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Executive Orders

EXECUTIVE ORDER MJF 02-73

Louisiana Domestic Terrorism Advisory Committee

WHEREAS, Executive Order No. MJF 2001-42, issued on September 21, 2001, established the Louisiana Domestic Terrorism Advisory Committee within the executive department, Office of the Governor;

WHEREAS, Executive Order No. MJF 2002-7, issued on April 18, 2002, expanded the membership of the Committee and changed the reporting schedule; and

WHEREAS, it is necessary to amend Executive Order No. MJF 2001-42, as amended by Executive Order No. MJF 2002-7 in order to add one additional member to the Committee;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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 3 of Executive Order No. MJF 2001-42, as amended by Executive Order No. MJF 2002-7, is amended to provided as follows:

The Committee shall submit periodic reports to the governor which address the issues set forth in Section 2 of this Order. The Committee shall submit a final detailed report to the governor which addresses these issues by July 11, 2002.

SECTION 2: Section 4 of Executive Order No. MJF 2001-42, as amended by Executive Order No. 2002-7, is amended to provide as follows:

The Committee shall be composed of twenty-four (24) members who, unless otherwise specified, shall be appointed by, and serve at the pleasure of, the governor. The membership of the Committee shall be selected as follows:

A. The deputy secretary of the Department of Public Safety and Corrections, Public Safety Services, or the deputy secretary's designee;

B. The adjutant general of the Louisiana Army National Guard, or the adjutant general's designee;

C. The assistant director of the Office of Emergency Preparedness, Military Department, Office of the Governor, or the assistant director's designee;

D. The secretary of the Department of Agricultural and Forestry, or the secretary's designee;

E. The secretary of the Department of Environmental Quality, or the secretary's designee;

F. The secretary of the Department of Health and Hospitals, or the secretary's designee;

G. The secretary of the Department of Transportation and Development, or the secretary's designee;

H. The secretary of the Department of Wildlife and Fisheries, or the secretary's designee;

I. The president of the Louisiana Sheriff's Association, or the president's designee;

J. The president of the Louisiana Association of Chiefs of Police, or the president's designee;

K. The president of the Louisiana Fire Chiefs Association, or the president's designee;

L. The president of the Louisiana Association of Nationally Registered Emergency Medical Technicians, or the president's designee;

M. The president of the Louisiana Emergency Preparedness Association, or the president's designee;

N. The president of the Louisiana Municipal Association, or the president's designee;

O. The president of the Louisiana Police Jury Association, or the president's designee;

P. One (1) member of the Louisiana State Police Hazardous Materials Unit;

Q. The chair of the Louisiana Homeland Security Committee of the Louisiana House of Representatives, or his designee;

R. One (1) sheriff representing one of Louisiana's sixty-four parishes, or the sheriff's designee;

S. One (1) at-large member representing local emergency management;

T. One (1) at-large member representing local public works departments;

U. One (1) at-large member representing the Louisiana Chemical Association;

V. One (1) at-large member representing the Louisiana State Firemen's Association;

W. One (1) at-large member who is an academic employee of a public university in the state of Louisiana; and

X. One (1) at-large member who is an academic employee of a private university in the state of Louisiana.

SECTION 3: All other sections, subsections, and paragraphs of Executive Order No. MJF 2001-42, as amended by Executive Order No. MJF 2002-7, shall remain in full force and effect.

SECTION 4: 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 17th day of December, 2002.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0301#009

EXECUTIVE ORDER MJF 02-74

Carry-Forward Bond Allocation
Louisiana Housing Finance Agency

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act No. 51 of the 1986 Regular Session of the Louisiana Legislature (collectively hereafter "the Act"), Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, (hereafter collectively "MJF 96-25") was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2002 (hereafter the 2002 Ceiling@);

(2) the procedure for obtaining an allocation of bonds under the 2002 Ceiling; and

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

WHEREAS, Executive Order No. MJF 2002-19, issued on August 20, 2002, allocated sixty-one million eighty-six thousand two hundred fifty dollars (\$61,086,250) from the 2002 Ceiling to the Louisiana Housing Finance Agency in connection with a single family mortgage revenue bond project, but the sixty-one million eighty-six thousand two hundred fifty dollars (\$61,086,250) allocation has been returned unused to the 2002 Ceiling;

WHEREAS, Executive Order No. MJF 2002-20, issued on August 20, 2002, as amended by Executive Order No. MJF 2002-61, issued on November 18, 2002, allocated five million dollars (\$5,000,000) from the 2002 Ceiling to the Shreveport Home Mortgage Authority in connection with a single family mortgage revenue bond project, but the five million dollar (\$5,000,000) allocation has been returned unused to the 2002 Ceiling;

WHEREAS, Executive Order No. MJF 2002-21, issued on August 20, 2002, as amended by Executive Order No. MJF 2002-60, issued on November 18, 2002, allocated three million five hundred thousand dollars (\$3,500,000) from the 2002 Ceiling to the Louisiana Housing Finance Agency in connection with the Galilee City Limited Partnership, LLC, project but the three million five hundred thousand dollar (\$3,500,000) allocation has been returned unused to the 2002 Ceiling;

WHEREAS, Executive Order No. MJF 2002-67, issued on December 6, 2002, allocated eight million dollars (\$8,000,000) from the 2002 Ceiling to the parish of

Ascension, state of Louisiana, in connection with a Shell Chemical, LP, project but the eight million dollar (\$8,000,000) allocation has been returned unused to the 2002 Ceiling;

WHEREAS, subsection 4.8 of MJF 96-25 provides that if the ceiling for a calendar year exceeds the aggregate amount of bonds subject to the private activity bond volume limit issued during the year by all issuers, by executive order, the governor may allocate the excess amount to issuers or an issuer for use as a carry-forward for one or more carry-forward projects permitted under the Act; and

WHEREAS, the governor desires to allocate the excess and/or unused amount of the 2002 Ceiling as a carry-forward for a project which is permitted and eligible under the Act;

NOW THEREFORE I, M.J. AMIKE@ FOSTER, JR., 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: Pursuant to and in accordance with the provisions of Section 146(f) of the Internal Revenue Code of 1986, as amended, and in accordance with the request for a carry-forward filed by the designated issuer, the excess and/or unissued private activity bond volume limit under the 2002 Ceiling is hereby allocated to the following issuer, for the following carry-forward project, and in the following amount:

Issuer	Carry-Forward	Project Amount
Louisiana Housing Finance Agency	Single Family Mortgage Revenue Bond Program	\$135,366, 216.03

SECTION 2: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 3: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 4: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 30th day of December, 2002.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0301#010

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Agro Consumer Services
Weights and Measures Division

Annual Fee for Registration of Taxi Meters
(LAC 7:XXXV.125)

The Commissioner of Agriculture and Forestry hereby adopts the following emergency rules for the implementation of regulations governing the calibration and registration of taxi meters in accordance with R.S. 3:4622 and the emergency rule provisions of R.S. 49:953(B), of the Administrative Procedure Act.

The Louisiana Department of Agriculture and Forestry is the only governmental agency that checks on the accuracy of taxi meters in the state of Louisiana. The fee for registering and inspecting taxi meters has been set at \$15. This fee, however, falls far short of the cost incurred by the department in ensuring the accuracy of taxi meters. The registration and testing of taxi meters is vital and important to the citizens of Louisiana because the registering and testing of taxi meters insures that the public who utilizes taxis are not subjected to fraud and illegal and excessive fares. The people who use taxis are individuals who cannot either afford to own a vehicle of their own or are businessmen and tourists coming into the state.

The department, as a result of state budget deficits and cuts to the department's appropriations, is forced to look for ways to bring its budget in line with current appropriations. Therefore, the department is forced to either cut services, such as calibration of taxi meters or to increase fees to cover the cost of services provided.

If the department ceases to enforce the registration and calibration of register taxi meters, the citizens of the state and visitors to the state who utilize taxi services will be subject to fraud and illegal and excessive fares by taxi operators. In order to protect the public and taxi services from inaccurate fares, it is necessary to immediately increase the fees charged for calibrating and registering taxi meters in Louisiana.

This Rule becomes effective upon signature, January 3, 2003, and will remain in effect 120 days, unless renewed by the Commissioner of Agriculture and Forestry or until permanent rules are promulgated in accordance with law.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§125. Metrology Laboratory Fee Structure

A. - E. ...

F. The annual fee for registration of taxi meters is \$50.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4608, 3:4622.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services,

Division of Weights and Measures, LR 19:1534 (December 1993), amended LR 23:857 (July 1997), LR 29:

Bob Odom
Commissioner

0301#011

DECLARATION OF EMERGENCY

Department of Environmental Quality
Office of the Secretary

Waste Tires
(LAC 33:VII.10505, 10519, 10525,
10527, and 10533)(SW034E)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953.B, and under the authority of R.S. 30:2011, the secretary of the Department of Environmental Quality declares that an emergency action is necessary in order to strengthen the regulations that will ensure proper disposal of waste tires processed in Louisiana. Waste tires that are not processed in accordance with LAC 33:VII.Chapter 105 create environmental and health-related problems and pose a significant threat to the safety of the community. The elimination of breeding areas for mosquitoes will reduce the exposure to these insects and the serious health problems associated therewith.

This Emergency Rule is effective on January 15, 2003, 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 SW034E, you may contact the Regulation Development Section at (225) 765-0399.

Adopted this 10th day of January, 2003.

