission Screening**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than cost of promulgation for FY 06-07. It is anticipated that \$1,428 (\$714 SGF and \$714 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 06-07. It is anticipated that \$714 will be expended in FY 06-07 for the federal share of the expense for promulgation of this proposed rule and the final rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This rule proposes to amend the provisions governing medical eligibility determination and pre-admission screening for nursing facility services for the purpose of clarification and to eliminate the use of the Title XIX Medical-Social Information form (Form 90-L)(for approximately 12,000 nursing facility applicants and residents). The Level of Care Eligibility Tool (LOCET) will replace preadmission screening and Form 90-L. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits for directly affected persons or non-governmental groups in FY 06-07, FY 07-08, and FY 08-09.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This rule has no known impact on competition and employment.

Jerry Phillips
Acting Medicaid Director
0608#065

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation**

Fees (LAC 43:XIX.701, 703, and 707)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, the Office of Conservation proposes to amend LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The proposed action will adopt Statewide Order No. 29-R-06/07 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation Fee Schedule for the collection of Application, Production, and Regulatory Fees, and will replace the existing Statewide Order No. 29-R-05/06.

Title 43

NATURAL RESOURCES

**Part XIX. Office of Conservation--General Operations
Subpart 2. Statewide Order No. 29-R**

Chapter 7. Fees

§701. Definitions

Application for Site Clearance—an application to approve a procedural plan for site clearance verification of platform, well or structure abandonment developed by an operator/lessee and submitted to the Commissioner of Conservation, as authorized by LAC 43:XL311 et seq., or successor regulations.

BOE—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 6.0.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:

§703. Fee Schedule for Fiscal Year 2006-2007

A. Application Fees

Application Fees	Amount

Application for Site Clearance	\$600

B. Regulatory Fees

1. Operators of each permitted Type A Facility are required to pay an annual Regulatory Fee of \$6,706 per facility.

2. Operators of each permitted Type B Facility are required to pay an annual Regulatory Fee of \$3,353 per facility.

3. Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay \$682 per well.

4. Operators of record of permitted Class III and Storage wells are required to pay \$682 per well.

C. ...

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers:

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	14
Tier 2	1-5,000	75
Tier 3	5,001-15,000	215
Tier 4	15,001-30,000	355
Tier 5	30,001-60,000	565
Tier 6	60,001-110,000	780
Tier 7	110,001-9,999,999	959

E. - E.3. ...

F. Pipeline Safety Inspection Fees

1. Owners/Operators of jurisdictional gas pipeline facilities are required to pay an annual Gas Pipeline Safety Inspection Fee of \$18 per mile, or a minimum of \$320, whichever is greater.

2. Owners/Operators of jurisdictional hazardous liquids pipeline facilities are required to pay an annual Hazardous Liquids Pipeline Safety Inspection Fee of \$18 per mile, or a minimum of \$320, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:

§707. Severability and Effective Date

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-06/07 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This Order (Statewide Order No. 29-R-06/07) supersedes Statewide Order No. 29-R-05/06 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR

29:2502 (November 2003), LR 30:2494 (November 2004),), LR 31:2950 (November 2005), LR 32:

Family Impact Statement

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed Rule on family as defined therein.

1. The proposed Rule will have no effect on the stability of the family.

2. The proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule will have no effect on the functioning of the family.

4. The proposed Rule will have no effect on family earnings and family budget.

5. The proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The proposed Rule will have no effect on the ability of the family or local government to perform any function as contained in the proposed Rules.

Comments and views regarding the proposed fees will be accepted until 4:30 p.m., Monday, October 2, 2006. Comments should be directed, in writing, to Todd Keating, Director, Engineering Division, Office of Conservation, P.O. Box 94275, Capitol Station, Ninth Floor, Baton Rouge, LA 70804-9275 (Re: Docket No. 06-866—Proposed Statewide Order No. 29-R-06/07).

A public hearing will be held at 9 a.m., Wednesday, September 27, 2006 in the LaBelle Hearing Room, located on the First Floor, LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Fees**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs (savings) to state or local governmental units resulting from this action.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Proposed Statewide Order No. 29-R-06/07 establishes the Louisiana Office of Conservation Fee Schedule for the collection of application, production, and regulatory fees by the Office of Conservation and will replace the existing Statewide Order No. 29-R-05/06 and will retain the maximum revenue caps authorized in R.S. 30:1 et seq. The Proposed Rule will retain the existing fee schedule for all Application Fees, but will also add the definition for a Site Clearance Application and the corresponding \$600 Application Fee, as previously authorized by R.S. 43:311. R.S. 30:21 et seq., R.S. 30:560, and R.S. 30:706 provide that the Commissioner of Conservation shall periodically and/or annually review the fees collected, and the Office of Conservation has established a practice of annually evaluating all applicable fees. This revision will authorize the collection of this application fee consistent with the Agency's other fee collections. The Production Tier Fee in

NOTICE OF INTENT

**Department of Natural Resources
Office of the Secretary**

**Oyster Lease Acquisition and Compensation Program
(LAC 43:I.Chapter 8)**

the FY 06/07 Fee Schedule has been reduced an average 6.29% overall due to the increased number of participating wells. The Regulatory Fees for Class I Injection Wells will remain at the same level as those charged in FY 05/06; however, the Regulatory Fees for Class II and III Injection Wells, and Type A and B Commercial Facilities have increased by approximately 2.4% due to the declining numbers of wells and facilities. The Office of Conservation will collect approximately the same revenue for these fees in FY 06/07 as in FY05/06, or approximately \$7,260,807.

Additionally, the passage of Act Nos. 222 and 223 of the 2004 Regular Legislative Session, authorizes the Office of Conservation to determine by rule annually, in accordance with the Administrative Procedure Act, the pipeline safety inspection fees charged for the approximately 45,266 miles of state regulated jurisdictional gas distribution and gas transmission pipelines (R.S. 30:560) and approximately 4,886 miles of state jurisdictional hazardous liquids pipelines (R.S. 30:706). Although the Office of Conservation is authorized to collect a "fee not to exceed \$22.40 per mile, or a minimum of \$400, whichever is greater" for these state jurisdictional gas and hazardous liquids pipelines, it should be emphasized that the Agency is proposing a FY 06/07 fee of only \$18.00 per mile, or a minimum of \$320, whichever is greater, which is an increase of \$3.00 per mile, or \$55 for the minimum fee, from those fees charged in FY 05/06, but is still substantially less than the maximum fees authorized by statute. Although this is the first increase for these fees since FY 98/99, it is necessary due to: (1) the Agency's FY 06/07 appropriation reduction of \$313,843 in State General Funds from FY 05/06, and (2) the Agency's reduction of \$476,947 from the balance of the Oil & Gas Regulatory Statutory Dedicated Fund, as mandated by Executive Order No. KBB 2005-82. Historically, the balance from the Oil & Gas Regulatory Statutory Dedicated Fund has been sufficient from the previous fiscal year(s) to offset the need to increase these fees; however, the FY 05/06 reduction eliminated most of the Fund's balance. The Office of Conservation is projected to collect approximately \$902,736 for the pipeline safety inspection fees in FY 06/07, or \$147,827 more than collected in FY 05/06.

No local governmental units will be impacted by this action.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will replace the existing Office of Conservation Fee Schedule. The proposed Statewide Order No. 29-R-06/07 will retain the existing revenue caps for fees assessed to industries under the jurisdiction of the Office of Conservation, as authorized by R.S. 30:21 et seq., R.S. 30:560, and R.S. 30:706, and is expected to reach approximately \$8,163,543 for FY 06/07.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The passage of Statewide Order No. 29-R-06/07 will have no effect on competition and employment.

Gary P. Ross
Assistant Commissioner
0608#037

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Under the authority of the laws of the state of Louisiana and in accordance with provisions of Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950, including the Oyster Lease Acquisition and Compensation Program under R.S. 56:432.1, with the general authority of the Department of Natural Resources under Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950, and with the Administrative Procedure Act, R.S. 49:950 et seq., the secretary hereby gives notice that rulemaking procedures have been initiated to promulgate rules to govern the Oyster Lease Acquisition and Compensation Program, LAC 43:I.851, 853, 855, 857, 859, 861, 863, 865, 867, and 869 and to replace or repeal the existing provisions of LAC 43:I.Chapter 8, Subchapter B and Subchapter C in their entirety.

The proposed Rule governs the administration of the Oyster Lease Acquisition and Compensation Program by the department, in accord with R.S. 56:432.1, for the acquisition of and compensation for oyster leases or portions of oyster leases upon which occurs or will occur dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration. The proposed Rule repeals the existing provisions of LAC 43:I.Chapter 8, Subchapter B and Subchapter C in their entirety as the authorizing statutory provisions of the former Oyster Lease Relocation Program have been replaced or repealed by Acts 2006, No. 425. The basis and rationale for this proposed Rule are to implement Acts 2006, No. 425, and to comply with the new provisions of R.S. 56:432.1 enacted thereunder.

This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Chapter 8. Coastal Protection, Conservation, and Restoration

Subchapter B. Oyster Lease Acquisition and Compensation Program

§850. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2288 (December 1998), repealed LR 32:

§851. Purpose and Authority

A. This Subchapter sets forth the rules for the acquisition of and compensation for oyster leases by the department when necessary for purposes of coastal protection, conservation, or restoration. The department may acquire oyster leases, in whole or in part, for such purposes on behalf of the state to the extent that the leases are or may be directly affected by the dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a coastal protection, conservation, or restoration project.

B. These regulations are adopted pursuant to Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950, including the Oyster Lease Acquisition and Compensation Program under R.S. 56:432.1 and the general authority of the department under Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:421, et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§852. Notification of Leaseholders

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2288 (December 1998), repealed LR 32:

§853. Construction and Usage

A. The following shall be observed regarding the construction and usage of these regulations.

1. Unless otherwise specifically stated, the singular form of any noun includes the plural and the masculine form of any noun includes the feminine.

2. Unless otherwise specifically stated, all references to *section* are to Sections of this Subchapter.

3. Any reference to *days* in this Subchapter shall refer to calendar days.

4. The day of the event from which a designated time period begins to run shall not be included in the computation of a period of time allowed or prescribed in these regulations. The last day of the period is to be included in the computation of a period of time allowed or prescribed in these regulations, unless it is a legal holiday, in which case the period runs until the end of the next day that is not a legal holiday. Nonetheless, the effective date of acquisition shall be on the date set by the department pursuant to these regulations and R.S. 56:432.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:421, et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§854. Exchange

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2289 (December 1998), repealed LR 32:

§855. Definitions

A. The following shall apply for purposes of these regulations.

Affected Acreage—the portion of an affected lease located within a direct impact area of a project.

Affected Lease—an existing oyster lease identified by the department from records provided and maintained by DWF as being located, in whole or in part, within a direct impact area of a project.

Coastal Protection, Conservation, or Restoration—any project, plan, act, or activity for the protection, conservation, restoration, enhancement, creation, preservation, nourishment, maintenance, or management of the coast, coastal resources, coastal wetlands, and barrier shorelines or islands, including but not limited to projects authorized under any comprehensive coastal protection master plan or annual coastal protection plan issued pursuant to Part II of Chapter 2 of Title 49 of the Louisiana Revised Statutes of 1950.

Department—the Department of Natural Resources, its secretary, or his designee.

Direct Impact Area—the physical location upon which dredging, direct placement of dredged, or other materials, or other work or activities necessary for the construction or maintenance of a project is planned to occur or has occurred.

DWF—the Department of Wildlife and Fisheries, its secretary, or his designee.

Effective Date of Acquisition—the date set by the department in accordance with these regulations and R.S. 56:432.1 upon which the affected lease or affected acreage shall revert back to the state of Louisiana, free and clear of any lease or other obligation or encumbrance.

Leaseholder—the last lessee of record, or his designee, of an oyster lease let by DWF pursuant to R.S. 56:425, et seq., as identified in records provided and maintained by DWF.

Marketable Oysters—includes both seed and market-size oysters as defined by DWF.

Oyster Resource Survey—any survey or sampling to obtain information that may include but is not limited to oyster density (via square meter samples), oyster condition, bottom condition, bottom type, oyster standing crop, oyster physiology, oyster mortality, water depth, water temperature, water salinity, and assessment of oyster reef community organisms.

Potential Impact Area—the physical location upon which dredging, direct placement of dredged, or other materials, or other work or activities necessary for the construction or maintenance of a coastal protection, conservation, and restoration project is projected, possible, or estimated to occur.

Potentially Affected Acreage—the portion of a lease located within the potential impact area of a project.

Potentially Affected Lease—an existing oyster lease identified by the department from records provided and maintained by DWF as being located, in whole or in part, within a potential impact area of a project.

Project—any project, plan, act, or activity recognized by the department as relating to coastal protection, conservation, or restoration.

Secretary—the Secretary of the Department of Natural Resources or his designee, unless otherwise specifically stated in this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:421, et seq., and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§856. Retention

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998), repealed LR 32:

§857. Notification to Leaseholder of an Oyster Resource Survey; Procedures and Protocols for an Oyster Resource Survey

A. When appropriate, the secretary shall determine and delineate the potential impact area of a project and in making such decision may consult with the government agency or any public or private entity responsible for the project.

B. When the secretary determines that an existing oyster lease identified in records provided and maintained by DWF may, in whole or in part, be located within the direct impact area of a project, the secretary may conduct an oyster resource survey.

C. The secretary shall notify the leaseholder in writing at least 15 days prior to the oyster resource survey of the potentially affected acreage or potentially affected lease. The notification shall, at a minimum, include the following:

1. a brief description of the coastal protection, conservation, or restoration project, and a plat or map depicting the project and potentially affected lease or potentially affected acreage;

2. a copy of these regulations, R.S. 56:424, and R.S. 56:432.1;

3. the date and time of the oyster resource survey;

4. the name of and contact information for the person conducting the oyster resource survey;

5. a statement that the leaseholder or his designee may accompany the person conducting the oyster resource survey;

6. a statement that the state may acquire the potentially affected lease or potentially affected acreage to be surveyed or sampled, and if so, that the leaseholder will be compensated for any acquired lease or portion thereof in accordance with R.S. 56:432.1 and this Subchapter;

7. the name of and contact information for a person at the department to direct all inquiries regarding the project and the potentially affected lease or potentially affected acreage;

8. a statement that the leaseholder may provide to the department, through the contact person listed in the notice, any reasonably confirmable data or other information relevant to a determination of the compensation for any potentially affected lease or potentially affected acreage, within 60 days after the actual date of the oyster resource survey conducted pursuant to this Subchapter. Failure to provide such data or information within the specified time period may preclude consideration of such data by the secretary, the department, the person conducting the oyster resource survey, or the appraiser appointed thereby;

9. a statement that if the person conducting the oyster resource survey is unable to conduct the survey on the date provided in the notice, that such person will provide notice

to the leaseholder of the new survey date and time by appropriate and reasonable means;

10. a statement that the oyster resource survey is to be conducted in the manner set forth under §857.E of this Subchapter; and

11. a statement that the department, the state of Louisiana, political subdivisions of the state, the United States, or any agency, agent, contractor, or employee of any of these entities is not subject to any obligation, responsibility, or liability in relation to or resulting from any surveying or sampling of any oyster lease, information provided to any leaseholder in relation to any surveying or sampling of any oyster lease, the timing of any acquisition of any part of any lease by the state pursuant to R.S. 56:432.1, the lack of acquisition of any part of any lease except as provided by R.S. 56:432.1, or any report pursuant to R.S. 56:432.2 or otherwise.

D. Any written notification from the secretary or the department to the leaseholder of a potentially affected lease or potentially affected acreage in accordance with this section shall be deemed legally sufficient if sent by certified United States mail, postage pre-paid, return receipt requested, or hand delivered, to the last address furnished to DWF by the leaseholder on the date of issuance of notice.

E. Oyster Resource Survey Procedures and Protocol

1. The intent of the oyster resource survey is to obtain information that may include but is not limited to oyster density (via square meter samples), oyster condition, bottom condition, bottom type, oyster standing crop, oyster physiology, oyster mortality, water depth, water temperature, water salinity, and assessment of oyster reef community organisms.