Title 33

ENVIRONMENTAL QUALITY

Part VII. Solid Waste

Subpart 2. Recycling

Chapter 105. Waste Tires

§10505. Definitions

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

* * *

Adjustment Tire—a tire that becomes unusable for any reason within the manufacturer's control and is returned to the dealer under a tire warranty by the tire manufacturer. Tire adjustments are initiated by the consumer.

* * *

Eligible Tire—a waste tire generated for which a fee was charged as per LAC 33:VII.10519.E.2.

* * *

Recall Tire—a tire that is specified as defective by the manufacturer and returned to the dealer so that the dealer may provide a replacement or repair. Recalls are initiated by the manufacturer.

* * *

Used Tire—a tire that can be salvaged and sold as a good, functional vehicle tire.

Used Tire Dealer—any person, business, or firm that engages in the sale of used tires for use on motor vehicles.

* * *

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

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

§10519. Standards and Responsibilities of Generators of Waste Tires

A. - E.1. ...

2. "All Louisiana tire dealers are required to collect a waste tire cleanup and recycling fee of \$2 for each passenger/light truck tire, \$5 for each medium truck tire, and \$10 for each off-road tire, upon sale of each new tire. These fees shall also be collected on all recall and adjustment tires. Tire fee categories are defined in the Waste Tire Regulations. No fee shall be collected on tires weighing more than 500 pounds or solid tires. This fee must be collected whether or not the purchaser retains the waste tires. Tire dealers must accept from the purchaser, at the time of sale, one waste tire for every new tire sold, unless the purchaser elects to retain the waste tire."

F. - O. ...

P. Generators other than new tire dealers (used tire dealers, salvage yards, recappers, etc.) shall maintain a complete record of purchase invoices, inventory records, and sales invoices for a period of no less than three years. These records shall be open for inspection and/or audit by the administrative authority at all reasonable hours.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:40 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2777 (December 2000), LR 27:830 (June 2001), LR 27:2227 (December 2001), LR 28:1953 (September 2002), LR 29:

§10525. Standards and Responsibilities of Waste Tire Processors

A. Upon receiving a shipment containing waste tires, the processor shall be responsible for verifying the number of waste tires in each shipment by actually counting each waste tire. The processor shall sign each waste tire manifest upon receiving waste tires. In order to be reimbursed from the Waste Tire Management Fund, processors shall only accept eligible tires from authorized Louisiana transporters or in accordance with LAC 33:VII.10519.K. Each processor shall accept no more than five unmanifested tires per day per customer. The processor shall maintain a log for all unmanifested loads. The log shall include, at the minimum, the following:

1. name and address of customer;
2. license plate number of vehicle delivering the tires;
3. phone number of customer;

4. number of tires received;
5. date;
6. time; and
7. signature of customer delivering the tires.

B. - F. ...

G Processors shall maintain a complete set of records pertaining to manifested tires or shredded waste tire material coming in or leaving their place of business. This shall include, but is not limited to, manifests, monthly reimbursement reports, records of all payments from/to end markets, inventory records, logs, any documents related to out-of-state tire activity, and financial records. These records shall be maintained for a period of no less than three years and shall be open for inspection by the administrative authority at all reasonable hours.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2779 (December 2000), LR 27:831 (June 2001), LR 27:2228 (December 2001), LR 28:1953 (September 2002), LR 29:

§10527. Standards and Responsibilities for Waste Tire Collectors and Collection Centers

A. All collection center operators shall satisfy the manifest requirements of LAC 33:VII.10533. All collection center operators shall be responsible for counting the tires in the shipment. Each collection center shall accept no more than five unmanifested tires per day per customer. The collection center shall maintain a log for all unmanifested loads. The collection center shall report monthly to the administrative authority, due no later than the fifteenth of the following month, the total number of tires received at the facility. These records shall be maintained by the collection center for a minimum of three years and are subject to audit by the administrative authority. The log for all unmanifested loads shall include, at the minimum, the following:

1. name and address of customer;
2. license plate number of vehicle delivering the tires;
3. phone number of customer;
4. number of tires received;
5. date;
6. time; and
7. signature of customer delivering the tires.

B. - G.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000), LR 29:

§10533. Manifest System

A. All shipments of more than 20 waste tires shall be accompanied by a waste tire manifest provided by the department and executed in accordance with this Section. Tires transported in Louisiana that are not eligible tires, as defined in LAC 33:VII.10505, shall be clearly labeled ineligible on the manifest.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000), LR 27:831 (June 2001), LR 27:2228 (December 2001), LR 29:

L. Hall Bohlinger
Secretary

0301#065

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Racing Commission

Worker's Compensation Insurance (LAC 46:XLI.531)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following Emergency Rule effective December 19, 2002, and it shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to adopt this Rule to clarify worker's compensation requirements for horse trainers in Louisiana.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLI. Horseracing Occupations

Chapter 5. Assistant Trainers and Other Employees

§531. Worker's Compensation Insurance

A. In addition to all other requirements for a trainer's license, each applicant therefor must furnish an individual certificate of insurance issued in his or her name only, of an insurance company licensed and/or authorized to do business in the state of Louisiana, showing he or she has worker's compensation insurance covering his or her employees and which names the Louisiana State Racing Commission as a certificate holder for purposes of coverage and cancellation of policy. Any exceptions to the form and content of the certificate may be considered on timely request.

B. Engaging in the profession of training horses on the grounds of any association licensed by the Racing Commission without proper worker's compensation insurance may result in a fine of not less than \$500 and/or suspension or revocation of license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:150.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 4:274 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 29:

Charles A. Gardiner III
Executive Director

0301#024

DECLARATION OF EMERGENCY

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

Medicaid Eligibility/Medically Needy Program Incurred Deductions

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following emergency rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2001-2002 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid Program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule promulgating the Medicaid Eligibility Manual in its entirety by reference in May of 1996 (*Louisiana Register*, Volume 22, Number 5). The Department provides Medicaid coverage under the Medically Needy Program that is optional under Title XIX of the Social Security Act Section 1902(a)(10) and 42 CFR Subpart D Section 435.300. The Medically Needy Program includes those individuals or families who meet all AFDC or SSI related categorical requirements and whose income is within the Medically Needy Income Eligibility Standard. It also includes those individuals or families whose resources fall within the categorical limits, but whose income is above the Medically Needy Income Eligibility Standard. These individuals or families having income in excess of the Medically Needy Income Eligibility Standard can reduce excess income by incurring medical and/or remedial care expenses. This method used for determining eligibility is referred to as spend-down. A state may choose to exclude from incurred expenses those bills for services furnished more than 3 months before the Medicaid application is filed for initial eligibility or in the case of a renewal more than 3 months before the first month of the new budget period or quarter of coverage. A state is required to deduct any current payment on such excluded expenses.

In compliance with Executive Order MJF 02-29, the Department proposes to amend the current policy governing the consideration of incurred expenses in the eligibility determination process for the Medically Needy Program. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce

expenditures in the Medicaid Program by approximately \$1,740,947 for state fiscal year 2002-2003.

Emergency Rule

Effective for applications filed on or after January 1, 2003 and those cases in which the eligibility renewal is due on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing deductions for incurred medical expenses in the eligibility determination process for the Medically Needy Program. Those bills for necessary medical and remedial services furnished more than 3 months before the Medicaid application is filed or for renewals more than 3 months before the first month of a new budget period or quarter of coverage will be excluded as an incurred expense. Current payments on excluded expenses will be allowed as an incurred expense.

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

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

David W. Hood
Secretary

0301#002

DECLARATION OF EMERGENCY

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

Medicaid Eligibility Treatment of Annuities

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule promulgating the *Medicaid Eligibility Manual* in its entirety by reference in May of 1996 (*Louisiana Register*, Volume 22, Number 5). Section I of the *Medicaid Eligibility Manual* addresses the eligibility factors considered in the determination of eligibility.

Section 13611 of the Omnibus Budget Reconciliation Act of 1993 amended Section 1917(c) of the Social Security Act and established Section 1917(d) to set forth rules wherein transfers of assets and trusts must be considered in determining eligibility for Medicaid. Current Medicaid

eligibility rules are not clear relative to the consideration of annuities in the eligibility determination process. The policy does not clearly state that an annuity is considered a legal instrument or device similar to a trust.

In order to comply with the Omnibus Budget Reconciliation Act of 1993 and curb abuse in the transfer of assets, the Bureau proposes to amend Section I of the *Medicaid Eligibility Manual* in order to clarify current policy regarding annuities.

This action is being taken to avoid a budget deficit that will occur if applicants are allowed to continue to hide assets by not having annuities considered as an available resource. It is estimated that implementation of this emergency rule will reduce expenditures for services by approximately \$4,222,050 for state fiscal year 2002-2003.

Emergency Rule

Effective January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends current Medicaid eligibility policy governing the transfer of assets and trusts to further define and clarify the consideration of annuities in the Medicaid eligibility determination process.

An annuity is considered a legal instrument or device similar to a trust. An annuity is defined as a contract or agreement by which one receives fixed, non variable payments on an investment for a lifetime or a specified number of years. An annuity containing a balloon payment will not be classified as an annuity for Medicaid eligibility purposes, but rather will be considered an available resource. A commercial (non-employment related) annuity purchased by or for an individual using that individual's assets will be considered an available resource unless it meets all of the following criteria. The annuity:

1. is irrevocable;
2. pays out principal and interest in equal monthly installments (no balloon payment) to the individual in sufficient amounts that the principal is paid out within the actuarial life expectancy of the annuitant;
3. names the State of Louisiana, Department of Health and Hospitals or its successor agency as the residual beneficiary of funds remaining in the annuity, not to exceed any Medicaid funds expended on the individual during his lifetime, and
4. is issued by an insurance company licensed and approved to do business in the State of Louisiana.

This policy change shall be applicable to all pending applications, renewals of eligibility or changes in situations (as defined in Section L of the *Medicaid Eligibility Manual*) where the applicant/recipient has an annuity. Existing annuities which do not meet all of the above criteria must be amended to comply with these requirements within 90 days of the first renewal or first change in their situation (as defined in Section L of the *Medicaid Eligibility Manual*) occurring after enactment of this rule.

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

Interested persons may submit written comments to Ben A. Bearden at Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible

for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0301#001

DECLARATION OF EMERGENCY

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

**Nursing Facilities Reimbursement Methodology
(LAC 50:VII.1305)**

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

Act 694 of the 2001 Regular Session of the Louisiana Legislature mandated that the Department of Health and Hospitals establish a case-mix reimbursement methodology for nursing homes. In accordance with Act 694, the bureau repealed the June 20, 1984 rule and established a new reimbursement methodology based on a case-mix price-based reimbursement system for private and public nursing facilities (*Louisiana Register*, Volume 28, Number 8).

In compliance with Executive Order MJF 02-29, the department proposes to amend the requirements governing the prospective reimbursement methodology for nursing facilities in order to revise the capital cost component and clarify other components of the reimbursement methodology.

Taking into consideration the impact of the reduction in the capital cost component to per diem rates in state fiscal year 2002-03, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care. These proposed rates are considered to be sufficient to enlist enough providers so that private nursing facility services under the state plan are available at least to the extent that they are available to the general population in the state.

This action is necessary in order to avoid a budget deficit in the medical assistance program. It is estimated that the implementation of this proposed Rule will reduce expenditures in the Medicaid Program by approximately \$17,169,003 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of services on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions contained in the August 20, 2002 Rule governing the rate determination for nursing facilities.

Title 50

PUBLIC HEALTHC MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1305. Rate Determination

A. - D.2.b. ...

c. The statewide administrative and operating price is established at 101.5 percent of the administrative and operating resident-day-weighted median cost.

2.c. - 3.b.i. ...

ii. A nursing facility's annual fair rental value (FRV) is calculated by multiplying the facility's current value times a rental factor. The rental factor shall be established by the Secretary of the Department of Health and Hospitals and shall be no less than 3 percent and no more than 7 percent.

iii. The nursing facility's annual fair rental value shall be divided by the greater of the facility's annualized actual resident days during the cost reporting period or 93 percent of the annualized licensed capacity of the facility to determine the FRV per diem or capital component of the rate. Annualized total patient days will be adjusted to reflect any increase or decrease in the number of licensed beds by applying to the increase or decrease the greater of the facility's actual occupancy rate during the base year cost report period or 93 percent of the annualized licensed capacity of the facility.

3.b.iv. - 5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1474 (June 2002), repromulgated LR 28:1791 (August 2002), amended LR 29:

Implementation of the provisions of this Emergency Rule shall be delayed until January 31, 2003 and will be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood
Secretary

0301#060

DECLARATION OF EMERGENCY

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

Outpatient Hospital Services C Clinic Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 4953(B)(1) et seq. and shall be in effect for the maximum period allowed under the act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in January of 1996 which established a uniform reimbursement methodology for outpatient hospital services (*Louisiana Register*, Volume 22, Number 1). The January 1996 Rule was subsequently amended to revise the reimbursement methodology for specified outpatient surgical procedures and the interim reimbursement for all other outpatient hospital services (*Louisiana Register*, Volume 26, Number 12). The interim reimbursement rate for all outpatient hospital services, except for designated outpatient surgical procedures, is a hospital specific cost to charge ratio calculation based on filed cost reports for the period ending in state fiscal year 1997. Act 13 of the 2002 Regular Session of the Louisiana Legislature allocated additional funds to the Department of Health and Hospitals for enhancement of the reimbursement rates paid to hospitals for outpatient services. In compliance with Act 13, the bureau increased the reimbursement rates for outpatient hospital clinic services (*Louisiana Register*, Volume 28, Number 10). This emergency rule is being promulgated to continue the provisions contained in the October 21, 2002 Rule. This action is being taken to promote the health and well being of Medicaid recipients by encouraging the continued participation of hospitals providing outpatient clinic services.

Emergency Rule

Effective for dates of service on or after February 19, 2003 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement rates for outpatient hospital clinic services. Hospitals must use the revenue codes and Physicians=Current Procedural Terminology (CPT)/Health Care Current Procedure Code System (HCPCS) specified by the Department when billing for services. The revenue codes and new reimbursement rates will be as follows.

Hospital Revenue Code	Description
510	General Internal Medicine Clinic
514	OB-Gyn Clinic
515	Pediatric Clinic
517	Family Practice Clinic
519	Specialty Clinic

Description	Payment Rate
Office/Outpatient visit, new	\$33.00
Office/Outpatient visit, new	\$33.00
Office/Outpatient visit, new	\$38.00
Office/Outpatient visit, new	\$57.00
Office/Outpatient visit, new	\$57.00
Office/Outpatient visit, established	\$33.00
Office/Outpatient visit, established	\$33.00
Office/Outpatient visit, established	\$38.00
Office/Outpatient visit, established	\$57.00
Office/Outpatient visit, established	\$57.00

Implementation of this Emergency Rule shall be contingent upon the certification of matching funds by nonstate public hospitals (except small rural hospitals as defined in R.S. 40:1300.143); or the completion of cooperative endeavor agreements to make public agency transfers to the Department as set forth in Act 13 of the 2002 Regular Session of the Louisiana Legislature; and the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood
Secretary

0301#059

DECLARATION OF EMERGENCY

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

Pharmacy Benefits Management Program
Prescriptions Limit

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2001-2002 General Appropriation Act which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure 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 administers

the Pharmacy Benefits Management Program under the Medicaid Program in accordance with federal and state regulations which govern Medicaid coverage of prescription drugs. Although federal regulations permit states to establish recipient service limits with a provision for exemption of certain recipient groups, the bureau has not established any limits on the number of prescriptions allowed to Medicaid recipients. In compliance with Executive Order MJF 02-29, the department proposes to establish a limit of eight prescriptions per calendar month with a provision for exemption of certain recipient groups.

This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of the following Emergency Rule will reduce expenditures by approximately \$76,310,300 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on and after February 3, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations governing the provision of prescription drug benefits offered to Medicaid recipients under the Medicaid Pharmacy Benefits Management Program.

1. The Department of Health and Hospitals will pay for a maximum of eight prescriptions per calendar month for Medicaid recipients.

2. The following recipient groups are exempt from the eight prescriptions per calendar month limitation:

- a. persons under 21 years of age;
- b. persons who are residents of long-term care institutions, such as nursing homes and ICF-MR facilities;
- c. persons participating in the Home and Community Based Waiver Programs;
- d. pregnant women;
- e. persons diagnosed with HIV/AIDS and receiving drugs related to the treatment of HIV/AIDS such as HIV anti-viral therapy; and
- f. persons who have had an organ transplant and are on anti-rejection medications.

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

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

David W. Hood
Secretary

0301#057

DECLARATION OF EMERGENCY

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

Physicians Services CCardiology, Maternal Fetal Medicine,
Inpatient Services CReimbursement Increase

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians= Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPCs). Reimbursement for these services is a flat fee established by the bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the bureau promulgated a rule to increase the reimbursement paid to physicians by restoring a prior seven percent reduction to the fees for specific procedure codes and increasing the reimbursement for other designated procedure codes (*Louisiana Register*, Volume 27, Number 5). After consultations with cardiologists, maternal fetal medicine specialists and other physicians around the state, the Bureau has determined that it is necessary to increase the reimbursement rate for designated CPT procedure codes for services rendered to Medicaid recipients.

This action is being taken to protect the health and welfare of Medicaid recipients by ensuring continued access to services and encouraging continued physician participation in the Medicaid Program. It is estimated that implementation of this emergency rule will increase expenditures in the Medicaid Program by approximately \$945,582 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement for selected cardiology, maternal fetal medicine and other physician services provided to Medicaid recipients. The following Physicians= Current Procedural Terminology (CPT) procedures shall be reimbursed at 84 percent of the Medicare Region 99 allowable for 2002.

Procedure Description
Transfusion, intrauterine, fetal
Amniocentesis; diagnostic
Chronic villus sampling, any method
Echocardiography, fetal, cardiovascular system, real time
Doppler echocardiography, fetal,...; follow-up or repeat study
Combined right heart catheterization and retrograde left heart catheterization, for congenital cardiac anomalies
Combined right heart catheterization and transseptal left heart catheterization through existing septal opening, with or without retrograde left heart catheterization, for congenital cardiac anomalies
Subsequent hospital care, per day (low complexity)
Subsequent hospital care, per day (moderate complexity)

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

Interested persons may submit written comments to Ben A. Bearden at 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.