2. Assessment Procedure

a. Should the secretary elect to obtain an oyster resource survey of a potentially affected lease or potentially affected acreage, he may select the person(s) to conduct the oyster resource survey considering all relevant criteria, including but not limited to prior experience, prior performance, demonstrated expert knowledge in the field of oyster biology, and the ability to perform concurrent task orders while maintaining high quality work. The person(s) so selected shall be contracted with by the department pursuant to R.S. 39:1481, et seq., or other applicable public contract law, and shall have the following minimum qualifications:

i. a college degree in biological science, or prior acceptance by a Louisiana federal or state court as an expert witness in the field of oyster biology or oyster ecology; and

ii. five years of professional experience conducting oyster lease surveys and standing oyster crop analyses.

b. Samples should be taken at a minimum within the area of a potentially affected lease delineated by the secretary as the potential impact area of the project for which the oyster resource survey is being conducted.

c. A written assessment of the results of the oyster resource survey shall be prepared.

d. Oyster resource survey methods and procedures used should be stated and identified in the written assessment.

e. Information and data from the oyster resource survey should be compiled, analyzed, and presented in

tables, charts, and in a written format along with scale maps indicating the location of the oyster leases in relation to the proposed project, location of sample sites, number and size of both live and dead oysters, oyster size frequency distribution, mortality rates per group, and photographs of oyster samples.

f. An original copy of the written assessment shall be provided to and retained by the department, which may use it in accordance with the appraisal and valuation procedures set forth in these regulations. A copy will be provided to the leaseholder upon written request by the leaseholder to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:424, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§858. Appeals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:2291 (December 1998), repealed LR 32:

§859. Appraisal

A. The secretary shall determine or delineate the direct impact area of a project, and in making such decision, may consult with any public or private entity responsible for the project.

B. Should the secretary determine that an existing oyster lease identified in records provided and maintained by DWF is, in whole or in part, located within the direct impact area of a project, the secretary shall obtain an appraisal of the affected lease or affected acreage.

C. When the secretary elects to obtain an appraisal of an affected lease or affected acreage, he shall select the appraiser considering all relevant criteria, including but not limited to the following:

1. prior performance; education; experience in valuation of oyster leases; experience in valuation of unique properties and unusual estates; experience in valuation of various land classes; demonstrated expert knowledge in the field of real property appraisal; and, the ability to perform concurrent tasks orders while maintaining high quality work;

2. the appraiser so selected shall be contracted with by the department pursuant to R.S. 39:1481, et seq., or other applicable public contract law, and shall have a current certification as a Louisiana certified general real estate appraiser; professional designation in the field of appraisal; and, five or more years professional experience conducting real property appraisals.

D. The appraiser shall estimate the fair market value of the affected lease or affected acreage to be acquired according to accepted appraisal methods, which may include analysis of comparable sales of other leases. The appraiser may also take into consideration any reasonably confirmable data or information supplied by any person or obtained through the appraisal process, and any data or information obtained through the oyster resource survey conducted in accordance with §857.

E. A written appraisal shall be prepared by the appraiser, estimating the fair market value of the affected lease or affected acreage, and explaining the valuation methodology. An original of the appraisal and a copy of all documents

used to develop the appraisal shall be provided to the department, which may use it pursuant to the procedures set forth in these regulations. A copy will be provided to the leaseholder upon written request by the leaseholder to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§861. Determination of Compensation

A. The secretary shall determine the compensation for any affected acreage to be acquired as follows.

1. If the department provides a time period of one year or more between issuance of a notice of acquisition pursuant to §863 and the effective date of acquisition, then compensation for the affected acreage to be acquired shall be equal to the fair market value of the affected acreage to be acquired as determined by the secretary in accordance with §859.

2. If the department provides a time period of less than one year between issuance of a notice of acquisition pursuant to §863 and the effective date of acquisition, the compensation for the affected acreage to be acquired shall be equal to the fair market value of the affected acreage to be acquired as determined by the secretary in accordance with §859 plus the value of such non-removable marketable oysters on the affected acreage, if any, as determined by the department, based upon reasonably confirmable data. The determination of value shall take into account the number of sacks of marketable oysters per acre, suitable acreage, natural mortality, current market price, and harvest cost.

3. Data for estimation of the value of non-removable marketable oysters shall be determined from the written assessment derived from the oyster resource survey conducted in accordance with §857. The department may also take into consideration any reasonably confirmable data or information supplied timely by any person in accordance with §857.

4. The appraiser and the department shall consider any reasonably confirmable data or other information supplied to the department by the leaseholder following the oyster resource survey conducted in accordance with §857. The department or the appraiser may disregard any information or data not submitted timely pursuant to §857.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§863. Notification to Leaseholder of Acquisition and Compensation

A. Should the secretary determine that an existing oyster lease issued by DWF is located within the direct impact area of a project and the project is necessary and proper for coastal protection, conservation, or restoration, the secretary may acquire the affected acreage on behalf of the state in accordance with this Section.

B. Acquisition shall be implemented by issuance of a notice of acquisition. Notice of acquisition may be mailed or delivered to the leaseholder no sooner than 60 days after the completion of the oyster resource survey conducted in accordance with §857. The notice shall be issued in writing to the leaseholder by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the

last address furnished to DWF by the leaseholder on the date of issuance of notice. A copy of such notice shall be recorded in the conveyance records of any parish in which the affected acreage to be acquired or the affected lease is located.

C. Such notice of acquisition shall, at a minimum, include:

1. a description specifying affected acreage, or portion thereof, being acquired;

2. the effective date of acquisition;

3. a brief description of the coastal protection, conservation, or restoration project for which the acreage is being acquired;

4. a plat or map depicting the project and the affected lease or affected acreage to be acquired;

5. a copy of these regulations and R.S. 56:432.1;

6. a statement that the department will acquire the acreage described in the notice of acquisition, and that such acquisition shall automatically occur on the date specified in the notice;

7. a statement that the leaseholder retains full use and possession of the affected acreage to be acquired until the effective date of acquisition, and may, at his sole risk and expense, harvest any oysters or take any other action permitted under the affected lease until the effective date of acquisition;

8. a statement that the acquisition will be effective regardless of whether the leaseholder actually received the notice of acquisition;

9. a statement that the affected lease shall continue in full force and effect as to all remaining acreage under the lease other than the acquired acreage (in cases where only part of the affected lease is being acquired);

10. a statement that lease payments as otherwise required by R.S. 56:428 or 429 shall no longer be payable as to the acquired oyster lease acreage for the calendar year after the date on which the notice of acquisition is issued; but that payment must still be paid as to any remaining acreage under the lease if the lease is acquired only in part;

11. a statement that the leaseholder will either be allowed a period of one year or more from the date of issuance of notice of acquisition herein in which to remove any and all marketable oysters from the affected lease, at his sole risk and expense, and that no compensation shall be allowed for oysters so removed or removable, or if the department states an effective date for the acquisition that is less than one year after the date of issuance, a statement that the compensation for the acreage to be acquired includes compensation for the non-removable marketable oysters as part of the attached acquisition payment;

12. a determination of compensation, stating the dollar amount that the department has determined in accordance with these regulations and R.S. 56:432.1 to be paid for the acquired acreage and the appraised value of the acquired acreage. If compensation is being paid for non-removable marketable oysters, a statement of the value thereof is also to be included;

13. a check, attached only to a notice of acquisition sent to the leaseholder's last address as furnished to DWF by the leaseholder on the date of issuance of notice, in the full amount of the determination of compensation, except for and less any amount due on recorded liens and encumbrances to

be paid out of said proceeds, in the name of the leaseholder of record in accordance with the records of DWF on the date of issuance of notice of acquisition herein;

14. a statement that acceptance or negotiation of the attached check (or draft) does not preclude a claim for additional compensation as provided in these regulations and R.S. 56:432.1;

15. if any amount due on a recorded lien or encumbrance has been withheld from the check for compensation, a statement indicating the name of the holder of the recorded lien or encumbrance, the amount withheld, and that payment of said amount has been made by the department to that holder;

16. a statement that the leaseholder may seek an administrative hearing in writing through the department within 60 days after issuance of the notice of acquisition, determination of compensation, or payment, pursuant to these regulations and R.S. 56:432.1, as to whether the acquisition due to the impact of dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration is proper or whether the compensation issued by the department satisfied the regulations under this Subchapter, and that administrative or judicial review may be permissible, but that the procedures stated by law and these regulations must be followed or such right of review may be lost or impaired; and

17. a statement that a request for administrative or judicial review shall have no effect upon the validity of the acquisition of the acquired acreage, but only the compensation payable to the leaseholder, unless review is sought timely and the leaseholder proves that the project or action for which the acreage was acquired does not further coastal protection, conservation, or restoration.

D. Before issuing any notice of acquisition, the department shall make a reasonable attempt to determine whether any amount is due on a recorded lien or encumbrance in relation to any oyster lease covering the acreage to be acquired. The holder of the lien or encumbrance and the leaseholder may negotiate to allocate the compensation to be paid under the notice of acquisition by written agreement among them. Any such written agreement must fully release and indemnify the department from any claim in relation to the acreage to be acquired or the compensation for such acreage.

1. If no such written agreement is provided on or before the date when the department issues the notice of acquisition, the department shall withhold the full amount of all liens or encumbrances covering any of the acreage to be acquired, up to the full amount of the compensation determined by the department. If the department timely receives such a written agreement, the department shall withhold the amount agreed by the lienholder or encumbrance holder. A statement of the name of the holder and the amount withheld in relation to each lien or encumbrance shall be issued to the leaseholder as part of the notice of acquisition.

2. Should the amount of compensation to be paid for the acquired acreage be insufficient to pay the entirety of the lien or encumbrance, any lien or encumbrance shall be paid in order of legal preference and all holders of any remaining

or unpaid lien or encumbrance shall be notified of the reason for non-payment or partial payment and issued a copy of the notice of acquisition.

3. The department shall forward payment in the full amount of any withholding to the holder of the lien or encumbrance by certified United States mail, return receipt requested, postage pre-paid, or by pre-paid receipted courier or delivery service, or hand delivery, to the last address on file with the secretary of state, if any, or to any address provided to the department or DWF by the lien or encumbrance holder. A copy of the notice of acquisition and determination of compensation, showing the lien or encumbrance and the withholding in relation thereto, shall be attached to the payment.

4. If the department is unable to make delivery of the payment by these means, the department shall transfer funds in the full amount of the withholding to a trust account from which it may be drawn for the benefit of the holder of the lien or encumbrance by joint agreement of the holder and the department, upon request of the lienholder of record on the date the notice of acquisition is initially issued.

5. If funds deposited into a trust account pursuant to this Subsection remain unclaimed after a period of five years, the funds shall be declared to be abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act, R.S. 9:151, et seq., at the sole discretion of the secretary.

E. If the department attempts issuance of notice of acquisition, determination of compensation, and the check pursuant to §863.C, at least once, and is unable to make delivery of the notice to the leaseholder thereby, the department shall re-issue the notice and the determination of compensation by certified United States mail, return receipt requested, to the leaseholder at his address on file with DWF on the date of the re-issuance. In such event, the department shall also publish a summary of such notice identifying the affected lease and acreage to be acquired, stating the effective date of the acquisition and providing a contact person at the department for all inquiries regarding the acquisition, in the official journal for all parishes in which any part of the acreage to be acquired is located. In addition, the following procedures shall apply.

1. If a Notice of Acquisition is re-issued under this Subsection, no check shall be attached to the re-issued notice. Instead, payment in the full amount of the determination of compensation, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, shall be transferred into a trust account from which it may be drawn for the benefit of the leaseholder by joint agreement of the leaseholder and the department, upon request of the leaseholder listed with DWF on the date the notice of acquisition is initially issued. If said funds deposited into a trust account pursuant to this Subsection remain unclaimed after a period of five years, the funds shall be declared to be abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act as set forth in R.S. 9:151, et seq., at the sole discretion of the secretary.

2. A re-issued notice shall include a statement that compensation for the acquisition has been deposited into a trust account, and that a contact person at the department designated in the re-issued notice can assist the leaseholder

in withdrawing said funds from the trust account. The re-issued notice shall also include a statement that any funds in the trust account remaining unclaimed after five years shall be declared abandoned and may be disposed of pursuant to the Uniform Unclaimed Property Act, R.S. 9:151, et seq.

F. Upon the effective date of acquisition of affected acreage as stated in the notice of acquisition, possession of the affected acreage acquired pursuant to the notice of acquisition, issued in accordance with this section shall revert back to the state of Louisiana, free and clear of any lease or other obligation or encumbrance, and regardless of whether the leaseholder actually receives the notice of acquisition.

G. No lease shall be granted for any water bottom for which any lease was previously acquired by the state for coastal protection, conservation, or restoration, unless the secretary of DWF determines that leasing would otherwise be appropriate under the provisions of Subpart D of Part VII of Chapter I of Title 56 of the Louisiana Revised Statutes of 1950 and the secretary of DNR affirms that the water bottom is not necessary for coastal protection, conservation, or restoration, as provided by and in accordance with the provisions of R.S. 56:425(E). Unless this determination has been made prior to issuance of the lease, a lease of water bottom for which a lease was previously acquired shall be null and void for such water bottom and shall be of no force or effect. No person shall have any claim against either secretary, either department, the state of Louisiana, its political subdivisions, the United States, or any agency, agent, contractor, or employee thereof or any other person in relation to the nullity of such lease. The determination of whether the water bottom sought to be leased is not necessary for coastal protection, conservation, or restoration shall be at the sole discretion of the secretary of DNR, upon consideration of existing, planned, projected, or reasonably foreseeable projects or other actions needed for coastal protection, conservation, or restoration.

H. Nothing in these regulations shall be construed to require the secretary to engage in or perform any project or other action for coastal protection, conservation, or restoration or any oyster resource survey, appraisal, or valuation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq., R.S. 56:425, and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§865. Administrative Review

A. A leaseholder of an oyster lease acquired, in whole or in part, in accordance with these regulations and R.S. 56:432.1 may seek an administrative hearing through the department.

1. Any such adjudication shall be limited to whether the acquisition due to the impact of dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration is proper, or whether the compensation issued by the department satisfies the rules and regulations under this Subchapter.

2. Any leaseholder whose lease is not acquired, but upon which dredging, direct placement of dredged or other materials, or other work or activities necessary for the

construction or maintenance of a project for coastal protection, conservation, or restoration has occurred, may also seek an administrative hearing through the department under this section to determine if acquisition of such oyster lease acreage would be proper.

B. A leaseholder's request for an administrative hearing under this section shall be requested in writing and sent to the department at the following address: Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Assistant Secretary, P.O. Box 44487, Baton Rouge, LA 70804-4487.

1. A written request for adjudication under this Section must be received by the department within 60 days after issuance of the notice of acquisition, determination of compensation, or payment to which the request pertains. However, a request for adjudication may be submitted to the department within two years after completion of the project for which acreage was acquired, if and only if, the leaseholder establishes that notice of the acquisition, determination of compensation, or payment was not issued as required by R.S. 56:432.1 or §863, or the request for adjudication seeks review of the lack of acquisition of leased acreage upon which dredging, direct placement of dredged or other materials, or other work or activities necessary for the construction or maintenance of a project for coastal protection, conservation, or restoration has occurred.

a. A request for adjudication received after the aforementioned deadlines, as applicable, is not timely and shall be denied.

b. A request for adjudication is deemed timely "received" when the request is mailed on or before the due date. If the papers are received by mail on the first legal day following the expiration of the delay, there shall be a rebuttable presumption that they are timely filed. In all cases where the presumption does not apply, the timeliness of the mailing shall be shown by an official United States postmark or by official receipt or certificate from the United States Postal Service or a bona-fide commercial mail service such as Federal Express or United States Parcel Service, made at the time of mailing which indicates the date thereof.