David W. Hood
Secretary

0301#004

DECLARATION OF EMERGENCY

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

Private Hospitals CEnhanced Outlier Payments

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing established a reimbursement methodology for payments to disproportionate share hospitals for catastrophic costs associated with providing medically necessary services to children under six years of age (*Louisiana Register*, Volume 20, Number 6). The reimbursement methodology also addressed payments to all acute care hospitals for catastrophic costs associated with providing medically necessary services to infants one year of age or under. An outlier payment is calculated on an individual case basis and paid at cost if covered charges for medically necessary services exceeds 200 percent of the prospective payment. The June 20, 1994 Rule was subsequently amended to revise the qualification and calculation for outlier payments (*Louisiana Register*, Volume 22, Number 2). To qualify for an outlier payment, the covered charges for the case must

exceed both \$150,000 and 200 percent of the prospective payment.

Act 13 of the 2002 Regular Session of the Louisiana Legislature allocated funds for the payment of hospital outlier reimbursements, but limited payment to 100 percent of marginal cost and based on the use of updated cost-to-charge ratios. In compliance with Act 13, the Bureau adopted an emergency rule to amend the definition of marginal cost contained in the February 20, 1996 rule and reduce the outlier payments made to private hospitals (*Louisiana Register*, Volume 28, Number 7). In addition, the base period was changed for the hospital specific cost-to-charge ratio utilized for the calculation of outlier payments and a deadline was established for receipt of the written request filing for outlier payments.

Act 13 also directed the Department of Health and Hospitals to pay enhanced outlier reimbursements to certain hospitals meeting specific criteria set forth by the Department and approved by the Centers for Medicare and Medicaid Services. In accordance with the Act 13 directive, the department promulgated an Emergency Rule developing a payment methodology for enhanced outlier reimbursements (*Louisiana Register*, Volume 28, Number 9). The department now proposes to adopt an emergency rule to repeal the September 7, 2002 Emergency Rule and to amend the February 20, 1996 Rule to provide enhanced outlier reimbursements to qualifying hospitals for state fiscal year 2002-2003.

This action is being taken to protect the health and welfare of Medicaid eligible children by encouraging the continued participation of hospitals that furnish neonatal and pediatric intensive care services in the Medicaid Program. It is estimated that implementation of this proposed Rule will increase expenditures for outlier payments to private hospitals by approximately \$2,000,000 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals the September 7, 2002 Emergency Rule and amends the February 20, 1996 Rule to provide enhanced outlier reimbursements to qualifying hospitals for state fiscal year 2002-2003. A qualifying hospital is defined as a hospital whose losses calculated using the outlier payment methodology effective July 1, 2002 are at least 25 percent of the amount calculated using the outlier payment methodology in effect as of June 30, 2002. The calculation will be based on actual submitted claims for dates of service on and after January 1, 2003 that qualify for outlier payments. A one time lump sum payment will be issued which is equal to the product of each qualifying hospital's pro rata share of outlier losses and all qualifying hospitals' outlier losses multiplied by the amount appropriated for payment of enhanced outlier reimbursements for SFY 2002-2003.

Implementation of this Emergency Rule shall be delayed until January 31, 2003 and will be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden at Bureau of Health Services Financing, P.O.

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

David W. Hood
Secretary

0301#058

DECLARATION OF EMERGENCY

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

Professional Services Program
Antibiotic Injections Reimbursement Increase

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians= Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPCs). Reimbursement for these services is a flat fee established by the bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the Bureau promulgated a rule to increase the reimbursement paid to physicians by restoring a prior seven percent reduction to the fees for specific procedure codes and increasing the reimbursement for other designated procedure codes (*Louisiana Register*, Volume 27, Number 5). After consultations with providers around the state, the bureau has determined that it is necessary to increase the reimbursement rate for antibiotic injections rendered to Medicaid recipients within a specific age range.

This action is being taken to protect the health and welfare of Medicaid recipients within the specified age range by ensuring continued access to services and encouraging continued provider participation in the Medicaid Program. It is estimated that implementation of this emergency rule will increase expenditures in the Medicaid Program by approximately \$459,159 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement for antibiotic injections administered to Medicaid recipients up to the age of twenty one. Antibiotic IM injections shall be reimbursed at a flat rate of \$22.

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

Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood
Secretary

0301#003

DECLARATION OF EMERGENCY

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

Professional Services Program
Orthopedic Services Reimbursement Increase

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians= Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPCs). Reimbursement for these services is a flat fee established by the bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the bureau promulgated a rule to increase the reimbursement paid to physicians by restoring a prior seven percent education to the fees for specific procedure codes and increasing the reimbursement for other designated procedure codes (*Louisiana Register*, Volume 27, Number 5). After consultations with orthopedic physicians around the state, the bureau has determined that it is necessary to increase the reimbursement rate for designated CPT orthopedic procedure codes for services rendered to Medicaid recipients.

This action is being taken to protect the health and welfare of Medicaid recipients by ensuring continued access to orthopedic services and encouraging continued physician participation in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$1,100,306 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of service on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the

reimbursement paid to physicians for orthopedic services provided to Medicaid recipients. Physicians= Current Procedural Terminology (CPT) orthopedic procedure codes (20000-29898) shall be reimbursed at 80 percent of the Medicare Region 99 allowable for 2002, except for those procedure codes on file that are in non-pay status.

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

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

David W. Hood
Secretary

0301#005

DECLARATION OF EMERGENCY

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

Public Hospitals CInpatient Reimbursement Methodology Target Rate Per Discharge

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in July of 1983 which established a reimbursement methodology for inpatient services provided in acute care hospitals (*Louisiana Register*, Volume 9, Number 7). Inpatient hospital services were reimbursed in accordance with the Medicare reimbursement principles with a target rate set based on the cost per discharge for each hospital, except that the base year to be used in determining the target rate was the fiscal year ending on September 30, 1981 through September 29, 1982. In a Rule adopted in October of 1984 (*Louisiana Register*, Volume 10, Number 10), separate per diem limitations were established for neonatal and pediatric intensive care and burn units using the same base period as the target rate per discharge calculation. A Rule was adopted in October 1992, which provided that inpatient hospital services to children under one year of age shall be reimbursed as pass-through costs and shall not be subject to per discharge or per diem limits applied to other inpatient hospital services. The reimbursement methodology was subsequently amended in a Rule adopted in June of 1994 which discontinued this reimbursement methodology for all nonstate hospitals and established a prospective payment methodology for nonstate hospitals (*Louisiana*

Register, Volume 20, Number 6). The department now proposes to rebase the target rate per discharge amounts and per diem limitations for carve out specialty units in state owned or operated hospitals utilizing the amounts calculated per the cost report for the fiscal year ending either on June 30, 2001 or June 30, 2002.

This action is being taken to enhance federal revenues in the Medicaid Program. It is estimated that this Emergency Rule will have no fiscal impact in state fiscal year 2002-2003 because the Medicaid inpatient cost in excess of the target rate per discharge amount was previously included in the Medicaid unreimbursed cost component of the disproportionate share hospital adjustment payment.

Emergency Rule

Effective January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing rebases the target rate per discharge amounts and per diem limitations for carve out specialty units in state owned or operated hospitals utilizing the amounts calculated per the cost report for the fiscal year ending either on June 30, 2001 or June 30, 2002. Allowable malpractice costs shall be included in the target rate per discharge and per diem limitations. Data from the twelve month cost reporting period of the base year shall be extracted to determine each hospital's cost per discharge or per day. Inpatient hospital services provided to children under one year of age in state owned or operated hospitals shall continue to be reimbursed as pass-through costs and shall not be subject to per discharge or per diem limits applied to other inpatient hospital services.

Implementation of the provisions of this emergency rule shall be delayed until January 31, 2003 and will be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood
Secretary

0301#062

DECLARATION OF EMERGENCY

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

Public Nursing Facilities CReimbursement Methodology (LAC 50:VII.1309)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and

shall be in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

Act 694 of the 2001 Regular Session of the Louisiana Legislature mandated that the Department of Health and Hospitals establish a case-mix reimbursement methodology for nursing homes. In accordance with Act 694, the Bureau repealed the June 20, 1984 Rule and established a new reimbursement methodology based on a case-mix price-based reimbursement system for private and public nursing facilities (*Louisiana Register*, Volume 28, Number 8). The Department subsequently promulgated an Emergency Rule revising the reimbursement methodology for state-operated nursing facilities in order to reimburse these facilities in accordance with the Medicare upper payment limit (*Louisiana Register*, Volume 28, Number 11). The bureau now proposes to amend the provisions contained in the August 20, 2002 Rule governing the reimbursement methodology for public nursing facilities. In addition the bureau proposes to repeal the October 14, 2002 Emergency Rule.

This action is being taken to enhance federal revenue. It is estimated that the implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$1,816,216 for state fiscal year 2002-2003.

Emergency Rule

Effective for dates of services on or after January 1, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals the October 14, 2002 Emergency Rule and amends the provisions contained in the August 20, 2002 Rule governing the reimbursement methodology for public nursing facilities.

Title 50

PUBLIC HEALTHC MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1309. State-Owned or Operated and Nonstate

Government-Owned or Operated Facilities

A. Nonstate government-owned or operated nursing facilities will be paid a prospective reimbursement rate. Each facility will receive a Medicaid base rate calculated in accordance with other sections of this rule. Nonstate government-owned or operated nursing facilities may also receive a supplemental Medicaid payment on a quarterly basis. The aggregate supplemental payments for these facilities, calculated on a quarterly basis, will be the state's best estimate of what nonstate government-owned or operated facilities would be paid under Medicare's prospective payment system for skilled nursing facilities less the aggregate Medicaid base payments for these facilities. The acuity measurements used in the supplemental Medicaid payment calculations will be the acuity of each facility's Medicaid residents, as determined under Medicare's 44 RUG classification methodology. Adjustments to the aggregate supplemental Medicaid payments will be made to account for differences in coverage between the Medicare and Medicaid programs.