2. A request for an administrative hearing shall, at a minimum, include the following:

a. identification of the notice of acquisition to which the request pertains, or if no notice has been issued, identification of the affected lease and affected acreage to which the request pertains;

b. a statement of the relief requested, identifying the specific issue or point as to which adjudication is sought;

c. a statement of the reasons such relief is requested, and the facts upon which the request for relief is based;

d. the name and address to which the department and the Division of Administrative Law will send all communications regarding the request for administrative review. Neither the department nor the Division of Administrative Law have any obligation to deliver any communications or other notices regarding the request to any person or address other than the address listed in the request or any amendment thereto. If no person is listed, the department and the Division of Administrative Law shall

deliver all communications or notices to the last address on file for the leaseholder with DWF, and shall have no obligation to deliver communications or notices to any other person or address.

3. The department shall promptly submit a request for adjudication to the Division of Administrative Law.

C. Any adjudication hereunder shall be governed by and conducted in accordance with the Administrative Procedure Act (APA), R.S. 49:950, et seq., and the Division of Administrative Law Act (DALA), R.S. 49:991, et seq., unless such procedures are inconsistent or in conflict with the provisions of this Subchapter or R.S. 56:432.1.

D. The leaseholder may provide to the Division of Administrative Law, the department, and any other parties, including any holder of any lien or encumbrance or any other leaseholder claiming an interest in the acreage at issue, on or before the date of the adjudication, any reasonably confirmable data or other information that the leaseholder believes should be considered by the Division of Administrative Law in conducting the administrative review of the determination of the department. The Division of Administrative Law shall consider any reasonably confirmable data or information timely provided to the department by the leaseholder or any other person pursuant to §863 and R.S. 56:432.1. The Division of Administrative Law may disregard any information or data that is not submitted timely pursuant to this Subchapter.

E. The final decision of the Division of Administrative Law shall be issued to the leaseholder, in writing by certified mail, at his address on file with DWF on the date of issuance thereof, or at such other address as may be specified in the request for adjudication; and the Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Assistant Secretary, P.O. Box 44487, Baton Rouge, LA 70804-4487.

F. A request for adjudication shall have no effect upon the validity of the acquisition of the acreage acquired pursuant to a notice of acquisition, but only the compensation payable to the leaseholder. However, the acquisition may be found invalid if adjudication is sought timely and the project or action for which acquisition is sought does not further coastal protection, conservation, or restoration. If the acquisition is invalidated, the full possession of the oyster lease acreage sought to be acquired shall remain with the leaseholder, as if the notice of acquisition had never been issued.

G. If the Division of Administrative Law declares in a final decision that the leaseholder is entitled to additional compensation for the acquisition of the leasehold acreage at issue or that the department should have acquired a lease or acreage which it had not previously acquired, and states the amount of such compensation that is due, the department, subject to Constitution Article 12, Section 10, shall issue a check or draft to the leaseholder for such additional amount, except for and less any amount due on recorded liens and encumbrances to be paid out of said proceeds, by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address on file with DWF on the date of issuance, or at such other address as may be specified in the request for adjudication, within 60 days after issuance of the final decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§867. Judicial Review

A. A leaseholder may seek judicial review of the final decision of the Division of Administrative Law under §865 in accordance with R.S. 56:432.1(D), based solely on the administrative record and, except as otherwise provided in these rules or by R.S. 56:432.1, governed by and conducted in accordance with the Administrative Procedure Act (APA), R.S. 49:950, et seq. and the Division of Administrative Law Act (DALA), R.S. 49:991, et seq.

B. Proceedings for judicial review may be instituted in accordance with R.S. 56:432.1(D) by filing a petition in the Nineteenth Judicial District Court for the Parish of East Baton Rouge within 60 days after issuance of the final decision of the Division of Administrative Law. No petition for judicial review may be filed, and any such petition is premature, unless adjudication has been timely sought and all administrative remedies have been exhausted. Copies of the petition shall be served upon the secretary and on all parties of record.

C. A request for judicial review shall have no effect upon the validity of the acquisition of any oyster lease acreage acquired pursuant to a notice of acquisition, but only the compensation payable to the leaseholder. However, the acquisition may be found invalid if review is sought timely and the project or action for which acquisition is sought does not further coastal protection, conservation, or restoration. If the acquisition is invalidated, the full possession of the acreage sought to be acquired shall remain with the leaseholder, as if the notice of acquisition had never been issued.

D. If the court declares in its judgment that the leaseholder is entitled to additional compensation for the acquisition of the leasehold acreage at issue or that the department should have acquired a lease or acreage which it had not previously acquired, and states the amount of such compensation that is due, the department may appeal the judgment in accord with R.S. 49:965 of the Administrative Procedure Act (APA). If the judgment is affirmed on appeal or no appeal is taken and subject to Constitution Article 12, Section 10, the department shall issue a check or draft to the leaseholder for such additional compensation as set forth in the original judgment or as may be modified or amended on appeal by certified United States mail, return receipt requested, postage pre-paid, or hand delivery, to the last address on file with DWF on the date of issuance, or at such other address as may be specified in the request for adjudication no more than 60 days after the judgment becomes final and definitive under the provisions of Articles 2166 and 2167 of the Code of Civil Procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

§869. Reimbursement of Costs of Acquisition

A. The department may acquire any acreage under this Subchapter in relation to a project or action for coastal protection, conservation, or restoration performed or to be

performed by or for the United States, any department, agency, board, commission, or political subdivision of the state, or any other public or private entity responsible for a project.

B. If the department acquires acreage under this Subchapter in relation to any project or action performed by any person or entity other than the department, such entity shall compensate the department for all costs incurred by the department, which are associated with the acquisition.

C. The costs for which reimbursement is due under this Subchapter includes but is not limited to costs of oyster resource surveys, appraisal, administrative, or other uses of department personnel or resources, payment for acquisition, and awards on administrative adjudications or judicial review.

D. The secretary may choose, at his sole discretion, to waive any part or all of the compensation that would otherwise be required under this Section. No person or entity shall have any right to such waiver, and the secretary shall have no obligation to make such a waiver. Waiver of any part of the compensation that would otherwise be required shall not affect any obligation to pay the remainder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:213.1, et seq. and R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 32:

Subchapter C. Rules Governing Davis Pond Oyster Relocation Program

§875. Purpose

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1483 (July 2000), repealed LR 32:

§877. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1483 (July 2000), repealed LR 32:

§879. Notification of Leaseholders

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1484 (July 2000), repealed LR 32:

§881. Leaseholder Options

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1484 (July 2000), repealed LR 32:

§883. Exchange Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1484 (July 2000), repealed LR 32:

§885. Relocation Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1485 (July 2000), repealed LR 32:

§887. Retention Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1486 (July 2000), repealed LR 32:

§889. Purchase Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1486 (July 2000), repealed LR 32:

§891. Payment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1486 (July 2000), repealed LR 32:

§893. Release

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1487 (July 2000), repealed LR 32:

§895. Appeals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 26:1487 (July 2000), repealed LR 32:

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by "Oyster Lease Acquisition and Compensation Program." Such comments must be received no later than Friday, October 6, 2006 at 4:30 p.m., and should be sent to William K. Rhinehart, Administrator, Coastal Restoration Division, Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, P.O. Box 44487, Baton Rouge, LA 70804-4487 or to FAX (225) 342-9417 or by email to Kirk.Rhinehart@la.gov. This proposed regulation is available for inspection and copying between the hours of 8:30 a.m. and 4:30 p.m. at Louisiana Department of Natural Resources, Office of Coastal Restoration and Management, Assistant Secretary, 617 North Third Street, 10th Floor, Baton Rouge, LA 70804.

Scott A. Angelle
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Oyster Lease Acquisition and
Compensation Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

While the administrative burden to both the Department of Wildlife and Fisheries and the Department of Natural Resources may initially be heavy, both agencies will absorb the additional workload with existing staff. All costs associated with the Oyster Lease Acquisition and Compensation Program (OLACP) are built into existing project costs. The OLACP implementation cost is estimated to be, on average, less than 1% of the overall project cost. Furthermore, most projects are cost shared with the federal government. Therefore, no anticipated increase in costs to State or local governmental entities should result from this action.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Department of Wildlife and Fisheries may experience a slight decrease in revenue as approximately 550 acres that could be leased for oyster production will be acquired by the Department of Natural Resources. However, the lease rate is only \$2 per-acre per-year so this decrease is negligible.

While the direct economic benefits are difficult to determine, promulgation of these regulations will assist in the acquisition of additional federal funds for coastal protection, conservation, and restoration projects by guaranteeing the timely acquisition of oyster leases directly impacted by projects and removing uncertainty and possible delays in project implementation.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

All oyster lessees affected by this program will receive compensation equal to the fair market value of the oyster lease acquired. Therefore, there are no economic costs or benefits to persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition or employment is anticipated in either the public or private sector.

Robert D. Harper
Undersecretary
0608#041

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Gaming Control Board**

Operation of Video Draw Poker Devices and
Penalty Schedule (LAC 42:XI.2407 and 2430)

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42:XI.2407 and adopt LAC 42:XI.2430 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42
LOUISIANA GAMING
Part XI. Video Poker

Chapter 24. Video Draw Poker

§2407. Operation of Video Draw Poker Devices

A. Responsibilities of Licensees

1. The licensee or a designated representative of the licensed establishment shall be required to be physically present and available within the licensed establishment at all times during all hours of operation; shall ensure that the devices are not tampered with, abused, or altered in any way; and shall prevent the play of video draw poker devices by persons under the age of 21 and prevent access to the gaming area by persons under the age of 18.

2. - 7. ...

8. Repealed.

9. - 13. ...

14. All licensees shall post one or more signs at points of entry to the gaming area to inform customers of the toll-free telephone number available to provide information and referral services regarding compulsive or problem gambling. The toll-free numbers shall be provided by the division.

B. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control

Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 30:267 (February 2004), repromulgated LR 30:441 (March 2004), LR 32:

§2430. Penalty Schedule

A. The division may assess a civil penalty as provided for in the penalty schedule. The penalty schedule lists a base penalty which shall apply to the first violation of the statutory provision or rule.

B. A second or subsequent violation is a violation of the same statutory provision or rule occurring within a one year period regardless of when the violation was admitted, adjudicated, or when the violation report was issued. If one or more violations occur within a one year period, the base penalty shall be multiplied by a factor based on the total number of violations within the one year period.

C. The violation of any statutory provision or rule may result in the assessment of a civil penalty, suspension, revocation, or other administrative action. If the total dollar amount of penalties per violation report exceeds \$50,000, the division shall recommend administrative action.

D. The board and division shall not assess a civil penalty unless and until the licensee or permittee meets all of the requirements for the issuance of a license or permit as provided for in Chapter 2 and 6 of Title 27 of the Louisiana Revised Statutes, or in any rules adopted by the board and promulgated in Chapter III or XI of Title 42 of the Louisiana Administrative Code, governing the operation of video draw poker devices, which provide for licensing criteria.

E. Penalty Schedule

Regulation Number	Violation Description	Licensed Establishments with up to Three Machines	All Other Licensees
Application and License			
2405.B.1.b	Failure to File Tax Returns/Pay Taxes Owed	\$ 500	\$1,000
2405.B.2	Failure to Conspicuously Display License	\$ 100	\$ 200
2405.B.3.c	Failure to File Complete Renewal Application 45 Days Prior to Expiration	\$ 250	\$ 500
2405.B.6	Failure to Disclose Full Ownership Of Licensee	Administrative Action	Administrative Action
2405.B.7	Failure to Attend Required Hearings/Meetings	\$ 500	\$1,000
2405.B.8	Failure to Comply with All Federal Gambling Laws	Administrative Action	Administrative Action
2405.B.9	Operation of Business	Administrative Action	Administrative Action
2405.C	Parish or Municipal Licenses	Administrative Action	Administrative Action
2405.D.1	Failure to Notify Division of Change of Ownership	Administrative Action	Administrative Action
Operation Of Video Draw Poker Devices			
2407.A.1	No Des Rep/Failure to Monitor VGD/Gaming Area	\$ 500	\$1,000
2407.A.2	Loaning Money, Extending Credit or Finance Asst Prohibited	\$1,000	\$2,000
2407.A.3	Allowing Intoxicated Persons to Play Video Devices	\$1,000	\$2,000
2407.A.4	Failure of Licensee to Supervise Employees to Ensure Compliance with Regulations	\$ 250	\$ 500
2407.A.5	Failure to Pay Valid Ticket Voucher on Demand	\$1,000	\$2,000
2407.A.6	Proper Placement of Devices	\$ 250	\$ 500
2407.A.7	Failure to Notify Division of Device Malfunction	\$ 250	\$ 500
2407.A.9	Keys Shall Be Secure and Available to the Division	\$ 100	\$ 200
2407.A.10	Loss of Access of Device Telephone Line	\$ 250	\$ 500
2407.A.11	Allowing Play of a Disconnected Device	\$1,000	\$2,000
2407.A.12	Licensees Shall Post Signs Play of Devices by Patrons under Age 21	\$ 500	\$1,000
2407.A.13	Current Copy of Rules and Regulations Not Available	\$ 100	\$ 200
2407.A.14	Failure to Post Compulsive Gambling Toll Free Number	\$ 500	\$1,000
2407.B.2	Video Poker Employees Must Possess Permit	Not applicable	\$ 25
2407.B.8	Permittees Shall Have Ability to Locate Records/Documents and Possess Knowledge of Operations	\$ 100	\$ 200
2407.C.1	Payment of Prizes	\$ 500	\$1,000
2407.D.1	Advertising	\$ 500	\$1,000

Regulation Number	Violation Description	Licensed Establishments with up to Three Machines	All Other Licensees
Revenues			
2409.C.2 b	Insufficient Funds Available for Electronic Transfer	Not applicable	\$1,000
2409.C.3	Minimum Balance Requirements	Not applicable	\$1,000
2409.E.2	Failure to Have Records Readily Available for Audit	\$1,000	\$2,000
Regulatory, Communication, And Reporting Responsibilities			
2411.A.3-6	Failure to Provide Semi-Annual, Quarterly or Monthly Report Requested by Date Required	\$ 500	\$1,000
2411.A.7	Failure to Retain All Records for a Period of Three Years (Manufacturers Five Years)	\$1,000	\$2,000
2411.A.8	Failure to Surrender License and Records to Division after Ceasing to Participate in Video Gaming	Administrative Action	Administrative Action
2411.A.9	Failure to Maintain Required Records, Submit All Reports, and Keep Division Informed in Writing of All Changes	\$1,000	\$2,000
2411.A.10	Failure to Keep and Maintain Bank Account Documents	\$1,000	\$2,000
2411.A.11	Except as Otherwise Provided, upon Selling of Licensed Entity, the Licensee Shall Surrender Its License within 10 Business Days of the Change of Ownership	Administrative Action	Administrative Action
2411.A.12	All Licensed Manufacturers and Distributors Shall Maintain a Current Record of Devices Received, Sold and in Inventory	Not applicable	\$1,000
2411.A.13	Failure to Provide a Division Approved Program to Train and Certify Technicians	Not applicable	\$1,000
2411.A.14	Failure to Provide a Current List of Authorized Service Personnel	Not applicable	\$1,000
2411.B.1	Failure to Provide a Semi-Annual Report Requested by Division	Not applicable	\$1,000
2411.B.3	Failure of Manufacturer to Request Authorization for Device Modifications	Not applicable	Administrative Action
2411.B.4	All Licensed Manufacturers Shall Sell or Lease Video Gaming Devices to Licensed Distributors	Not applicable	Administrative Action
2411.C.1	Failure of Distributor to Provide Quarterly Report Requested by Division	Not applicable	\$1,000
2411.C.2	Quarterly Report Information	Not applicable	\$1,000
2411.C.3	Failure of Distributor to Provide Quarterly Inventory Report Requested by Division	Not applicable	\$1,000
2411.C.5	Licensed Distributor Shall Only Purchase or Lease, Sell, etc.. to a Licensed Manufacturer, Device Owner, or Another Distributor	Not applicable	Administrative Action
2411.D.1	Failure of Device Owner to Provide a Monthly Report	Not applicable	\$1,000
2411.D.3	Failure of Device Owner to Maintain All Audit Tapes for a Period of 3 Years	Not applicable	\$1,000
2411.D.4	All Licensed Device Owners Shall Only Purchase or Lease Devices from a Licensed Distributor or Owner	Not applicable	Administrative Action
2411.D.5	Possessing Ram Clear Chips by Device Owner	Not applicable	Administrative Action
2411.D.6	Failure to Notify Division Technical Staff Prior to Removal of Devices from Service for Less Than 72 Hours	Not applicable	\$1,000
2411.D.7	Devices Disabled from the Central Computer for More Than 72 Hours Shall Be Transferred to the Device Owner's Warehouse Proper Paperwork Sent to Division within Five Business Days	Not applicable	\$1,000
2411.E.1	Failure to Provide Quarterly Report Requested by Division	\$ 500	\$1,000
2411.E.3	Failure to Provide Monthly Fuel Sales Reports	Not applicable	\$2,000
2411.E.4	Failure of Licensed Truck Stops to Maintain Sufficient Fuel Sales Records	Not applicable	Administrative Action
2411.F.1.a	Failure of Licensed Service Entity to Maintain Invoices	Not applicable	\$1,000
2411.F.1.b	Failure of Licensed Service Entity to Maintain a List of All Certified Technicians	Not applicable	\$1,000
2411.F.2	Failure of Licensed Service Entity to Have a Certified Technician and Adequate Facilities Approved by Division	Not applicable	\$1,000
2411.F.4	Possessing Ram Clear Chips by Licensed Service Entities	Not applicable	Administrative Action
2411.G.3	Failure to Submit Device Forms Required by the Division in a Timely Manner	\$ 500	\$1,000
2411.H.1	Misrepresentation of Contracts	Administrative Action	Administrative Action
2411.H.2	Failure to Provide Copies of Written Contracts, or Summaries of Oral Contracts, Pertaining to the Operation of Devices within 10 Business Days of Making Such Contracts	\$1,000	\$2,000
2411.H.3	Party to Video Gaming Contract	Administrative Action	Administrative Action
2411.H.4	No Licensee Shall Enter into a Contract with an Individual Deemed Unsuitable	Administrative Action	Administrative Action
Devices			
2413.A.1.a-d	Device Specifications	Administrative Action	Administrative Action
2413.A.1.e	Unapproved Information on Device Screen/Housing	\$ 100	\$ 200
2413.A.1.e.ii	The Phrase "No Person under the Age of 21 Allowed to Play" Shall Be Conspicuously Displayed on the Face of All Devices	\$ 250	\$ 500
2413.A.1.f-s	Device Specifications	\$1,000	\$2,000
2413.A.2-4	Devices Shall Not Have Any Switches, Jumpers, Wire Posts, or Any Other Means of Manipulation That Could Be Used to Affect the Outcome of a Game	Administrative Action	Administrative Action
2413.A.5-6	Devices Shipped to and Transported through Louisiana Shall at All Times Remain in the Demonstration Mode and Shall Not Accept Coin or Currency and Hidden Icons	Administrative Action	Administrative Action
2413.B.2-6	Licensed Manufacturers Shall Supply the Division with Timetables and Guidelines for Accomplishing Tasks Involved in Testing of Devices, Provide Assistance in Troubleshooting, Submit Operational Manuals, Equipment and Parts	Not applicable	\$1,000
2413.B.6.d	No Device Shall Contain Software with Any Transparent Codes or Security Features That Could Evoke Functions Such as Pay Tables, Payout Percentages or Counters	Not applicable	Administrative Action
2413.C.1	No Device Shall Be Altered or Modified without Written Permission from the Division	Administrative Action	Administrative Action

Regulation Number	Violation Description	Licensed Establishments with up to Three Machines	All Other Licensees
2413.C.2	No Unauthorized Modifications to Devices	Administrative Action	Administrative Action
2413.E.1	Only Certified Technicians May Access the Interior of an Enrolled and Enabled Device	\$ 500	\$1,000
2413.E.2	All Device Owners Shall Maintain a Current, Written Maintenance Log for Each Device Operating within a Licensed Establishment on a Division Approved Form	Not applicable	\$1,000
2413.E.3	A Division Approved Ram Clear Chip and Procedure Shall Be Used When a Device's Memory Is To Be Cleared	\$ 500	\$1,000
2411.E.4	Failure of Licensed Truck Stops to Maintain Sufficient Fuel Sales Records	Not applicable	Administrative Action
2413.E.5	Only Licensed Manufacturers, Distributors and Division Personnel Are Allowed to Possess Ram Clear Chips	Administrative Action	Administrative Action
2413.E.6	Use of Any Other Method to Clear the Memory of a Device Is Prohibited, Unless Specifically Authorized	\$ 500	\$1,000
2413.E.7	The Division Shall Be Notified before a Device Is Disconnected from the Central Computer	\$ 500	\$1,000
2413.E.8	No Substitutions or Replacement of Devices unless Approved by the Division and Appropriate Decal Is Affixed	\$ 500	\$1,000
2413.F.1	Failure to Provide Information of Shipment of Devices and Obtaining Division Approval	\$ 500	\$1,000
2413.F.2	Failure to Provide Division with the Make, Model, Serial Number and an Inventory of the Devices Being Shipped	\$ 500	\$1,000
2413.F.3	The Division Shall Be Notified at Least Three Business Day Prior to Shipment of Any Devices	Deny Shipment	Deny Shipment
2413.F.4	Devices Shall Be Shipped within 10 Business Days of the Notification and Approval	\$ 500	\$1,000
2413.F.5	All Devices Shall Be Shipped to an Approved Location	Not applicable	Administrative Action
2413.G.1	Failure to Request Local Law Enforcement to Investigate Damage or Theft of Any Device	\$ 500	\$1,000
2413.G.2	Failure to Obtain and Forward Requested Reports to the Division after Investigation	Not applicable	\$1,000
2413.G.3	The Device Owner or Licensed Establishment Shall Notify the Division, in Writing, of Any Damage to or Theft from a Device	\$ 500	\$1,000
2413.H.1	When a Device Is Permanently Removed from Service by a Licensed Device Owner, the Validation Decal Shall Be Removed by That Device Owner and Shall Be Returned to the Division with the Completed Device Transfer Report	Not applicable	\$1,000
2413.H.2	The Completed Device Transfer Report Shall Be Submitted to the Division within 5 Business Days	\$ 500	\$1,000
2413.H.3	No Devices Which Are Permanently Removed from Service Shall Have a Validation Decal Displayed on It	\$ 500	\$1,000
2413.I.1	No Licensee Shall Place or Allow Placement of Devices unless the Device Is Placed Pursuant to the Provisions	Administrative Action	Administrative Action
2413.I.2	No Licensee May Possess or Offer for Play an Unlicensed Device or Any Other Gambling Device	Administrative Action	Administrative Action
2413.K.1	Failure to Store Devices in a Warehouse in a Manner Which Easily Displays Serial Number Plate and/or Permit Sticker	Not applicable	\$ 500
2413.K.2	Device Owners Who Wish to Share Warehouse Space Must Meet Certain Criteria	Not applicable	\$ 500
Gaming Establishments			
2415.B.1	Security Officers or Off Duty Officers are Required in All Establishments with More Than 20 Devices	Not applicable	\$2,000
2415.B.2	Continuous Video Surveillance on Premises with 20 or More Devices	Not applicable	\$2,000
2415.C.1	Device Groupings Shall Be Physically Located within the Licensed Establishment	\$ 250	\$ 500
2415.C.2	No Device Shall Be Placed Closer Than 12 Inches to Any Other Device (May Be Placed Back to Back)	\$ 250	\$ 500
2415.C.3	Devices at a Qualified Truck Stop Facility Shall Not Be Placed in Certain Areas on the Premises	Not applicable	\$1,000
2415.D.1	No Licensed Establishment Shall Be Altered or Renovated Dealing with Devices w/o Division Approval	\$ 500	\$1,000
2415.D.2	Any Licensed Establishment That Allows Mixed Patronage Shall Have Devices in Designated Areas with a Partition	\$ 500	\$1,000
2415.D.3.a-d	A Licensed Establishment That Is Connected to Another Business Shall Have a Door between Them That Automatically Closes, Have a Separate Outside Entrance, Keep Records Separate and Have Personnel That Are Solely Employed by the Licensed Establishment	\$1,000	\$2,000
2415.D.4.a-d	A Truck Stop Facility Licensed after Having Filed a New Application on or after July 1, 2000, Shall Comply with Certain Parking Area Requirements	Not applicable	Administrative Action
2415.D.5	Failure to Maintain Compliance with Parking Area Requirements	Not applicable	Administrative Action
Code of Conduct of Licensees and Permittees			
2417.A.1	All Licensees and Permittees Shall Comply with All Applicable Federal, State and Local Laws and Regulations	Administrative Action	Administrative Action
2417.A.2	All Licensees and Permittees Shall Conduct Themselves in a Professional Manner When Communicating with the Public and Division	\$ 500	\$1,000
2417.B.1-5	Unsuitable Conduct	Administrative Action	Administrative Action
2417.C.1.a-j	Additional Causes for Disciplinary Action	Administrative Action	Administrative Action

Regulation Number	Violation Description	Licensed Establishments with up to Three Machines	All Other Licensees
Investigations			
2419.B.1.b	Any Licensed Premises Shall Be Subject to Inspection, The Licensee Shall Render Full Courtesy and Cooperation to Agents	\$ 500	\$1,000
2419.B.2	All Licensees Shall Make Available to the Division Records Requested	Administrative Action	Administrative Action
2419.B.3.b	All Devices Shall Have, at All Times, the Proper Validation Decal Affixed to the Device and Maintenance Log Books Properly Secured and Available for Inspection	\$ 500	\$1,000
Louisiana Gaming Control Law			
R.S. 27:27.3	Failure to Post Toll Free Telephone Number on Advertisements	\$ 500	\$1,000
R.S. 27:306(A)(2)(e)(i)-(v)	A Lounge Located in a Licensed Hotel/Motel Must Meet Certain Criteria	Not applicable	Administrative Action
R.S. 27:306(A)(4)(c)(ii)(aa)-(ee)	A Restaurant Located at a Licensed Truck Stop Must Meet Certain Criteria	Not applicable	Administrative Action
R.S. 27:306(A)(4)(c)(iii)(aa)-(cc)	Parking Area at a Licensed Truck Stop Must Meet Certain Criteria	Not applicable	Administrative Action
R.S. 27:306(A)(4)(c)(vi)(aa)-(gg)	Licensed Truck Stop Must Maintain Certain Amenities	Not applicable	Administrative Action

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 32:

Family Impact Statement

Pursuant to the provisions of R.S. 49:953.A., the Louisiana Gaming Control Board, through its chairman, has considered the potential family impact of amending LAC 42:XI.2407 and adopting LAC 42:XI.2430.

It is accordingly concluded that amending LAC 42:XI.2407 and adopting LAC 42:XI.2430 would appear to have a positive yet inestimable impact on the following:

1. the effect on the stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the effect on the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

All interested persons may contact Tom Warner, Attorney General's Gaming Division, telephone (225) 326-6500, and may submit comments relative to these proposed Rules, through September 11, 2006, to 1885 North Third Street, Suite 500, Baton Rouge, LA 70802.

H. Charles Gaudin
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Operation of Video Draw Poker
Devices and Penalty Schedule**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No implementation costs are anticipated.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change adopting a penalty schedule to be published as a rule in the Louisiana Administrative Code is a modification from a penalty schedule previously approved by the Board in 1998. While some penalties increase and others stay at the same amount it is impossible to determine what the net effect on revenue collections will be since the Board is unable to estimate the number of violations that will occur in

the future and higher penalties may or may not result in greater compliance and fewer violations.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change adopting a penalty schedule to be published as a rule in the Louisiana Administrative Code is a modification from a penalty schedule previously approved by the Board in 1998. While some penalties increase and others stay at the same amount it is impossible to determine what the net costs or economic benefits to directly affected persons (video Poker licensees) will be since the Board is unable to estimate the number of violations that will occur in the future and higher penalties may or may not result in greater compliance and fewer violations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment is estimated.

H. Charles Gaudin
Chairman
0608#042

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Office of Charitable Gaming**

Electronic Video Bingo
(LAC 42:I.1811, 1817, 1911 and 1933)

Under authority of R.S. 4:705(10), 707, 724 and 729 and R.S. 47:1511 and in accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Charitable Gaming, proposes to amend LAC 42:I.1817, 1911, and 1933 and to repeal §1811 all relative to electronic video bingo.

The amendments to LAC 42:I.1911.A.1 will be effective 90 days after adoption to allow manufacturers time to modify machines to comply with the Rule's requirements.

Title 42

LOUISIANA GAMING

Part I. Charitable Bingo, Keno, Raffle

Subpart 2. Electronic Video Bingo

Chapter 18. Electronic Video Bingo Rules

§1811. Operation of Machines

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:705(10), 707 and 724 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Justice, Corrections, Criminal Justice and Law Enforcement Division, LR 11:796 (November 1988), repealed by the Department of Revenue, Office of Charitable Gaming, LR 32:

§1817. Enforcement and Regulation

A. - E. ...

F. Civil Violations

1. When the department determines a permittee has violated the act or these rules, the department may issue a civil violation to the permittee in an amount not less than \$250 nor more than \$1,000. Violations may be issued for each act not in accord with these regulations. Each day of operation in violation constitutes a separate violation.

2. A violation may be issued for, but is not limited to the following acts:

- a. the operation of an unpermitted machine;
- b. the use of more than 35 electronic video bingo machines on a premises;
- c. the unauthorized breaking of Seal A or Seal B in a machine;
- d. the failure to report and pay timely the fees assessed;
- e. the failure to prohibit persons under the age of 21 years old from playing the machine;
- f. the falsification of application or reporting documents;
- g. the refusal to allow inspection of the machines;
- h. the unauthorized destruction of printed ticket vouchers and accounting ticket copies.

G. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:705(10), 707 and 724 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Justice, Corrections, Criminal Justice and Law Enforcement Division, LR 11:798 (November 1988), amended by the Department of Revenue, Office of Charitable Gaming, LR 32:

Chapter 19. Electronic Video Bingo

§1911. Machine Specifications

A. Prior to approval for use in the state, each machine must meet the following specifications with respect to its operation.

1. It shall offer and display only the game of bingo. No game, symbols or activity other than bingo may be displayed on an electronic video bingo machine, unless approved by the department in writing.

A.2. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:705(10), 707 and 724 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 17:482 (May 1991), amended by the Department of Revenue, Office of Charitable Gaming, LR 32:

§1933. Operation of Machines

A. Machines may be available for play at commercial and noncommercial locations only during a licensed session during which no less than 10 games of call bingo or keno are played.

B. Machines may be available for play at a noncommercial location which does not lease its facility to other licensed organizations only during a licensed session at times other than when call bingo or keno games are being conducted.

C. No person under the age of 21 years old shall be permitted to play any electronic video bingo machine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:705(10), 707 and 724 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 17:482 (May 1991), amended by the Department of Revenue, Office of Charitable Gaming, LR 32:

Family Impact Statement

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature.

1. Implementation of this proposed Rule will have no effect on the stability of the family.

2. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. Implementation of this proposed Rule will have no effect on family earnings and family budget.

5. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Michael Legendre, Director, Office of Charitable Gaming, Department of Revenue, P.O. Box 98502, Baton Rouge, LA 70884-9502 or by fax to (225) 925-7069. All comments must be submitted by 4:30 p.m., Monday, September 25, 2006. A public hearing will be held on Tuesday, September 26, 2006, at 10 a.m. in the Calcasieu Room on the Second Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Electronic Video Bingo**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

These proposed amendments clarify that electronic video bingo machines may only offer and display the game of bingo and address the age limit of persons allowed to play such electronic video machines. These amendments are necessary since approval of hybrid electronic bingo/slot machines, which have replaced traditional electronic video bingo machines. Use of these hybrid machines has created a concern that gamers believe them to be bona fide slot machines and not charitable gaming electronic video bingo machines. This is particularly a problem in locations that have prohibited video poker and other slot machine gaming. Implementation of this proposed rule will have negligible impact on the agency's costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

These proposed amendments will have negligible effect on the Office of Charitable Gaming's revenue collections and no effect on the revenue collections of local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The two manufacturers of the hybrid electronic video bingo/slot machines that operate in the state will be affected by these proposed amendments because the hybrid machines will have to be reprogrammed to display only the bingo game. The manufacturers will have to make the program modifications and then submit the revised programs to the gaming testing lab at an approximate cost of \$4,000 to each manufacturer. Once the programs have been approved, they will have to distributed and installed on the hybrid machines. The manufacturers' reprogramming and distribution costs are not known, but should be minimal. The amendments to Section 1817 prohibiting play of EVB machines by persons under 21 may result in some reduction of revenue to organizations and machine operators; however, the amount of any reduction cannot be estimated with any degree of certainty.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These proposed amendments should have no effect on competition or employment.

Cynthia Bridges
Secretary
6008#048

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

**Food Stamp Program—Implementation of the Louisiana
Combined Application Project (LaCAP)
(LAC 67:III.1999 and Chapter 21)**

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 3, Food Stamps at Chapter 19, Certification of Eligible Households and to adopt Chapter 21, Louisiana Combined Application Project (LaCAP).

Pursuant to the Food Stamp Act of 1977 and in accordance with requirements to operate demonstration projects under Section 17(b) of said Act, the agency will implement the Louisiana Combined Application Project (LaCAP). The purpose of LaCAP is to strengthen access to nutrition benefits for disadvantaged individuals while improving the administration of the Food Stamp Program.

The agency is amending §1999 to address when a concurrent notice shall be sent to a household and situations in which a concurrent notice is not necessary.

Title 67

SOCIAL SERVICES

**Part III. Office of Family Support
Subpart 3. Food Stamps**

**Chapter 19. Certification of Eligible Households
Subchapter M. Notice of Adverse Action
§1999. Reduction or Termination of Benefits**

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the household at the time of action in the following situations:

1. the agency disqualifies a household member because of an intentional program violation and the benefits of the remaining household members are reduced or ended because of the disqualification;
2. benefits are reduced or terminated at the end of the certification period when the client timely reapplies;
3. the client's whereabouts are unknown and agency mail directed to him has been returned by the Post Office indicating no known forwarding address;
4. the client has been certified in another state and that fact has been established;
5. the client signs a statement requesting closure or reduction in benefits and waives the right to advance notice;
6. benefits are reduced or terminated effective the month following the semi-annual report month as a result of changes reported through the semi-annual reporting process;
7. the agency receives a written report signed by the head of the household or other responsible household member which provides sufficient information for the agency to determine the household's benefit amount or ineligibility;
8. mass changes;
9. based on reliable information, the agency determines that the household has moved or will be moving out of the state prior to the next monthly issuance;
10. the household applied for cash assistance and food stamps at the same time and has been getting food stamps while waiting for approval of the cash assistance grant;
11. the client was a certified resident in a drug or alcohol treatment center or a group living arrangement which loses its state certification or FNS disqualifies it as a retailer;

12. a household certified under expedited processing rules provides postponed verification which reduces or terminates benefits.

B. A concurrent notice shall not be sent to the household at the time of action in the following situations:

1. all members of the household have died;
2. the household's allotment changes from month to month during the certification period because of changes expected at the time of certification;
3. the agency recoups benefits from a client who previously received a repayment demand letter; and
4. the Fraud and Recovery Section converts a cash payment to allotment reduction because the household failed to make agreed payments on a claim.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55903 et seq., 7 CFR 273.13, 7 CFR 273.12(f)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:324 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998), LR 32:

Chapter 21. Louisiana Combined Application Project (LaCAP)

§2101. General Authority

A. The Louisiana Combined Application Project (LaCAP) is established in accordance with applicable state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Subchapter A. Household Concept

§2103. Household Definition

A. The definition of a household is an individual who is receiving Supplemental Security Income (SSI) and:

1. is at least 60 years old;
2. has a federal living arrangement of Code "A" as determined by the Social Security Administration (SSA);
3. is not institutionalized, or otherwise ineligible for food stamps due to immigration status, an Intentional Program Violation, or drug conviction; and
4. lives alone or declares to purchase and prepare food separately from others in a shared living situation.

B. SSI individuals whose payments are in a "suspense" or "terminated" status as coded by SSA may not participate in LaCAP.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2105. Application Process

A. The Office of Family Support shall make an eligibility determination and issue food stamp benefits within 30 days following the date of application for LaCAP.

B. LaCAP applications will be processed without a face-to-face or telephone interview.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.2(g), 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2107. Benefits

A. Participants will receive one of four standard amounts of food stamp benefits based on the household's total combined shelter (housing and utilities) costs.

B. Benefit levels and shelter thresholds used to determine benefits will be adjusted each year to reflect changes in the thrifty food plan and prevailing shelter expenses. Benefit levels will also be adjusted annually based on the cost-of-living adjustments for SSI.

C. Eligibility begins the first day of the month the LaCAP application is received. Benefits will not be prorated.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2109. Certification Period

A. A certification period of 36 months will be assigned to each eligible LaCAP case.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7CFR Part 282, and section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2111. Change Reporting

A. Households participating in LaCAP are not required, but must be allowed, to report changes in circumstances affecting their eligibility or benefit level.

B. The agency must act on changes when it becomes aware of the change from the household or another source if the change affects the household's eligibility or benefit level.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2113. Household Options

A. Households may choose to opt out of LaCAP at any time and participate in the regular Food Stamp Program, if otherwise eligible.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2115. Notices of Adverse Action

A. LaCAP households shall be notified of action to reduce or terminate benefits in accordance with procedures outlined in Chapter 19, Subchapter M, Notice of Adverse Action.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.13.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§2117. Recovery of Overissued Benefits

A. Establishment of claims, penalties, and collection methods for LaCAP households shall be handled in accordance with procedures outlined in Chapter 19, Subchapter P, Recovery of Over-Issued Food Stamp Benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.B., 7 CFR 273.18.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? Implementation of this Rule will have a positive impact on the stability of the family by providing the elderly, disabled participants easier access to the Food Stamp Program and the possibility that they will receive an increased food stamp benefit level.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? Implementation of this Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? Implementation of this Rule will have no impact on the functioning of the family.

4. What effect will this have on family earnings and family budget? Implementation of this Rule will have a positive impact on the family budget as the food stamp benefit level for elderly, disabled individuals will be slightly higher through LaCAP.

5. What effect will this have on the behavior and personal responsibility of children? Implementation of this Rule will have no impact on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this is strictly an agency function.

All interested persons may submit written comments through September 28, 2006, to Adren O Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton

Rouge, LA, 70804-9065. He is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on September 28, 2006, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, Louisiana, beginning at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Ann S. Williamson
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Food Stamp Program—Implementation
of the Louisiana Combined Application Project (LaCAP)**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Implementation costs associated with this rule change are the costs of publishing the rule, printing policy changes, and form revisions which are estimated to be approximately \$600 (\$300 State/\$300 Federal). These funds are routinely included in the agency's annual budget. In addition, the proposed rule change may result in a small increase in federal Food Stamp benefit expenditures since more eligible households may be certified, but this possible increase cannot be determined, should be minimal, and would be paid with 100% federal funds. There will be no increase in federal Food Stamp benefit expenditures for current Food Stamp recipients since LaCAP has been found by the U.S. Department of Agriculture, Food and Nutrition Service (USDA-FNS) to be cost neutral (no one can receive both regular Food Stamp benefits and LaCAP benefits simultaneously). If there are any increased expenditures, they will be paid with existing federal funds provided by USDA-FNS.

There will be no costs to local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no impact on revenue collections for state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

SSI recipients who are not currently receiving Food Stamp benefits and who are at least 60 years of age and living alone may become eligible for Food Stamps as a result of LaCAP. Current Food Stamp recipients who meet the LaCAP criteria and choose to receive LaCAP may receive either a higher or lower amount of Food Stamp benefits, depending on individual circumstances.

There are no costs to any persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed rule will have no impact on competition and employment.

Adren O. Wilson
Assistant Secretary
0608#059

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

CCAP/STEP Mandatory Electronic Payments
(LAC 67:III.2901, 2902, 2905-2913, 5107, 5109, and 5729)

The Department of Social Services, Office of Family Support, proposes to amend LAC 67:III §§5107 and 5109 in the Child Care Assistance Program (CCAP) and §5729 in the Strategies to Empower People (STEP) Program, and to repeal Subpart 5. Family Independence Work Program (FIND Work).

As a result of delays and problems with the distribution of CCAP child care payments and STEP supportive services payments during and after Hurricanes Katrina and Rita and with the advent of 2006 hurricane season and the possibility of further delays in the distribution of such payments, the agency has chosen to disburse these payments electronically through direct deposit and stored value cards. This electronic disbursement process will be mandatory for all CCAP providers and STEP participants effective September 1, 2006. Electronic disbursement will allow the Agency to provide effective and efficient disbursement of CCAP and STEP payments while eliminating the need to print and mail checks. Authority for this action is ACF Guidance, ACYF-IM-CC-05-03, Flexibility in Spending CCDF Funds in Response to Federal or State Declared Emergency Situations.

Additionally, the agency is repealing the FIND Work Program as it was replaced by the Strategies to Empower People (STEP) Program in October 2003.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 5. Family Independence Work Program

Chapter 29. Organization

§2901. General Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:626 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 19:504 (April 1993), LR 24:1135 (June 1998), repealed LR 32:

§2902. State Plan

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474, R.S. 46:233 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:450 (April 1997), amended LR 28:1598 (July 2002), repealed LR 32:

§2905. Program Administration

Repealed.

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:42146 et seq., 45 CFR 250.30, 45 CFR 250.33, R.S. 460.3(A)(3), R.S. 46:453(B), 45 CFR 251.4 and 45 CFR 251.5, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:627 (July 1990), amended by the Department of Social Services, Office

of Family Support, LR 17:973 (October 1991), LR 19:505 (April 1993), LR 23:450 (April 1997), repealed LR 32:

Subchapter B. Participation Requirements

§2907. Individual Participation Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P. L. 104-193 and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:626 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 16:1064 (December 1990), LR 19:505 (April 1993), LR 19:1177 (September 1993), LR 23:450 (April 1997), LR 24:1781 (September 1998), LR 25:2455 (December 1999), LR 26:1343 (June 2000), repealed LR 32:

§2909. Failure to Participate

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193; R.S. 46:231, R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:627 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 18:870 (August 1992), LR 19:505 (April 1993), LR 23:451 (April 1997), LR 24:353 (February 1998), LR 25:2455 (December 1999), LR 26:1343 (June 2000), repealed LR 32:

Subchapter C. Activities and Services

§2911. Work Activities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:626 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 17:1227 (December 1991), LR 19:505 (April 1993), LR 20:1130 (October 1994), LR 22:1142 (November 1996), LR 23:451 (April 1997), LR 25:2456 (December 1999), repealed LR 32:

§2913. Support Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:231; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:388 (April 1991), amended LR 18:748 (July 1992), LR 18:1268 (November 1992), LR 19:505 (April 1993), LR 20:794 (July 1994), LR 23:451 (April 1997), LR 24:356 (February 1998), LR 24:1135 (June 1998), LR 25:2456 (December 1999), LR 26:1343 (June 2000), LR 28:102 (January 2002), repealed LR 32:

Subpart 12. Child Care Assistance Program

Chapter 51. Child Care Assistance Program

Subchapter A. Administration, Conditions of Eligibility, and Funding

§5107. Child Care Providers

A. ...

B. A licensed Class A center or licensed Class A Head Start center must be active in the Child Care Assistance Program (CCAP) Provider Directory, complete and sign a Class A provider agreement, and provide complete and accurate documentation and information required for Direct Deposit before payments can be made to that facility.

C. - D.1.d ...

E. A public or non-public school program must be certified, must complete and sign a school program provider agreement and Form W-9, must be regulated by the Board of Elementary and Secondary Education (BESE) if a public school or *Brumfield vs. Dodd* approved if a non-public

school, and provide complete and accurate documentation and information required for Direct Deposit before payments can be made to that provider.

F. ...

G.1. A provider shall be denied or terminated as an eligible CCAP provider if:

a. - g ...

h. a Class A or School Child Care Provider fails to submit complete and accurate documentation and information required for Direct Deposit.

G.2. - I.2. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484, 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:

§5109. Payment

A. - E. ...

F. Electronic disbursement of child care payments shall be mandatory for all types of CCAP providers. Electronic disbursement of child care payments includes direct deposit to the CCAP provider's bank account (checking or savings) or payments to a stored value card account for the CCAP provider. It is mandatory for Class A and School Child Care providers to utilize direct deposit to receive their CCAP payments. The fees associated with the use of a stored value card are subject to the conditions of that financial institution.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), repromulgated LR 30:2078 (September 2004), LR 31:2265 (September 2005), LR 32:

Subpart 16. Strategies to Empower People (STEP) Program

Chapter 57. Strategies to Empower People (STEP) Program

Subchapter C. STEP Program Process

§5729. Support Services

A. - B.5....

C. Electronic disbursement of support services payments shall be mandatory for all payment types.

1. Electronic disbursement of support services payments other than child care payments includes direct deposit to the STEP participant's bank account (checking or savings) or payments to a stored value card account for the STEP participant.

2. Electronic disbursement of child care payments includes direct deposit to the CCAP provider's bank account (checking or savings) or payments to a stored value card account for the CCAP provider.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004), amended LR 32:

Family Impact Statement

- 1. What effect will this Rule have on the stability of the family? This Rule will have no effect on the stability of the family.
- 2. What effect will this Rule have on the authority and rights of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.
- 3. What effect will this Rule have on the functioning of the family? This Rule will have no effect on the functioning of the family.
- 4. What effect will this Rule have on family earnings and family budget? This Rule will allow CCAP providers and STEP participants to accept CCAP and STEP payments more quickly.
- 5. What effect will this Rule have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.
- 6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this is strictly an agency function.

Interested persons may submit written comments by September 28, 2006, to Adren O. Wilson, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, LA, 70804-9065. He is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on September 28, 2006, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Ann Silverberg Williamson
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: CCAP/STEP
Mandatory Electronic Payments**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
Effective September 1, 2006, the Office of Family Support (OFS) will require all Child Care Assistance Program (CCAP) and Strategies to Empower People (STEP) Program payments to be made electronically by either direct deposit or stored value cards effective with September 2006 payments. The agency estimates a savings of \$40,440 for FY 06/07 and \$49,248 for FY 07/08 and 08/09. The estimated FY 06/07 cost includes \$600 for the cost of publishing rulemaking and program related materials.
OFS currently issues approximately 6,248 CCAP checks and 2,502 STEP checks each month, for a total of 8,750 checks

that will no longer be mailed each month. The total savings per month are calculated as follows:

- Postage savings: 8,750 (checks) x .293 (postage per check = \$2.564 (monthly)
- Envelope savings: 8,750 (checks) x .013 (per envelope) = \$114 (monthly)
- Check stock savings 8,750 (checks) x .008 (cost per check for stocking) = \$70 (monthly)
- Bank check processing fee savings: 8,750 (checks) x .155 (fee per check) = \$1,356 (monthly)

Total savings per month = \$4,104. Since this change will be effective September 2006, estimated savings for 06/07 will be \$4,104 x 10 months = \$41,040. Costs include \$600 in estimated rule publication fees. The total estimated savings for FY 06/07 is \$41,040 - \$600 = \$40,440. Total estimated savings for FY 07/08 and FY 08/09 will be \$4,104 x 12 months = \$49,248.