B. State-owned or operated nursing facilities will be paid a prospective reimbursement rate. The payment rate for each of these facilities will be calculated on a quarterly basis and shall be the greater of the state's best estimate of what the facility would be paid under Medicare's prospective payment

system for skilled nursing facilities or the nursing facility's allowable cost from the most recent filed Medicaid cost report trended forward to the midpoint of the rate year using the index factor. The acuity measurements used in the quarterly rate calculations will be the acuity of each facility's Medicaid residents, as determined under Medicare's 44 RUG classification methodology. Adjustments to these gross Medicare prospective payment rates will be made to account for differences in coverage between the Medicare and Medicaid programs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1475 (June 2002), repromulgated LR 28:1793 (August 2002), amended LR 29:

Implementation of the provisions of this Emergency Rule shall be delayed until January 31, 2003 and will be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

David W. Hood
Secretary

0301#056

DECLARATION OF EMERGENCY

Department of Health and Hospitals

Office of the Secretary

Bureau of Health Services Financing

Qualified Individuals Medicare Part B Buy-In

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

The bureau promulgated a Rule in July 1998 adopting the provisions of Section 4732 of the Balanced Budget Act of 1997 governing the payment of Medicare Part B premiums for Qualified Individuals (QIs) in the two mandatory eligibility groups (*Louisiana Register*, Volume 24, Number 7). The provisions were effective for premiums payable beginning January 1, 1998 and ending December 31, 2002. Payment for the Medicare premiums is provided by 100 percent federal funds, which are provided as a capped annual grant. The number of QIs certified is limited by availability of these funds. Individuals in the first group of QIs (QI-1s) were eligible if their incomes were above 120 percent of the Federal poverty line, but less than 135 percent. The

Medicaid benefit for QI-1s consisted of payment of the full Medicare Part B premium.

Federal statutory authority for the payment of Medicare Part B premiums benefits for QIs was originally intended to expire on December 31, 2002. A Continuing Resolution (Public Law No. 107-229, as amended by Public Law Nos. 107-240 and 107-244) was enacted to extend the QI-1 benefits at the current funding levels through January 21, 2003. The bureau promulgated an emergency rule to amend the July 20, 1998 Rule by extending the benefits of a QI-1 (*Louisiana Register*, Volume 28, Number 12). The Continuing Resolution was most recently amended by Public Law No. 107-294, extending the QI-1 benefits at the current funding levels through March 12, 2003. The bureau now proposes to amend the January 1, 2003 Emergency Rule and extend payment of Medicare Part B premiums for Qualifying Individuals-1 through March 12, 2003. This action is being taken to avoid federal sanctions by complying with changes in federal regulations. It is estimated that the implementation of this Emergency Rule has no fiscal impact for state fiscal year 2002-2003 other than the administrative cost of promulgating the Rule.

Emergency Rule

Effective January 21, 2003, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the January 1, 2003 Emergency Rule and extends payment of Medicare Part B premiums for Qualifying Individuals-1 through March 12, 2003.

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

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

David W. Hood
Secretary

0301#061

DECLARATION OF EMERGENCY

Board of Examiners for New Orleans and Baton Rouge Steamship Pilots

Enhanced Drug and Alcohol Policy
(LAC 46:LXXVI.Chapter 3)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots for the Mississippi River and/or Board of Review (hereinafter "board") hereby promulgates an Emergency Rule regarding enhancement of current drug and alcohol policies, together with other violations and penalties associated therewith.

In accordance with state law and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public

health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the board adopts the following. The effective date for this Emergency Rule is January 3, 2003. This Emergency Rule shall remain in effect for 120 days or until the promulgation of the final Rule, whichever occurs first.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXVI. Steamship Pilots

Chapter 3. Enhanced Drug And Alcohol Policy

§301. Purpose and Policy

A. Due to the safety sensitive nature of the duties performed by NOBRA pilots, the board will maintain and enforce a policy of no tolerance for the violation of its policies, rules and regulations as to those river pilots who pursuant to R.S. 34:1041 et seq. have the duty to pilot sea-going vessels up and down the Mississippi River generally from mile 88 AHP to mile 304 AHP (Latitude 31). These Rules and Regulations are enacted to accomplish those purposes required by the Legislature and to protect the public by ensuring available, safe and competent pilotage of vessels on the waterways under the jurisdiction of this board.

B. Further, the Louisiana Legislature formed this board for the additional purpose of establishing rules, regulations and requirements for all NOBRA pilots to establish standards for recommendation by the board to the governor of the state of Louisiana for such disciplinary matters who may have violated same.

C. The purposes of these rules and regulations are as follows:

1. to enhance general standards of conduct of pilots herein; and
2. for the board to recommend to the Office of the Governor such sanctions as are permitted herein; and
3. to enhance certain minimum standards of conduct relative to alcohol and substance abuse; and
4. to enhance a set of rules and regulations for the proper and safe pilotage of sea-going vessels upon the waterways under the jurisdiction of this board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§303. Application

A. The board hereby adopts the following enhanced rules and regulations relating to a drug and alcohol abuse policy applicable to all state licensed NOBRA Pilots pursuant to the provisions of R.S. 34:1041 et seq., together with all apprentices and candidates. These rules and regulations are not intended to replace those rules and regulations in existence. Current rules and regulations are not superceded nor replaced. What follows is intended only to enhance and strengthen the existing rules and regulations. Any conflict is to be construed and resolved in the stricter sense and implementation. With that end, all current rules and regulations are adopted herein in extenso.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§305. Statement of Findings

A. This board has always had a strong commitment and policy to establish programs promoting the highest standards of pilot health, safety and welfare. Consistent with the spirit and intent of this on-going commitment, the board herewith re-establishes and re-enforces these policies. The board's stated goals will continue to be one of establishing and maintaining a work environment that is free from the effects of alcohol and drug use and abuse. The board's stated goals will continue to be one of establishing and maintaining a work environment that is free from any incident or occasion that may result in any loss, adverse effect or harm to the State's or general public's safety, health and welfare.

B. While the board has no intention of intruding into the private lives of NOBRA pilots, apprentices or candidates, the board does expect that these persons report for work in a fit condition to perform their respective duties. The board recognizes that off-the-job incidents, as well as on-the-job incidents, and involvement with alcohol and drugs can have an impact on the work place and on a river pilot's ability to accomplish the board's goals herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§307. Authority

A. As mandated by R.S. 34:1041, these rules and regulations are issued in accordance with the Administrative Procedure Act under R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements of oversight for NOBRA pilots, apprentices and candidates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§309. Definitions

A. As used in this Chapter, the following terms as used in these rules and regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

Administrative Procedure Act (APA) the Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

Alcoholic Beverage/Alcohol Any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol; any substance that may otherwise impair or affect the ability of a pilot to function in any way whatsoever.

Applicant/Candidate Any person who seeks or is seeking a pilot commission issued herein; also may be used interchangeably with "pilot."

Application The written application supplied by the Board of Examiners to an applicant who desires to become a river pilot as per law and/or for the New Orleans-Baton Rouge Pilot Association.

Apprentice Any person enrolled and/or participating in the orientation program as established by this board; also may be used interchangeably with "pilot."

Association New Orleans-Baton Rouge Steamship Pilot Association

Board of Examiners or Board of Review The board of Examiners for New Orleans and Baton Rouge Steamship

Pilots for the Mississippi River and/or Board of Review, established in R.S. 34:1041 et seq.

Candidate Any person enrolled and/or participating in the orientation program as established by this board; also may be used interchangeably with "pilot."

Drug Any and all controlled dangerous substances as defined in R.S. 40:961(7). Drugs which are illegal under federal, state, or local laws include but are not limited to, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and stimulants not prescribed for current personal treatment by an accredited or licensed physician.

Gender The use of "his" or "her" or any reference to masculinity or femininity are to be used interchangeably

NOBRA Pilot or Pilot A Mississippi River pilot under the jurisdiction of this Commission, as designated in R.S. 34:1041; any person as recommended by the board to the Office of the Governor and commissioned thereafter as per law; hereinafter "pilot."

Prescription Medication Any medication distributed by or with the authorization of a licensed physician as defined in R.S. 40:961 (30).

VTCC Vessel Traffic Center, or any other similarly related United States Coast Guard or governmental facility, institution, or program whatsoever.

Waterways The Mississippi River generally between mile 88 AHP and Mile 304 AHP (Latitude 31).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§311. Severability

A. If any provision of these rules and regulations is held to be invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end, provisions of these rules and regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§313. Effective Date

A. These rules and regulations shall be in full force and effective ninety days after final publication in the Louisiana Register or as per law, whichever is earlier.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§315. Violations of the Policy

A. Any pilot in violation of these policies, rules or regulations may be referred to the Office of the Governor for reprimand, fine, suspension and/or pilot commission revocation, unless otherwise provided for in this board's rules and regulations.

B. Any pilot in violation of this policy may be reprimanded, fined, evaluated, and treated for drug use and have his or her pilot commission suspended or revoked as provided by R.S. 34:1041 et seq.