There are no implementation costs or savings associated with the repeal of the FIND Work Program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no implementation costs or savings associated with the repeal of the FIND Work Program. Implementation of this rule will have no effect on state or local revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs to any non-governmental groups. CCAP providers and STEP participants may or may not incur fees associated with the use of the stored value card (Chase Direct Payment Card) or direct deposit. The Chase Direct Payment Card offers free point-of-sale transactions, free monthly statements, and one free ATM withdrawal per deposit at Chase and All Point ATMS. Regarding direct deposit, most banks offer free checking accounts when a direct deposit is established so it is not anticipated that there will be fees involved with this service. Therefore, the agency is unable to project fee amounts that will be incurred by its customers as they may in fact not incur any fees. Additionally, Chase has been unable to project the amount of fees that the customers/clients might incur. There are no costs associated with the repeal of the FIND Work Program.

There is no anticipated economic benefit to any persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Adren O. Wilson
Assistant Secretary
0608#057

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

TANF Initiatives
(LAC 67:III.Chapter 55)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 15, Chapter 55, §§5549, 5555, 5581; to adopt §§5509, 5569, and 5583; and to repeal §5579.

Pursuant to Act 16 of the 2005 Regular Legislative Session, and HB 1 of the 2006 Regular Legislative Session, the agency proposes to provide funding through Memoranda of Understanding and contracts to several state agencies and other entities for implementation and administration of a number of TANF Initiatives which provide services to families with minor children in order to meet one of the four TANF goals. The initiatives being adopted include §5509, Domestic Violence Services, §5569, Alternatives to Abortion Services Program, and §5583, Children's Defense Fund Freedom Schools.

Additionally, the agency is proposing the following changes in order to clarify services and funding sources. §5549, OCS Child Welfare Program, is being amended to remove references to TANF Maintenance of Effort funds. §5555, Individual Development Account (IDA) Program, is being amended to show that IDA funds may be used for one or more qualified purposes as determined by the department and based on the needs of the community. §5581, Earned Income Tax Credit (EITC) Program, is being amended to include financial literacy as an additional service.

The agency also proposes to repeal §5579, Developmental and Socialization Activities Program for Foster Children, as funding is no longer available for this TANF Initiative.

A Declaration of Emergency signed June 1, 2006, adopting the Alternative to Abortion Services Program and the Children's Defense Fund Freedom Schools and amending the OCS Child Welfare Program was published in the June issue of the *Louisiana Register*.

A Declaration of Emergency signed July 1, 2006, amending the Individual Development Account (IDA) Program was published in the July issue of the *Louisiana Register*.

Title 67 SOCIAL SERVICES

Part III. Office of Family Support

Subpart 15. Temporary Assistance For Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5509. Domestic Violence Services

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to provide for services pertaining to domestic violence including rural outreach, services to children in shelters, and training of law enforcement and DSS personnel.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is not limited to needy families. Eligibility for services is limited to children and/or their parents or caretaker relatives who are victims of domestic violence.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§5549. OCS Child Welfare Programs (Effective April 12, 2002)

A. OFS shall enter into a Memorandum of Understanding with the Office of Community Services (OCS), the state child welfare agency, for collaboration in identifying and serving children in needy families who are at

risk of abuse or neglect. The methods of collaboration include:

A.1. - B. ...

C. Financial eligibility is limited to needy families which include a minor child living with a custodial parent or an adult caretaker relative. A needy family is a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), or Supplemental Security Income (SSI).

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:2374 (November 2002), amended LR 31:486 (February 2005), LR 32:

§5555. Individual Development Account Program (Effective July 1, 2002)

A. - B. ...

C. Effective July 1, 2006, IDA funds may be used for one or more of the following qualified purposes as determined by the secretary:

C.1 - D. ...

E. These services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in homes of relatives.

F. Eligibility is limited to low-income families at or below 200 percent of the federal poverty level.

G. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; Act 1098, 2001 Reg. Session; Act 84, 2002 First Extraordinary Session; Act 13, Reg. Session; HB 1, 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:45(January 2003), amended LR 32:

§5569. Alternatives to Abortion Services Program

A. Effective June 1, 2006, the Office of Family Support shall enter into contracts with public agencies, non-profit organizations, or for-profit organizations to provide intervention services including crisis intervention, counseling, mentoring, support services, and pre-natal care information, in addition to information and referrals regarding healthy childbirth, adoption, and parenting to help ensure healthy and full-term pregnancies as an alternative to abortion.

B. These services meet the TANF goals to provide assistance to needy families so children may be cared for in their own homes or in the homes of relatives and to encourage the formation and maintenance of two-parent families by providing pregnancy and parenting support to low-income women, their male partners, and families who are experiencing an unplanned pregnancy.

C. Eligibility for services is limited to pregnant women, their male partners, and/or pregnant minors whose family's income is at or below 200 percent of the federal poverty level.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§5579. Developmental and Socialization Activities Program for Foster Children

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1, 2004 Reg. Session, Act 16 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 31:488 (February 2005), repealed LR 32:

§5581. Earned Income Tax Credit (EITC) Program

A. The agency has entered into contracts to provide public awareness, education and targeted outreach strategies regarding the benefits of claiming the Earned Income Tax Credit (EITC) Program, state tax credit programs, and free taxpayer assistance, and to provide financial literacy to families receiving services under this program. Strategies include collaboration with the Internal Revenue Service, various state departments and the targeted expansion of existing outreach activities to assure that free taxpayer assistance is available statewide.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 1, 2004 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 31:1610 (July 2005), amended LR 32:

§5583. Children's Defense Fund Freedom Schools

A. Effective June 1, 2006, the agency shall enter into contracts to create supportive, nurturing, literature-rich environments for children ages 5 to 18 years of age by focusing on literacy, cultural heritage, parental involvement, servant-leadership, and social action. The Freedom Schools program connects the needs of children and their families with the resources of the community.

B. These services meet the TANF goal to prevent and reduce out-of-wedlock pregnancies.

C. Eligibility for services is not limited to needy families.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; HB 1 2006 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? Implementation of this Rule should have no impact on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule should have no impact on family functioning.

4. What effect will this have on family earnings and family budget? Adding financial literacy as a component of the EITC Program may have a positive effect on a family's earnings and budget.

5. What effect will this have on the behavior and personal responsibility of children? The Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, these programs are strictly an agency function.

All interested persons may submit written comments through September 28, 2006, to Adren O Wilson, Assistant Secretary, Office of Family Support, P.O. Box 94065, Baton Rouge, LA, 70804-9065.

A public hearing on the proposed Rule will be held on September 28, 2006, at the Department of Social Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, LA, beginning at 9:15 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Ann S. Williamson
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: TANF Initiatives**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The implementation costs for two new TANF Initiatives are \$1,500,000 for Domestic Violence Services and \$1,000,000 for Alternatives to Abortion Services Program. Act 17 of the 2006 Regular Session of the Louisiana Legislature allocated the funding for these two initiatives. The agency will enter into Memoranda of Understanding and contracts with state agencies and other entities to provide services for these programs. Future expenditures are subject to legislative appropriation. The programs will be discontinued if funding is not available.

Additionally, the Children's Defense Fund Freedom Schools Initiative is being adopted under the authority granted to the department by Louisiana's TANF Block Grant at a cost of \$730,000. The agency has entered into contracts with outside entities to create supportive, nurturing, literature-rich environments for children ages 5 to 18 years of age by focusing on literacy, cultural heritage, parental involvement, servant-leadership, and social action. The programs will serve approximately 550 children.

A Declaration of Emergency signed June 1, 2006, effected the Alternatives to Abortion Program and the Children's Defense Fund Freedom Schools.

The initiatives being amended (OCS Child Welfare Program, Individual Development Account Program, and Earned Income Tax Credit Program) or repealed (Developmental and Socialization Activities Program) by this rule will not result in any other costs or savings to state agencies other than the cost of publishing the rule, which is estimated to be \$400. These costs are routinely included in the agency's annual budget.

The total estimated implementation cost is approximately \$3,230,400. Funding for this increase in expenditures will be met with monies from Louisiana's TANF Block Grant.

There are no savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed changes will have no effect on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are not anticipated costs to any persons or non-governmental groups as a result of this rule.

The TANF Initiatives provide assistance to eligible clients in the form of services, which has no immediate impact on the person's income. The services offered through the programs that are affected by this proposed rule will continue with a long-term goal of improving the economic situations of the targeted families.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Adren O. Wilson
Assistant Secretary
0608058

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

2007 Turkey Season (LAC 76:XIX.113-117)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend the turkey rules and regulations for the 2007 season.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Season

§113. Turkey Hunting Regulations

A. Daily limit is one gobbler, two gobblers per season. Taking of hen turkeys, including bearded hens, is illegal. Still hunting only. Use of dogs, baiting, electronic calling devices and live decoys is illegal. Turkeys may be hunted with shotguns, including muzzle loading shotguns, using shot not larger than #2 lead or BB steel shot, and bow and arrow but by no other means. Shooting turkeys from a moving or stationary vehicle is prohibited. Shotguns capable of holding more than three shells prohibited.

B. It is unlawful to take from the wild or possess in captivity any live wild turkeys or their eggs. No pen raised turkeys from within or without the state shall be liberated (released) within the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2263 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2375 (November

2002), LR 29:2512 (November 2003), LR 30:2874 (December 2004), LR 31:3167 (December 2005), LR 32:

§115. Statewide Turkey Hunting Areas-Resident Game Birds and Animals

A. Shooting hours: one-half hour before sunrise to one-half hour after sunset.

Species	Season Dates	Daily Bag Limit	Possession Limit
Turkey	See Schedule	1	2/Season

B. Turkey season will open in designated areas on the fourth Saturday in March. The Area A turkey season will be 30 consecutive days in length, the Area B turkey season will be 23 consecutive days in length, and the Area C turkey season will be 16 consecutive days in length. Wildlife Management Areas, National Forests, National Wildlife Refuges, and U.S. Army Corps of Engineers land may vary from this framework. Deviation from this framework may occur in those years when the fourth Saturday in March falls the day before Easter.

C. Statewide Youth Turkey and Physically Challenged Season on private lands shall be the weekend prior to the statewide turkey season. Only youths younger than 16 years of age or hunters possessing a Physically Challenged Hunter Permit with wheelchair classification may hunt. Youth must possess a hunter safety certification or proof of successful completion of a hunter safety course. Each youth must be accompanied by one adult 18 years of age or older. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for the youth. Adults accompanying youth may not possess a firearm or bow. Youths may possess only one firearm or bow while hunting. Legal weapons and shot are the same as described for the turkey season. The supervising adult shall maintain visual and voice contact with the youth at all times. An adult may supervise only one youth during this special hunt. Only one gobbler per day may be taken and any gobbler taken by the hunter during this special season counts towards their seasonal bag limit of 2. Contact regional offices for a Physically Challenged Hunter Permit application.

D. 2007 Turkey Hunting Schedule

Area	Season Dates
A	March 24 - April 22
B	March 24 - April 15
C	March 24 - April 8
Private Lands Youth and Physically Challenged Hunter (Wheelchair Confined) Hunt	March 17 - 18

E. 2007 Turkey Hunting Season—Open Only in the Following Areas

1. Area A—March 24-April 22

a. All of the following parishes are open:

- i. Beauregard;
- ii. Bienville;
- iii. Claiborne (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- iv. East Baton Rouge;
- v. East Feliciana;
- vi. Grant (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);

- vii. Jackson;
 - viii. LaSalle;
 - ix. Lincoln;
 - x. Livingston;
 - xi. Natchitoches (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - xii. Rapides (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - xiii. Sabine;
 - xiv. St. Helena;
 - xv. Tangipahoa;
 - xvi. Union;
 - xvii. Vernon (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - xviii. West Baton Rouge;
 - xix. West Feliciana (including Raccourci Island);
 - xx. Winn (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
- b. Portions of the following parishes are also open:
- i. Allen—North of LA 104, west of LA 26 south of junction of LA 104 to US 190, north of US 190 east of Kinder, west of US 165 south of Kinder;
 - ii. Avoyelles—That portion bounded on the east by the Atchafalaya River, on the north by Red River to the Brouillette Community, on the west by LA 452 from Brouillette to LA 1, on the south by LA 1, eastward to Hamburg, thence by the West Atchafalaya Basin Protection levee southward;
 - iii. Calcasieu—North of I-10;
 - iv. Caldwell—West of Ouachita River southward to Catahoula Parish line;
 - v. Catahoula—South and west of the Ouachita River from the Caldwell Parish line southward to LA 8 at Harrisonburg, north and west of LA 8 from Harrisonburg to the LaSalle Parish line. ALSO that portion lying east of LA 15;
 - vi. Evangeline—North and west of LA 115, north of LA 106 from St. Landry to LA 13, west of LA 13 from Pine Prairie to Mamou and north of LA 104 west of Mamou;
 - vii. Franklin—That portion lying east of LA 17 and east of LA 15 from its juncture with LA 17 at Winnsboro;
 - viii. Iberville—West of LA 1. EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;
 - ix. Jefferson Davis—North of US 190 from junction with LA 26 to Kinder, west of US 165 and north of I-10 west from junction of US 165;
 - x. Madison—That portion lying east of US 65 from East Carroll Parish line to US 80 and south of US 80. Also, all lands east of the main channel of the Mississippi River;
 - xi. Morehouse—West of US 165 from the Arkansas line to the junction of LA 140 at Bonita, north and west of LA 140 to junction of LA 830-4 (Cooper Lake Road), west of LA 830-4 to US 165 at Bastrop, south of US 165 to junction of LA 3051 (Grabault Road) south of LA 3051 to junction of LA 138, west of LA 138 to junction of LA 134, north of LA 134 to the Ouachita Parish line;
 - xii. Ouachita—East of LA 143 from Union Parish line to US 80 in West Monroe, north of US 80 to LA 139, west of LA 139 to the Morehouse Parish line;

- xiii. Pointe Coupee—All of the parish except that portion bounded on the north by LA Hwy. 1, from Innis to the junction of LA Hwy 417, on the west by LA Hwy. 417 southward toward McCrea, on the south by LA Hwy. 417 from McCrea to its junction with Delhi Lane, then by Delhi Lane to LA Hwy. 418, then LA Hwy. 418 northward to LA Hwy. 1 at Innis. EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;
 - xiv. Richland—That portion south of US 80 and east of LA 17;
 - xv. St. Landry—That portion bounded on the west by the West Atchafalaya Basin Protection Levee and on the east by the Atchafalaya River. EXCEPTION: the Indian Bayou Area, see Federal Lands Hunting Schedule for Indian Bayou Area dates;
 - xvi. Upper St. Martin—All within the Atchafalaya Basin. EXCEPTIONS: Sherburne WMA and Indian Bayou Area, see WMA Turkey Hunting Schedule for special season dates on all state, federal and private lands within Sherburne WMA boundaries and see Federal Lands Hunting Schedule for Indian Bayou dates;
 - xvii. Tensas—That portion west of US 65 from the Concordia Parish line to its juncture with LA 128, north of LA 128 to St. Joseph; west and north of LA 605, 604 and 3078 northward to Port Gibson Ferry. Also all lands east of the main channel of the Mississippi River;
2. Area B—March 24-April 15
- a. All of the following parishes are open:
 - i. Caddo;
 - ii. DeSoto;
 - iii. Red River;
 - iv. St. Tammany;
 - v. Washington.
 - b. Portions of the following parishes are open:
 - i. Ascension—All east of the Mississippi River;
 - ii. Bossier—All open except that portion bounded on the north by I-20, on the west by LA 164, on the south by LA 164, and on the east by the Webster Parish Line;
 - iii. East Carroll—East of US 65 from Arkansas state line to Madison Parish line;
 - iv. Iberville—All east of the Mississippi River;
 - v. Webster—All open except that portion bounded on the north by I-20, on the east by U.S. 371, on the south by LA 164, and on the west by the Bossier Parish line (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
3. Area C—March 24-April 8
- a. All of the following parishes are open:
 - i. Concordia;
 - b. Portions of the following parishes are open:
 - i. Caldwell—All east of the Ouachita River;
 - ii. Catahoula—All of the parish EXCEPT for that portion located in Area A;
 - iii. Franklin—West of LA 17 from the Richland Parish line southward to Winnsboro, west of LA 15 southward to the Catahoula Parish line;
 - iv. Richland—West of LA 17 from Franklin Parish line to Ringle Road, south of Ringle Road to Ferguson Road, south of Ferguson Road to Little Road, south of Little Road to Big Creek, east of Big Creek to Franklin Parish line;

v. Tensas—East and south of US 65 from Concordia Parish line to LA 128, south of LA 128 to St. Joseph, east and south of LA 605, 604 and 3078 northward to Port Gibson Ferry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2264 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2376 (November 2002), LR 29:2512 (November 2003), LR 30:2875 (December 2004), LR 31:3167 (December 2005), LR 32:

§117. 2007 Wildlife Management Area Turkey—Hunting Regulations

A. General

1. The following rules and regulations concerning management, protection and harvest of wildlife have been officially approved and adopted by the Wildlife and Fisheries Commission in accordance with the authority provided in Louisiana Revised Statutes of 1950, Section 109 of Title 56. Failure to comply with these regulations will subject the individual to citation and/or expulsion from the management area.