C. A pilot shall be suspended from performing the duties of a pilot pending a hearing pursuant to R.S. 34:1041 et seq. and Revised Statute Title 49 upon the following:

1. tests positive for any drug;
2. uses any drug in violation of these rules and regulations;
3. refuses to submit to reasonable scientific testing for drugs and/or fails to cooperate fully with the testing procedures and/or in any way attempts to alter the test results;
4. tests positive for alcohol;
5. refuses to submit to a blood alcohol test and/or fails to cooperate fully with the testing procedure and/or in any way attempts to alter the test results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§317. Standards of Safe Pilotage, Grounds for Recommendation to the Governor

A. Subject to the authority of the Office of the Governor, as per law, this board shall be exclusively and unilaterally be vested with the power and authority to recommend to the Office of the Governor of Louisiana revocation and/or suspension of all rights and privileges of river pilotage for appointment as a NOBRA Pilot, apprentice, and/or candidate for any violation of the board's drug and alcohol rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§319. Effect of Positive Tests/ Disciplinary Action

A. Any NOBRA pilot, apprentice or candidate with alcohol or a prohibited drug detected in his system will have an opportunity to explain any medical condition which may have had an effect on the test result. However, passive inhalation or atmospheric contamination are not acceptable explanations for confirmed positive drug tests.

B. Any positive drug screen or positive alcohol test shall be reported to the U.S. Coast Guard and may place the pilot's license in jeopardy. Any NOBRA pilot testing positive for alcohol or a prohibited drug, or residual thereof, shall be removed from duty, pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Any NOBRA pilot who presents a positive alcohol test or drug screen shall be subject to disciplinary action by the board of Examiners/Board of Review, including the recommendation of revocation or suspension of his commission by the governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall be determined by the Board of Examiners/Board of Review on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for drug use and/or alcohol abuse shall do so at his own personal expense. In addition, the evaluation and treatment facility must be pre-approved by the Board of Examiners/Board of Review.

C. Refusing a drug screen and/or alcohol test, or any attempts at alteration or substitution of samples is considered a violation of these rules. Any NOBRA pilot who refuses to

submit to a drug screen and/or alcohol test, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results, shall be removed from duty as a pilot pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Furthermore, any refusal to submit to a drug screen and/or alcohol test, failure to cooperate fully with the testing procedures, or any attempt to alter the test results shall be considered by the Board of Examiners/Board of Review as a positive test result. In addition, avoiding the directions of the Board of Examiners/Board of Review after an accident/incident which mandatorily requires a drug/alcohol screen will be considered a refusal to test and will subject the offending pilot to disciplinary action by the Board of Examiners/Board of Review.

D. In addition, if the master of a vessel refuses a pilot's services due to the alleged impairment of the pilot, the pilot shall immediately contact a member of the Board of Examiners/Board of Review to receive instructions regarding testing. The pilot shall then immediately proceed to a testing facility selected and pre-designated by the Board of Examiners/Board of Review. Failure to proceed to the testing facility in the time allowed by the Board of Examiners/ Board of Review, which shall be determined at the time, but shall not exceed three hours, shall be considered a refusal to test and will subject the offending pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with La. R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§321. Prohibitions and Requirements of the Policy

A. It shall be assumed that a NOBRA pilot, under any influence of alcohol or drugs or who uses alcohol or drugs on the job, has the potential for interfering with his own safety, as well as that of the vessel he is piloting and other vessels in the area, together with danger to related property and personnel. Consistent with existing board practices, such conditions shall be immediate cause for disciplinary action.

B. The board will cooperate fully with appropriate law enforcement agencies by reporting information with respect to the violation of laws regarding illegal substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§323. Drug and Alcohol Testing

A. All current NOBRA pilots, applicants and/or apprentices shall be subject to testing for the presence of alcohol and the presence of marijuana, opiates, cocaine, amphetamines, and phencyclidine, together with any and all other substances as may be tested as ordered by the board.

B. Types of Testing

1. All pilots shall submit to all reasonable scientific testing for drugs and alcohol when directed by the board. All procedures conducted in connection with such testing shall

comply with NOBRA rules and regulations as of this date, and as those that may be amended from time to time.

2. A pilot shall be required to submit a breath test and/or blood test and/or urine test and/or hair specimen test for the presence of drugs and/or alcohol under the following non-exclusive circumstances:

- a. prior to recommendation for appointment, as a part of the physical exam required by law and these Rules and Regulations;
- b. after recommendation, whenever the pilot is required by the board to undergo a physical examination;
- c. upon written complaint investigated by this board;
- d. when and if any commissioner invokes the provision of any of its Rules and Regulations, including but not limited to LAC 46:LXXVI.111.L;
- e. when subject to the random drug or alcohol testing policy as created by the NOBRA Association
- f. when subject to the random drug or alcohol testing policy as created by this board
- g. when the pilot is reasonably suspected of using drugs in violation of this policy;
- h. when the pilot is determined to be directly involved in a marine casualty or accident;
- i. when there exists reasonable suspicion that a pilot is performing duties while under the influence of alcohol or drugs.

C. The board may designate a testing agency to perform any scientific test(s) necessary to detect the presence of alcohol and/or drugs or their metabolites in a pilot's system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

§325. Test Results

A. Any pilot, whose test is confirmed as positive, shall have the right of reasonable immediate access to drug tests records. Any and all pilot requests shall be in writing and delivered to the board without delay.

B. The results of the drug testing conducted pursuant to this policy and all information, interviews, reports, statements and memoranda relating to the drug testing shall, as per law, be confidential and disclosed only to this board and the pilot tested, except that:

1. the board may report the results to the Office of the Governor; and
2. in the event that the board determines that a hearing is required pursuant to R.S. 34:1041 et seq., there shall be no requirement of confidentiality in connection with such hearing or release of such medical records or test results, all as per law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots and Board of Review, LR 29:

Henry G. Shows
Chairman

0301#014

DECLARATION OF EMERGENCY

Board of Examiners for New Orleans and Baton Rouge Steamship Pilots

Standards of Conduct and Investigations
(LAC 46:LX XVI.Chapter 4)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots for the Mississippi River (hereinafter "board") hereby promulgates an Emergency Rule regarding standards of conduct, standards of proper and safe pilotage, standards of recency of service, conditions of reinstatement, procedures for investigations and enforcement, together with other violations and penalties associated therewith.

In accordance with state law and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the Board adopts the following rules and regulations. The effective date for this Emergency Rule is December 18, 2002. This Emergency Rule shall remain in effect for 120 days or until the promulgation of the final Rule, whichever occurs first.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXVI. Steamship Pilots

Chapter 4. Standards of Conduct and Investigations

§401. Purpose/Statement of Policy

A. Due to the safety sensitive nature of the duties performed by NOBRA pilots, the Board, with respect to pilotage up and down the Mississippi River generally from mile 88 AHP to mile 304 (Latitude 31) along the Mississippi River:

1. will maintain and enforce a strict policy of no tolerance for the violation of its policies, rules and regulations;
2. will maintain and enforce a strict policy of no tolerance for misconduct or conduct unbecoming of a pilot while on or off duty;
3. will establish standards for recommendation of NOBRA pilots to the governor of the state of Louisiana for such disciplinary matters for pilots who pursuant to R.S. 34:1041 et seq. may have violated these rules and regulations and/or work related thereto, including but not limited to services rendered at the Vessel Traffic Center (commonly known as "VTC");
4. will maintain and enforce a strict policy of full and complete oversight as is necessary to ensure that pilots who return to duty after varying degrees of absences shall comply with the following rules and regulations hereinbelow;
5. will establish procedures in conformity with the requirements of the Louisiana Administrative Procedure Act (R.S. 49:950 et seq.) for investigating and conducting such hearings relative to incidents and/or complaints of pilot misconduct, carelessness, and/or incompetence;

6. will establish certain additional minimum standards of conduct, including but not limited to conduct relative to neglect of duty, drunkenness, habitual intemperance, substance abuse, incompetency, maintaining proficiency, remaining properly posted, and general bad conduct of river pilots;

7. will maintain and enforce a strict policy of conducting full and complete investigations, and possible subsequent referrals to the Office of the Governor of any and all violations of commission rules and state and/or federal law;

8. will maintain and enforce a strict policy no tolerance of the failure of a NOBRA pilot to maintain all applicable licenses, certificates and commissions as may be administered and/or issued by any local, state or federal governmental agency as are necessary to pilot vessels herein;

9. will maintain a policy of no tolerance for the failure of a NOBRA pilot, within the jurisdiction of this board, to pilot vessels for less than a certain number of trips within a specified time period, all in order to maintain familiarity and continuous working knowledge of the Mississippi;

10. to provide a situational policy for the proper and safe pilotage of sea-going vessels upon the waterways under the jurisdiction of the NOBRA pilots;

11. will establish general standards of pilotage hereunder and herein;

12. will establish standards to recommend to the Office of the Governor such sanctions of NOBRA Mississippi River pilots as is permitted herein;

13. will establish certain minimum standards of pilotage time actually performed on the Mississippi River to assist in establishing competency of NOBRA pilots;

14. will provide a uniform set of rules and regulations for the proper and safe pilotage of sea-going vessels upon the waterways under the jurisdiction of this board;

15. will establish standards by which this board may recommend a pilot to return to work as a pilot or, where applicable, otherwise recommend or deny to the Office of the Governor of the State of Louisiana such an individual for re-appointment as NOBRA Mississippi River pilots who pursuant to R.S. 34:1041 et seq.;

16. will ensure compliance by the board with the Public Meetings Law. These Rules and Regulations are enacted to accomplish those purposes required by the Legislature and to protect the public by ensuring safe and competent pilotage of vessels on the waterways under the jurisdiction of this board;

17. to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services;

18. will establish standards of oversight and rules for apprentices and candidates; and

19. will maintain and enforce a policy where there shall be no other violation of these rules and regulations that is contrary, in the discretion of this board, to these rules and regulations herein.