2. Only those Wildlife Management Areas listed are open to turkey hunting.

3. ATVs, ATCs and motorcycles cannot be left overnight on WMAs EXCEPT in designated camping areas. ATVs are prohibited from two hours after sunset to 3 a.m. All roads including trails and roads designated as ATV only trails shall be closed to ATVs from March 1 through August 31 unless otherwise specified. ATV off-road or off-trail travel is prohibited. Certain trails may be open during this time period to provide access for fishing or other purposes. These trails will be marked by signs at the entrance of the trail. Otherwise, only walk-in hunting is permitted (bicycles permitted). All ATV trails on Jackson-Bienville WMA will be open for use by holders of Physically Challenged Hunter Permits (wheelchair bound classification only) during the special Physically Challenged Hunter (wheelchair bound classification) turkey season.

4. Bag limits on WMAs are part of the season bag limit. Only one turkey is allowed to be taken during special lottery hunts.

5. WMAs with youth turkey hunts are closed to all activities except turkey hunting by authorized youth hunt participants and fishing on the day(s) of the youth hunt.

B. Permits

1. Self-Clearing Permits. All turkey hunts, including lottery hunts, are self-clearing. Hunters must check in daily by obtaining a permit from a self-clearing station prior to hunting. The self-clearing permit must be in the hunter's possession while hunting. Upon completion of each days hunt, the hunter must check out by completing and depositing the hunter report portion of the permit in the check-out box at a self-clearing station before exiting the WMA.

2. Lottery Hunts. All or a portion of the turkey season on Bayou Macon, Clear Creek, Loggy Bayou, Sabine, Sherburne, Sicily Island, Tunica Hills, Union and West Bay WMAs are restricted to those persons selected as a result of the pre-application lottery. Special youth only lottery hunts will be held on Big Lake, Bens Creek, Fort Polk/Peason Ridge/KNF Calcasieu Ranger District, Jackson-Bienville,

Loggy Bayou, Sherburne, Sicily Island, Spring Bayou, Thistlethwaite, Union and West Bay WMAs. Deadline for receiving complete applications in the Baton Rouge office for all lottery hunts is 4:30 p.m. February 16, 2007. An application fee of \$5 must be sent with each application. Applicants for WMA youth hunts must be at least 8 years old on the day of the hunt. Applicants may submit only one application and will be selected for one WMA Turkey Lottery Hunt annually. Submitting more than one application will result in disqualification. Contact any district office for applications. Hunters must abide by self-clearing permit requirements. Youths chosen for special youth only hunts will be guided by members of the Louisiana Chapter of the National Wild Turkey Federation. One family member may accompany the youth and guide, but may not hunt.

C. Wildlife Management Area Turkey Hunting Schedule*

WMA	Non-Lottery Season Dates	Lottery Dates**	Permit Requirements
Bayou Macon	None	April 7-8	Self-Clearing
Bens Creek ¹	March 24-April 8	None	Self-Clearing
Big Lake	March 24-April 8	None	Self-Clearing
Bodcau	March 24-April 8	None	Self-Clearing
Boeuf	March 24-April 1	None	Self-Clearing
Clear Creek	April 2-22	March 24-25 March 31-April 1	Self-Clearing
Camp Beauregard	March 24-April 1	None	Self-Clearing
Fort Polk	March 24-April 22	None	Self-Clearing
Grassy Lake	March 24-April 8	None	Self-Clearing
Hutchinson Creek	March 24-April 22	None	Self-Clearing
Jackson-Bienville	March 24-April 8	None	Self-Clearing
Lake Ramsey	March 24-April 8	None	Self-Clearing
Little River	March 24-April 8	None	Self-Clearing
Loggy Bayou	None	April 14-15	Self-Clearing
Peason Ridge	March 24-April 22	None	Self-Clearing
Red River	March 24-April 8	None	Self-Clearing
Sabine	None	March 24-25 March 31-April 1	Self-Clearing
Sandy Hollow ¹	March 24-April 8	None	Self-Clearing
Sherburne ²	March 29-April 1	March 24-25 March 26-28	Self-Clearing
Sicily Island	None	March 24-26 March 27-29 March 30-April 1 April 2-4 April 5-8	Self-Clearing
Tangipahoa Parish School Board	March 24-April 22	None	Self-Clearing
Three Rivers	March 24-April 8	None	Self-Clearing
Tunica Hills South Tract	April 9-15	March 24-25 March 31-April 1 April 7-8	Self-Clearing
Tunica Hills Angola Tract ³	April 9-15	March 24-25 March 31-April 1 April 7-8	Self-Clearing
Union	None	April 7-8	Self-Clearing
Walnut Hills	March 24-April 22	None	Self-Clearing
West Bay	None	March 24-25 March 31-April 1	Self-Clearing

*Only those Wildlife Management Areas listed have a turkey hunting season. All other areas are closed.

**The deadline for receiving applications for all turkey Lottery Hunts on WMAs is February 16, 2007.

¹No turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

²All turkeys harvested on Sherburne WMA must be weighed and checked at WMA headquarters.

³Area closed to all users April 16 – August 31.

D. Wildlife Management Area Youth Hunts

WMA	Lottery Youth Hunt Date
Bens Creek	March 17
Big Lake	March 17
Fort Polk/Peason Ridge/ Calcasieu Ranger Dist.	March 17
Jackson-Bienville	March 17
Loggy Bayou	April 7
Sherburne	March 17-18
Sicily Island	March 17
Spring Bayou	March 17
Thistlethwaite	April 7
Union	March 31
West Bay	March 17

E. Wildlife Management Area Physically Challenged (Wheelchair Confined) Hunt. Jackson-Bienville WMA will be open April 14-20 to physically challenged hunters. Hunters must possess a Physically Challenged Hunter Permit with wheelchair classification. During this special hunt, ATVs may be used by physically challenged hunters on all designated ATV trails in accordance with the Physically Challenged Hunter Permit. Hunters must abide by self-clearing permit requirements. Contact regional offices for a Physically Challenged Hunter Permit application.

F. Federal Lands Turkey Hunting Schedule

1. Kisatchie National Forest (KNF) Turkey Hunting Schedule. Caney Ranger District, March 24-April 8; all remaining KNF lands, March 24-April 15 (including Catahoula and Red Dirt National Wildlife Management Preserves).

2. U.S. Army Corps of Engineers Turkey Hunting Schedule. Indian Bayou Area, March 17-18 physically challenged lottery only hunt, lottery hunt only on March 24-25 and March 26-28, non-lottery hunt March 29-April 1. Contact USCOE at 337-585-0853 for further information. Old River Control and Lock Areas, March 24-April 8. Contact USCOE (225) 492-2690 for further information.

3. National Wildlife Refuges. Bogue Chitto NWR, March 24-April 15; Lake Ophelia NWR, March 24-April 6 hunt ends at 12 p.m. each day; Tensas NWR, March 17-18 (youth lottery only), March 24-April 8; Upper Ouachita NWR, March 17 (youth lottery only). Contact the U.S. Fish and Wildlife Service for information regarding NWR hunts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 25:2265 (November 1999), amended LR 26:2636 (November 2000), LR 27:2272 (December 2001), LR 28:2377 (November 2002), LR 29:2514 (November 2003), LR 30:2876 (December 2004), LR 31:3169 (December 2005), LR 32:

Family Impact Statement

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Interested persons may submit written comments on the proposed Rule to David Moreland, Administrator, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than October 16, 2006.

Terry D. Denmon
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: 2007 Turkey Season**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Establishment of turkey hunting regulations is an annual process that is carried out using existing staff and funding levels. No increase or decrease in costs to state or local governmental units associated with implementing the proposed rule is anticipated.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

License revenue from the sale of various wild turkey licenses is estimated to be \$55,497. Failure to adopt this rule would result in no turkey hunting seasons and loss of state revenue collections from the sale of turkey stamps. In addition, loss of tax revenues of an undeterminable amount may occur to both state and local governmental units from the sale of supplies and equipment used in the pursuit of turkeys.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

An estimated 27,000 resident and nonresident sportsmen and an undeterminable number of sporting good distributors, retail outlets and landowners may be directly affected by this proposal. Turkey hunters in Louisiana generate income to retail outlets, landowners and commercial businesses that cater to the hunting public through hunting leases and the sale of related outdoor equipment and associated items (food, fuel, clothing, shotgun shells, etc.). These land and business owners will be negatively impacted if turkey hunting seasons, rules and regulations are not established and promulgated. The actual amount of this impact is not estimable at this time. Resident and nonresident turkey hunters will be required to purchase a Louisiana wild turkey license in addition to their basic and big game hunting licenses, provided they are not exempt from purchasing a turkey license or do not already possess a license that includes wild turkey hunting privileges. The additional costs incurred by turkey hunters for the purchase of wild turkey licenses will be \$5.50 for residents, non-resident active military, non-resident students and non-resident Louisiana natives, and \$20.50 for other non-residents.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Hunting supports approximately 17,000 full and part-time jobs in Louisiana of which a proportion is directly related to turkey hunting. Failure to establish turkey hunting seasons may have a negative impact on some of these jobs. It is anticipated that there will be little or no effect on competition in both the public and private sectors resulting from the proposed action.

Dwight Landreneau
Secretary
0608#029

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

Legislation

LEGISLATION

State Legislature House of Representatives

House Concurrent Resolution Number 1
of the 2006 Regular Session
by Representative Waddell
Vagus Nerve Stimulators
(LAC 50:XVII.504 and 505)

A Concurrent Resolution

To amend the Department of Health and Hospitals, office of public health, rules on Medicaid reimbursement, relative to Vagus Nerve Stimulators, and to direct the Louisiana Register to print the amendments in the Louisiana Administrative Code.

WHEREAS, the Department of Health and Hospitals, office of public health, has promulgated rules relative to Medicaid reimbursement for Vagus Nerve Stimulators; and

WHEREAS, thirteen other states have expressly provided for Medicaid reimbursement for the implementation and programming of Vagus Nerve Stimulators; and

WHEREAS, Louisiana and Arkansas are the only two states that do not allow all surgeons other than neurosurgeons to receive Medicaid reimbursement for Vagus Nerve Stimulators; and

WHEREAS, this rule is an unnecessary obstacle for patients wishing to receive a Vagus Nerve Stimulator implant; and

WHEREAS, R.S. 49:969 provides that "the legislature, by concurrent resolution, may suspend, amend, or repeal any rule or regulation or body of rules and regulations adopted by a state, department, agency, board, or commission".

THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that LAC 50:XVII.505(A) is hereby amended and reenacted, and LAC 50:XVII.504 is hereby enacted to read as follows.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XVII. Durable Medical Equipment

Subpart 1. Prosthetics

Chapter 5. Vagus Nerve Stimulator

§504. Implanting the Vagus Nerve Stimulator

A. The implantation of a Vagus Nerve Stimulator shall be performed by a surgeon who has been properly trained and is familiar with the carotid sheath.

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 29:2799 (December 2003), amended by House Concurrent Resolution Number 1 of the 2006 Regular Legislative Session, LR 32:1535 (August 2006).

§505. Programming the Vagus Nerve Stimulator

A. The programming of the VNS stimulator shall be performed by the surgeon who performed the implant procedure or by a licensed neurologist or psychiatrist. Programming subsequent to the first three times may be subject to post authorization review for medical necessity prior to payment of the claim. Authorization for payment will only be considered when there is documented clinical evidence to show that the recipient has experienced seizures since previous programming attempts. Payment for the programming procedure will only be authorized when it is performed as an attempt to reduce or prevent future episodes of seizures.

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 29:2800 (December 2003), amended by House Concurrent Resolution Number 1 of the 2006 Regular Legislative Session, LR 32:1535 (August 2006).

BE IT FURTHER RESOLVED that the clerk of the House of Representatives is hereby directed to transmit a suitable copy of this Resolution to the Office of the Louisiana Register and the Department of Health and Hospitals, office of public health.

BE IT FURTHER RESOLVED that the Louisiana Register is hereby directed to have the amendment to LAC 50:XVII.505(A) and the enactment of LAC 50:XVII.504 printed and incorporated in the Louisiana Administrative Code and to transmit a copy of the revised rule to the Department of Health and Hospitals, office of public health.

Joe R. Salter
Speaker of the House
and
Donald E. Hines
President of the Senate

0608#039

LEGISLATION

State Legislature House of Representatives

House Concurrent Resolution Number 8
of the 2006 Regular Session
by Representatives Lafonta, K. Carter, and Gray
Duration of Certification and Developmental Assistance
(LAC 19:II.115 and 301)

A Concurrent Resolution

To amend the Department of Economic Development, Small and Emerging Business Development Program rules to extend the period of time that a business may benefit from

the program and to direct the Louisiana Register to print the amendments in the Louisiana Administrative Code.

WHEREAS, LAC 19:II.115(A) and II.301(B)(5) provide that a business may be certified for only up to seven years for the Small and Emerging Business Development Program; and

WHEREAS, the devastating effects of Hurricane Katrina and Hurricane Rita have placed great impediments upon Louisiana's small and emerging businesses; and

WHEREAS, such impediments require that the term of certification for small and emerging businesses be lengthened to ten years to allow these businesses to recover from the effects of these two great disasters; and

WHEREAS, R.S. 49:969 provides that "the legislature, by concurrent resolution, may suspend, amend, or repeal any rule or regulation or body of rules or regulations adopted by a state department, agency, board, or commission".

THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that LAC 19:II.115(A) and II.301(B)(5) are hereby amended to read as follows.

Title 19

CORPORATIONS AND BUSINESS

Part II. Small and Emerging Business

Development Program

Chapter 1. General Provisions

§115. Duration of Certification

A. The maximum amount of time that a firm may be granted certification by the SEBD Program is ten years or when the firm graduates.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), LR 26:1572 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:544 (April 2003), LR 30:755 (April 2004), amended by House Concurrent Resolution Number 8 of the 2006 Regular Legislative Session, LR 32:1536 (August 2006).

Chapter 3. Developmental Assistance Program

§301. Developmental Assistance

A. ...

B. Developmental Steps

1. - 4. ...

5. Graduation from the Program. Upon completion of the program's ten year term or attainment of the SEB's programmatic goals, the SEB will graduate from the program. Companies that do not make satisfactory progress and/or exceed the net worth prerequisites for certification will be terminated from the SEBD Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:544 (April 2003), LR 30:755 (April 2004), amended by House Concurrent Resolution Number 8 of the 2006 Regular Legislative Session, LR 32:1536 (August 2006).

BE IT FURTHER RESOLVED that the clerk of the House of Representatives is hereby directed to transmit a copy of this Resolution to the Department of Economic Development, Small and Emerging Business Program.

BE IT FURTHER RESOLVED that the Louisiana Register is hereby directed to have the amendments provided for in this Resolution printed and incorporated into the Louisiana Administrative Code and to transmit a copy of the revised rules to the Department of Economic Development, Small and Emerging Business Program.

Joe R. Salter
Speaker of the House
and
Donald E. Hines
President of the Senate

0608#040

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 4-5, 2006, 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:	September 1, 2006
Re-Take Candidates:	September 22, 2006
Reciprocity Candidates:	November 10, 2006

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 September 2, 2006. Questions may be directed to (225) 952-8100.

Bob Odom
Commissioner

0608#027

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Retail Floristry Examination

The next retail floristry examinations will be given October 23-27, 2006, at 9:30 a.m. in the 4-H Mini Farm Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending in application and fee is September 8, 2006. No applications will be accepted after September 8, 2006.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, 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 September 8, 2006. Questions may be directed to (225) 952-8100.

Bob Odom
Commissioner

0608#028

POTPOURRI

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Division of Pesticides and Environmental Programs

Imposition of Quarantine—Hurricane Katrina

Editor's Note: The following quarantine was signed by Bob Odom, Commissioner of Louisiana Department of Agriculture and Forestry on December 7, 2006. This quarantine was printed with errors in the December 20, 2006 edition of the *Louisiana Register*. This quarantine has been posted on the OSR website and printed in the August 20, 2006 edition of the *Louisiana Register* as an errata notification.

In accordance with the provisions of the Formosan Termite Initiative Act, (R.S. 3:3391.1 through 3391.13), the Commissioner of Agriculture and Forestry, (commissioner), by the authority granted to him by R.S. 3:3391.7, hereby issues the following quarantine:

I. Facts Supporting Declaration

On August 29, 2005 Hurricane Katrina devastated the parishes of Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany, Tangipahoa, and Washington. The named parishes are known to be heavily infested with Formosan termites. The hurricane has left millions of tons of wood debris, including debris infested with Formosan termites, in the named parishes. Additionally, thousands of structurally unsound buildings and structures, many of which are infested with Formosan termites, are in the named parishes and will have to be destroyed and turned into wood debris. State and federal authorities have developed plans to turn this wood debris into compost and other items for use in these and other Louisiana parishes. Such use of this wood debris will facilitate the spread of Formosan termites into areas of the state that are either not currently infested or have a minor or moderate infestation, thereby causing destruction or substantial damage to houses and other structures.

Many of the houses and structures that will be destroyed contain architecturally significant components, such as beams and doors, which are both salvageable and economically valuable. These articles will be sold for installation in new and remodeled homes and structures in the named parishes and in other parishes. Many of these articles will be infested with Formosan termites. The use of these infested articles in new and remodeled homes and structures will cause the spread of Formosan termites and subsequent destruction or substantial damage to these and other homes and structures.

The devastation left by Hurricane Katrina also requires temporary and permanent housing to be moved into or built in the named parishes. Unless the movable temporary

housing is inspected prior to leaving the named parishes, the use or passage of the temporary housing in or through other parishes of the state will cause the spread of Formosan termites and subsequent destruction or substantial damage to these and other homes and structures. All new construction and reconstruction of permanent housing in the named parishes must be treated for Formosan termites to reduce the extent of infestation and to minimize subsequent destruction and damage to these homes and structures and other homes and structures.

Imposition of this quarantine is required to prevent the spread of Formosan termites and infestation of areas, homes and structures that are not currently infested, or which are to be built or reconstructed. Failure to impose this quarantine will cause severe economic damage and property loss to the citizens of Louisiana.

II. Objectives of Quarantine

The objectives of this quarantine are to prevent the spread of Formosan termites into areas of the state that are not now currently infested with Formosan termites, to prevent Formosan termites from infesting existing homes and structures that are not currently infested, and to prevent Formosan termites from infesting new and reconstructed homes and structures.

III. Geographical Area of Quarantine

The geographical areas of this quarantine are the named parishes of Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany, Tangipahoa, and Washington.

IV. Prohibitions and Requirements

1. All new construction and reconstruction of houses, buildings and other permanent structures in the named parishes must be treated for Formosan termites according to the Louisiana Structural Pest Control Commission's Rules and Regulations.

2. The movement of any wood or cellulose material from the named parishes and the burial or use as land fill of any wood or cellulose material, including burial or use as land fill in any of the named parishes, is prohibited unless such movement, burial or use as land fill is performed pursuant to a written plan submitted to and approved in writing by the commissioner or his designee(s). Any changes or amendments to any plan previously approved by the commissioner or his designee(s) must also be submitted to and approved in writing by the commissioner or his designee(s).

3. All temporary housing to be moved out of the named parishes shall not be removed from the named parishes until written authorization is given by the commissioner or his designee(s).

4. All architectural components, such as beams, doors, and other wood salvaged from a structure in the named parishes shall not be sold or placed in a new, remodeled, or reconstructed home, building, or permanent structure located in the named parishes or in any other parish prior to being fumigated or treated for Formosan termites.

V. Exemptions from Quarantine

The following activities shall be exempt from this quarantine.

1. Commercial logging and timber operations related to silviculture productions.

2. Commercial operations involving the sale or distribution of nursery stock. Nursery stock is defined in R.S. 3:1656(B) and means "all trees, shrubs, ornamental plants, grass sod, foliage plants, or marsh plants."

VI. Time Limit

This quarantine shall remain in effect until rescinded by my written order. A waiver of any requirement or authorization for anyone to do any of the prohibited acts, whether in whole or in part, by me or my designee(s) shall not be construed as rescinding or modifying this quarantine.

Signed December 7, 2005 at Baton Rouge, Louisiana.

Bob Odom
Commissioner

0608#075

POTPOURRI

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Division of Pesticides and Environmental Programs

Imposition of Quarantine—Hurricane Rita

Editor's Note: The following quarantine was signed by Bob Odom, Commissioner of Louisiana Department of Agriculture and Forestry on December 7, 2006. This quarantine was printed with errors in the December 20, 2006 edition of the *Louisiana Register*. This quarantine has been posted on the OSR website and printed in the August 20, 2006 edition of the *Louisiana Register* as an errata notification.

In accordance with the provisions of the Formosan Termite Initiative Act, (R.S. 3:3391.1 through 3391.13), the Commissioner of Agriculture and Forestry, (commissioner), by the authority granted to him by R.S. 3:3391.7, hereby issues the following quarantine

I. Facts Supporting Declaration

On September 24, 2005 Hurricane Rita devastated the parishes of Calcasieu, Cameron and Jefferson Davis. The named parishes are known to be heavily infested with Formosan termites. The hurricane has left millions of tons of wood debris, including debris infested with Formosan termites, in the named parishes. Additionally, thousands of structurally unsound buildings and structures, many of which are infested with Formosan termites, are in the named parishes and will have to be destroyed and turned into wood debris. State and federal authorities have developed plans to turn this wood debris into compost and other items for use in these and other Louisiana parishes. Such use of this wood debris will facilitate the spread of Formosan termites into areas of the state that are either not currently infested or have a minor or moderate infestation, thereby causing destruction or substantial damage to houses and other structures.

Many of the houses and structures that will be destroyed contain architecturally significant components, such as beams and doors, which are both salvageable and economically valuable. These articles will be sold for installation in new and remodeled homes and structures in the named parishes and in other parishes. Many of these articles will be infested with Formosan termites. The use of these infested articles in new and remodeled homes and structures will cause the spread of Formosan termites and

subsequent destruction or substantial damage to these and other homes and structures.

The devastation left by Hurricane Rita also requires temporary and permanent housing to be moved into or built in the named parishes. Unless the movable temporary housing is inspected prior to leaving the named parishes, the use or passage of the temporary housing in or through other parishes of the state will cause the spread of Formosan termites and subsequent destruction or substantial damage to these and other homes and structures. All new construction and reconstruction of permanent housing in the named parishes must be treated for Formosan termites to reduce the extent of infestation and to minimize subsequent destruction and damage to these homes and structures and other homes and structures.

Imposition of this quarantine is required to prevent the spread of Formosan termites and infestation of areas, homes and structures that are not currently infested, or which are to be built or reconstructed. Failure to impose this quarantine will cause severe economic damage and property loss to the citizens of Louisiana.

II. Objectives of Quarantine

The objectives of this quarantine are to prevent the spread of Formosan termites into areas of the state that are not now currently infested with Formosan termites, to prevent Formosan termites from infesting existing homes and structures that are not currently infested, and to prevent Formosan termites from infesting new and reconstructed homes and structures.

III. Geographical Area of Quarantine

The geographical areas of this quarantine are the named parishes of Calcasieu, Cameron and Jefferson Davis.

IV. Prohibitions and Requirements

1. All new construction and reconstruction of houses, buildings and other permanent structures in the named parishes must be treated for Formosan termites according to the Louisiana Structural Pest Control Commission's Rules and Regulations.

2. The movement of any wood or cellulose material from the named parishes and the burial or use as land fill of any wood or cellulose material, including burial or use as land fill in any of the named parishes, is prohibited unless such movement, burial or use as land fill is performed pursuant to a written plan submitted to and approved in writing by the commissioner or his designee(s). Any changes or amendments to any plan previously approved by the commissioner or his designee(s) must also be submitted to and approved in writing by the commissioner or his designee(s).

3. All temporary housing to be moved out of the named parishes shall not be removed from the named parishes until written authorization is given by the commissioner or his designee(s).

4. All architectural components, such as beams, doors, and other wood salvaged from a structure in the named parishes shall not be sold or placed in a new, remodeled, or reconstructed home, building, or permanent structure located in the named parishes or in any other parish prior to being fumigated or treated for Formosan termites.

V. Exemptions from Quarantine

The following activities shall be exempt from this quarantine.

1. Commercial logging and timber operations related to silviculture productions.

2. Commercial operations involving the sale or distribution of nursery stock. Nursery stock is defined in R.S. 3:1656(B) and means "all trees, shrubs, ornamental plants, grass sod, foliage plants, or marsh plants."

V. Time Limit

This quarantine shall remain in effect until rescinded by my written order. A waiver of any requirement or authorization for anyone to do any of the prohibited acts, whether in whole or in part, by me or my designee(s) shall not be construed as rescinding or modifying this quarantine.

Signed December 7, 2005 at Baton Rouge, Louisiana.

Bob Odom
Commissioner

0608#022

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Clean Air Act Section 111(d) Plan for Coal-Fired Electrical Steam Generating Units

Under the authority of the Louisiana 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 a Section 111(d) plan is proposed for coal-fired electrical steam generating units (EGUs) in Louisiana to comply with provisions of the federal Clean Air Mercury Rule (CAMR).

Section 111(d) of the Clean Air Act Amendments of 1990 and provisions of the CAMR as published in the *Federal Register* at 70 FR 28606-28700 (May 18, 2005) require states to submit to EPA a plan to reduce mercury emissions from coal-fired EGUs. EPA published a model rule (40 CFR Part 60, Subpart HHHH, *Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units*) on May 18, 2005, to assist the states. The department proposed a rule (AQ257ft) in the *Louisiana Register* on May 20, 2006, to incorporate the federal rules by reference, and made substantive changes to the proposal (AQ257ftS) on July 20, 2006, to mirror subsequent changes in the originally-promulgated federal rule. The published EPA model rule forms the basis for the Section 111(d) plan.

The EPA model rule establishes mercury limits from new and existing coal-fired EGUs and creates a market based cap-and-trade program that will reduce EGU emissions of mercury in two separate phases, in the years 2010 and 2018. Each state receives a mercury budget for each year. Louisiana's budget is 0.601 tons of mercury for years 2010-2017 and 0.237 tons of mercury thereafter. The proposed initial mercury allowances are included in the plan. The public comment period for the proposed Section 111(d) plan begins on August 20, 2006, and ends on September 26, 2006.

The public hearing for this plan will be held at 1:30 p.m. on September 26, 2006, in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton

Rouge, LA. Interested persons are invited to attend and submit oral comments on the Section 111(d) plan. Should individuals with a disability need an accommodation in order to participate, contact James Orgeron at the address given below or at (225) 219-3578. Parking in the Galvez Garage is free with a validated parking ticket.

Written comments must be received no later than September 26, 2006, at 4:30 p.m., and should be sent to James Orgeron, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314, or to FAX (225) 219-3582, or by email to james.orgeron@la.gov. The Section 111(d) plan is available on the Internet at www.deq.louisiana.gov/portal/tabid/2381/Default.aspx. A copy 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 the coal-fired EGU Section 111(d) plan.

A copy of the plan, minus the appendices, may be viewed at the following DEQ office locations from 8 a.m. to 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

0608#046

POTPOURRI

Office of the Governor Oil Spill Coordinator's Office

Freshwater Bayou Crude Oil Discharge of June 21, 1997
Final Settlement Agreement

Agencies: Louisiana Oil Spill Coordinator's Office, Office of the Governor (LOSCO); Louisiana Department of Environmental Quality (LDEQ); Louisiana Department of Natural Resources (LDNR); and Louisiana Department of Wildlife and Fisheries (LDWF).

Action: Notice of Availability of a Final Settlement Agreement.

Summary: Notice is hereby given that a document entitled "Vermilion Parish Coastal Marsh Natural Resource Restoration Agreement" (Final Settlement Agreement) is final and available to the public as of September 20, 2006. This document has been agreed to by Apache Corporation and the agencies listed above (trustees) to address natural resources damage claims associated with the June 21, 1997 discharge of crude oil into a coastal marsh near Freshwater City, Louisiana (incident). On June 20, 1999, the trustees published a Damage Assessment and Restoration Plan (DARP) in the *Louisiana Register* detailing natural resource injuries caused by the Freshwater Bayou incident, and the compensatory restoration project selected to compensate the public for lost resource services. The project, which involved planting two acres of broken marsh habitat with California

bulrush (*Schoenoplectus californicus*) was implemented in 2001 but was determined not to meet the prescribed performance standards. As a result the trustees, in cooperation with Apache Corporation, prepared a Final Restoration Plan (FRP) in October 2005 to inform the public of restoration planning efforts conducted to select a restoration alternative for corrective action. The Final Settlement Agreement and its attachment (i.e., the Restoration Implementation and Monitoring Plan [RIMP]) describe the agreement between Apache Corporation and the trustees to settle natural resource damage claims in the state of Louisiana for the incident and include a description of the performance criteria, construction schedule, performance monitoring, and reporting requirements for the South Lake de Cade Vegetative Plantings compensatory restoration project, to be constructed along the southern rim of Lake de Cade, Terrebonne Parish, Louisiana.

Interested members of the public are invited to view the Final Settlement Agreement and RIMP online at the website address given below or request a copy of the documents from Chuck Armbruster at the address given below.

For Further Information: Contact Chuck Armbruster at 225-219-5800, or by email at charles.armbruster@la.gov. To view the Final Settlement Agreement via the internet, please visit www.losco.state.la.us and look under News Flash for Freshwater Bayou Oil Spill.

Address: Requests for copies of the Final Settlement Agreement should be sent to:

Charles K. Armbruster
Louisiana Oil Spill Coordinator's Office
150 Third Street, Suite 405
Baton Rouge, LA 70801

Roland Guidry
Oil Spill Coordinator

0608#072

POTPOURRI

Department of Health and Hospitals Bureau of Health Services Financing

Mental Health Rehabilitation Program
Changes of Ownership

Effective August 20, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated an Emergency Rule to establish a moratorium on the enrollment of new providers of mental health rehabilitation (MHR) services in the Medicaid Program (*Louisiana Register*, Volume 30, Number 8). The provisions of the Emergency Rule were adopted as a Rule and published on March 20, 2005 (*Louisiana Register*, Volume 31, Number 3). Effective August 20, 2006, the Department gives notice that changes of ownership (CHOWs) will be allowed for existing MHR providers. New owners must meet all participation requirements for the Medicaid Program.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0608#073

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
Tatco, Inc.	Grogan	S	Martin Timber Company	001	171531
H. Emery Galbraith	Caddo Pine Island	S	VESPY	005	990454

Operator	Field	District	Site Type	Parish	Location
Unknown	Little Temple	L	Abandoned Flowlines	Jefferson	T17S, R23E section 30
Unknown	Little Temple	L	Abandoned Flowlines	Lafourche	T17S, R23E section 30
Unknown	Little Temple	L	Abandoned Flowlines	Lafourche	T17S, R22E section 25

James H. Welsh
Commissioner

0608#036

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