B. In accordance with state law and in order the board of examiners proposes to adopt the following pertaining to the rules and regulations of the board.

C. This board has always had a strong commitment and policy to the pilot members of NOBRA Association to provide a safe work place and to establish programs promoting the highest standards of pilot health, safety and welfare. Consistent with the spirit and intent of this on-going commitment, the board herewith re-establishes and re-enforces these policies. The board's stated goal will continue to be one of establishing and maintaining a work environment that is free from any incident or occasion that may result in any loss, adverse effect or harm to the safety, health and welfare of the public's interests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§403. Application

A. The board hereby adopts the following rules and regulations relating to all applicants, apprentices, and state licensed NOBRA Pilots pursuant to the provisions of R.S. 34:1041 et seq. These rules and regulations are not intended to replace those rules and regulations in existence. Current rules and regulations are not superceded nor replaced. Where applicable, what follows is intended only to enhance and/or clarify existing rules and regulations. Where applicable, any conflict is to be construed and resolved in the stricter sense and implementation. With that end, all current rules and regulations are adopted and incorporated herein in extenso. With that end, all current rules and regulations are to be read in para materii.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§405. Statement of Findings

A. This board has always had a strong commitment and policy to the general public and maritime industry, including but not limited to apprentices and candidates and the pilot members of NOBRA Association to provide a safe work place and to establish programs promoting the highest standards of pilot health, safety and welfare. Consistent with the spirit and intent of this on-going commitment, the board herewith re-establishes and re-enforces all rules and regulations. The board's stated goals will continue to be one of establishing and maintaining a work environment that is free from any incident or occasion that may result in any loss, adverse effect or harm to the state's or general public's safety, health and welfare.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§407. Authority

A. As mandated by R.S. 34:1041, these rules and regulations are issued by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots in accordance with the Administrative Procedure Act under R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements for pilot oversight for NOBRA pilots, apprentices and candidates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq..

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§409. Definitions

A. As used in this Chapter, the following terms as used in these rules and regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

Administrative Procedure Act (APA) Cthe Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

Applicant/Candidate Cany person who seeks or is seeking a pilot commission issued herein.

Application Cthe written application supplied by the Board of Examiners to an applicant who desires to become a river pilot as per law and/or for the New Orleans-Baton Rouge Pilot Association.

Apprentice Cany person enrolled and/or participating in the orientation program as established by this board.

Association CNew Orleans-Baton Rouge Steamship Pilot Association.

Board of Examiners or Board Cthe Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, as established in R.S. 34:1041 et seq.

Gender Cthe terms "his" and "her" are to be used interchangeably, as are any references to that which may be masculine or feminine.

NOBRA Pilot or Pilot Ca Mississippi River pilot under the jurisdiction of this Commission, as designated in R.S. 34:1041; any person as recommended by the board to the Office of the Governor and commissioned thereafter as per law; hereinafter "pilot."

Services of a Pilot Cany advice or assistance with respect to pilotage by the commissioned pilot, including but not limited to advice concerning weather, channel conditions, or other navigational conditions.

Time Cshall mean the period of time necessary to commence and complete a job assignment, as dispatched, aboard a vessel or at the Vessel Traffic Center (VTC) or other similar event.

Turn Cshall mean the overall time-period necessary to complete the designated scope of work to be performed, including but not limited to a vessel, drug testing continuing education or at the VTC.

VTC Vessel Traffic Center, or any other similarly related United States Coast Guard or governmental facility, institution, or program whatsoever.

Waterways Cthe Mississippi River generally between mile 88 AHP and Mile 304 (Latitude 31).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§411. Severability

A. If any provision of these rules and regulations is held to be invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end, provisions of these rules and regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§413. Effective Date

A. These rules and regulations shall be in full force and effect ninety days after final publication in the *Louisiana Register*, or as per law, whichever is earlier.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§415. Violations of the Policy

A. This board may take such action as is necessary for any violation of these policies, rules and regulations by any pilot, apprentice, or candidate who violate these policies, rules or regulations, or the board may refer such person to the Office of the Governor, if required by law, for reprimand, fine, suspension and/or pilot commission revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§417. Standards Of Conduct: Proper And Safe Pilotage; Grounds for Disqualification and Suspension of Pilots, Apprentices, and Candidates; Grounds to Recommend Revocation of Pilot Commission

A. This board shall be exclusively and unilaterally vested with the power and authority to take action as to all rights and privileges of river pilotage as to a NOBRA Pilot, apprentice, and/or candidate for the following non-exclusive list of particulars.

B. This board shall be exclusively and unilaterally vested with the power and authority to recommend to the Office of the Governor of Louisiana revocation and/or suspension of all rights and privileges of river pilotage, for appointment as to a NOBRA pilot, apprentice, and/or candidate for the following non-exclusive list of particulars:

1. failure to pass any examination given by the board of Examiners;

2. failure to maintain, in good, valid and current standing, any and all maritime licenses and certificates necessary to pilot vessels as a NOBRA pilot, including but not limited to a U.S. Coast Guard First Class Pilot License of any gross tons between mile 88 AHP and mile 234 AHP;

3. conviction of any felony from any jurisdiction whatsoever;

4. denial, revocation or suspension of a pilot and/or maritime license and/or pilot commission by any local, state, or federal entity or jurisdiction whatsoever;

5. neglect of duty;

6. neglect of duty while piloting any vessel;

7. neglect of duty while performing services at VTC (Vessel Traffic Center) or other similar governmental facility;

8. conduct unbecoming a pilot while on-duty;

9. conduct unbecoming a pilot while off-duty;

10. failure to remain a qualified and registered voter of the state of Louisiana;

11. not successfully passing any physical examination as mandated by the U.S. Coast Guard;

12. any violation of the board's drug and alcohol rules and regulations;

13. refusal to submit to any and all scientific testing for drugs or alcohol ordered by the association and/or board as promulgated by the board's rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§419. Affirmative Duty to Report

A. There is an affirmative duty of apprentices, candidates, and pilots to immediately and timely provide proof of any and all test results and examinations to the board, including but not limited to medical, licensure, physical, drug, substance abuse or alcohol, where such results or examinations are related to safe pilotage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§421. False Claims

A. This board shall be vested with the right and ability to sanction any person who levies a knowingly false claim against this board, any board member or staff hereof, or any member of the NOBRA Association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§423. Absolute Insurer

A. A NOBRA pilot is the absolute insurer of his or her own state of mind, physical abilities, and overall well-being.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§425. Adoption of Navigational Rules

A. The board shall use a standard of that which adheres to common, local practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§427. Pilot's Duty To Remain on Board Ship

A. A NOBRA pilot shall remain on board the ship until properly relieved and/or has completed one's pilot assignment and/or is released by the ship master or his representative/agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§429. Pilot's Duty of Remain on Duty at the Vessel Traffic Center (VTC)

A. A NOBRA pilot shall remain on site and on duty at VTC (or similar facility) until properly relieved and/or released by the VTC Watch Supervisor or representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§431. Establishing Standards for Recency of Service on the River

A. In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the board hereby gives notice of intent to promulgate Rules regarding standards of mandated pilotage time on the Mississippi River and the necessity to obtain and maintain a current and valid Louisiana state pilot license and commission, together with other violations and penalties associated therewith.

B. In accordance with state law and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public

health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the board proposes to adopt the following.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§433. Other Qualifications to Maintain as a NOBRA Pilot while Performing Pilotage Services on the Mississippi River; Grounds for Disqualification and Suspension of Pilots, Apprentices, and Candidates; Grounds to Recommend of Revocation of Pilot Commission

A. All current NOBRA pilots, apprentices, and candidates shall always maintain each of the following:

1. a current and valid Louisiana voter's registration card as issued by the Louisiana Secretary of State, through the Office of the Registrar in the Parish where the NOBRA pilot, apprentice or candidate is domiciled as per Louisiana. A NOBRA pilot, apprentice or candidate may establishing residency elsewhere, as per law.

B. All current NOBRA pilots, apprentices, and candidates shall always:

1. have successfully passed a physical examination which, in the judgment of the board, includes, but is not limited to those standards, such as vision, color perception and hearing tests, necessary to perform duties as a pilot, together with those requirements as mandated by the United States Coast Guard;

2. cooperate fully with this board's testing procedures;

3. cooperate fully with this board's investigations of any matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§435. Pilot's Duty to Exhibit Identification

A. Whoever offers to pilot a ship or other vessel shall, if required, exhibit to the commander thereof his identification card as a NOBRA pilot, attested to by the chairman of the Board of Examiners; and if he refuses or neglects to do so, he shall not be entitled to any remuneration for any service he may render.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§437. Administrative Policy and Application

A. The purpose of these rules and regulations is to ensure compliance by the board with the provisions of the Louisiana Public Meeting Law and the records maintenance requirements of the provisions of R.S. 49:950 et seq. and R.S. 42:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§439. Meetings of Examiners

A. All meetings and notices thereof of the board shall be conducted in accordance with the Open Meetings Law (R.S. 42:1 et seq.). The board shall meet at least once each quarter and meetings shall be called in accordance with R.S. 42:7 or as per law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§441. Record Keeping

A. The Board of Examiners shall maintain records and conduct its hearings in accordance with R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§443. Reinstatement of Commission Pilot Privileges as Relates to Inactivity of Pilot Services; Re-Appointment of Pilot; Testing and Examination of Apprentices and Active Pilots; Establishing Standards of Pilotage

A. These Sections shall apply to all NOBRA commissioned pilots, together with former commissioned pilots, apprentices or applicants who have not piloted a vessel and/or been assigned to a turn or vessel as discussed hereinafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§445. Request for Appearance before Board

A. Any person who is subject to these rules and regulations shall apply, in writing, to this board to request an appearance for an administrative determination as to the status of such person for re-appointment or recommendation to pilot re-commissioning.

B. Such a request shall be placed on the board's agenda, as per law.

C. Such a request shall be heard as per law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§447. Applicability to Turns or Assignments

A. If an otherwise state-commissioned NOBRA pilot does not pilot or has not piloted a vessel or ship as assigned by the NOBRA Pilot Association during the normal course of dispatching of pilotage services for any period of six consecutive months, then before that pilot is eligible and authorized to pilot any such vessel along the NOBRA route, said pilot shall be required to successfully complete, to the exclusive and unilateral satisfaction of the board, each of the following non-exclusive list of particulars.

1. A minimum of five trips or turns along the NOBRA route from the general area of the Baton Rouge harbor (or within three miles of the Baton Rouge Interstate 10 Bridge over the Mississippi River at river mile 234 AHP and then along the meandering line of the Mississippi River) to the Algiers cut-off canal at Mississippi River mile 88 AHP.

2. Two trips of these five trips shall cover the entire NOBRA route between Baton Rouge and New Orleans. One trip shall be northbound. One trip shall be southbound.

3. Two trips of these five trips shall be at night.

B. Where there has been no pilotage or vessel assignments in excess of such six months, a NOBRA pilot shall be subject to and shall be required to successfully complete, to the exclusive and unilateral satisfaction of the board, a specially designed and planned program to

reasonably re-orient such pilot to Mississippi River pilotage under the jurisdiction of this board.

C. These Sections shall not apply to any assignment or turn at the VTC (Vessel Traffic Center) and shall be excluded from these rules. Work performed at VTC shall not be considered as a turn or assignment for these purposes only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§449. Re-orientation Period

A. Upon commencement of the re-orientation period, any pilot subject to these minimum requirements shall successfully complete all five trips and turns within 30 consecutive days. For good reason shown, and upon timely application by the pilot, additional time to complete these trips or turns may be granted by the board. The board shall have the exclusive and unilateral discretion to grant or deny any extension of time.

B. Where there has been no pilotage or vessel assignments in excess of such six months, and before resumption of pilot assignments, a NOBRA pilot shall have conducted a thorough U.S. Coast Guard physical as per Code of Federal Regulations (CFR) 10.709 and CFR 10.205, all as may be amended from time to time by the U.S. Coast Guard.

C. Where there has been no pilotage or vessel assignments in excess of such six months, a NOBRA pilot shall present for inspection and copying by the board a Form CG 719K/E (Rev. 7-01) or as may be amended from time to time by the U.S. Coast Guard.

D. Where there has been no pilotage or vessel assignments in excess of such six months, a NOBRA pilot shall produce to the board sufficient and verifiable documentation, to the exclusive discretion of the board, from any and all local, state, or federal governmental agencies to establish that said pilot is in good standing and is authorized to pilot such a vessel. Such documentation shall be reasonably determined by the board on a case-by-case basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

§453. Investigations and Enforcement of Board Policies and Other Violations of Commission Rules and Regulations; Penalties Associated with Violations; Conducting Hearings Associated with any Complaint or Violation of Pilotage; Testing and Examination of Apprentices and Active Pilots; Establishing Standards of Pilotage

A. All complaints reported to the board shall be considered for investigation. A complaint, under the provisions hereinafter, is defined as:

1. any written, signed complaint involving a pilot commissioned as per law, and/or

2. any other event involving a pilot commissioned herein, that, in the discretion of the board, justifies further investigation.

B. The board shall appoint an Investigating Officer to conduct a preliminary investigation of the complaint and report their findings to the board. In no event shall the Investigating Officer be an active member of the board.

C. If the Investigating Officer, following the preliminary investigation, is of the opinion that the conduct in question is not sufficient to justify further proceedings, he/she shall make a written report to the board, which, in its exclusive discretion, may accept or reject the recommendation and dismiss the complaint.

D. If after the preliminary investigation, the board is of the opinion that the complaint is sufficient to justify a full investigation, the board shall, if so required by law, notify the Office of the Governor and request authority from the governor to conduct a full investigation and/or administrative hearing regarding the complaint. Following receipt of authority from the governor, if so required by law, the board shall authorize its Investigating Officer to conduct a full investigation of the complaint.

E. If the Investigating Officer, following the full investigation, is of the opinion that the conduct in question is not sufficient to justify further proceedings, he/she shall make a written report to the board, which, in its exclusive discretion, may accept or reject the recommendation and dismiss the complaint.

F. Following the full investigation, if the board is of the opinion that an administrative hearing is required, the board shall give notice to the pilot, by registered mail or personal service, of the complaint or allegations made against him/her and offer the pilot an opportunity to show compliance with the laws or regulations allegedly violated. Said notice shall be issued pursuant to R.S. 49:955(B) and shall include:

1. a statement of the time, place, and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is being held;
3. a reference to the particular sections of the statutes and rules involved;
4. a short and plain statement of the matters asserted.

G. The board may make informal disposition of any investigation or adjudication/hearing by means of stipulation, agreed settlement, consent order or default. If required by law, approval of such informal disposition must be sought from the Office of the Governor before the informal disposition may be deemed final.

H. Any matter set for hearing shall be prosecuted by an Independent Prosecutor appointed by the board. The Independent Prosecutor may, in the discretion of the board, be the same party who acted as Investigating Officer. In no event shall the Independent Prosecutor be an active member of the board. The Independent Prosecutor may conduct further investigation and shall prepare and present the matter to the board in such manner as he/she may deem appropriate.

I. Any pilot may be represented in any adjudication/hearing before the board by an attorney at law duly admitted to practice in the state of Louisiana. Following receipt of proper notice of such representation, all further notices, subpoenas or other processes related to the proceedings shall be served on the pilot through his/her designated counsel of record.

J. Any pre-hearing motion shall be referred for decision to the board, who in its discretion, may rule on the motion prior to the hearing date or may defer the matter until the hearing date.

K. All investigations and hearings undertaken as authorized herein above, shall be conducted pursuant to the

Louisiana Administrative Procedure Act, R.S. 49:950 et seq. If any specific provision of this section in any way conflicts with the more general rule of the Louisiana Administrative Procedure Act, the more specific rule of this section shall govern.

L. The board shall docket and schedule the Hearing before the board not less than 10 days nor more than 180 days thereafter; provided, however, that such time may be lengthened or shortened as the board determines may be necessary or appropriate to protect the public interest or upon motion of the Investigating Officer or respondent/pilot pursuant to a showing of proper grounds.

M. Within 30 days of service of the Administrative Notice, or such longer time as the board may permit, the respondent/pilot shall provide a written answer the Administrative Notice, admitting or denying each of the separate allegations of fact and law set forth therein. Any matters admitted by respondent shall be deemed proven and established for purposes of adjudication. In the event that the respondent/pilot does not timely file a response to the Administrative Notice, all matters asserted therein shall be deemed admitted.

N. All motions or other papers permitted or required to be filed with the board unless otherwise notified in writing.

O. Motions for continuances of hearings, for dismissals of the proceeding and all other pre-hearing motions shall be filed not later than 15 days prior to the hearing. The opposing party shall have seven to respond in opposition. Each pre-hearing motion shall be accompanied by a memorandum which shall set forth a concise statement of the grounds upon which the relief sought is based and the legal authority therefor. A motion may be accompanied by an affidavit as necessary to establish facts alleged in support of the motion.

P. If an initial motion for continuance is not opposed, it may be granted by the presiding chairman of the board.

Q. Any pre-hearing motion, other than an unopposed initial motion for continuance of hearing which may be granted by the chairman of the board, shall be referred for decision to the board member designated by the board as the presiding officer of the board designated with respect to the proceeding for ruling. The presiding officer, who shall be a member of the board designated as presiding officer by the board in each matter before the board, in his discretion, may refer any pre-hearing motion to the board for disposition, and any party aggrieved by the decision of a presiding officer on a pre-hearing motion may request that the motion be reconsidered by the entire board.

R. Upon request of any party and upon compliance with the requirements of this Section, any board member shall sign and issue subpoenas in the name of the board requiring the attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence at an adjudication hearing.

S. No subpoena shall be issued unless and until the party who wishes to subpoena the witness first deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before the board only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examination, and to state the results thereof,

shall receive such additional compensation from the party who wishes to subpoena such witnesses as may be fixed by the board with reference to the value of time employed and the degree of learning or skill required.

T. In any case of adjudication noticed and docketed for hearing, counsel for respondent and Independent Prosecutor may agree, or the presiding officer may require, that a pre-hearing conference be held among such counsel, or together with the board's independent counsel appointed herein whereof, for the purpose of simplifying the issues for hearing and promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

U. Following such pre-hearing conference the parties shall, and without such conference the parties may by agreement, agree in writing on a pre-hearing stipulation which should include:

1. a brief statement from the Independent Counsel as to what is expected to be shown from the evidence to be presented;

2. a brief statement by respondent as to what the evidence and arguments in defense are expected to show;

3. a list of the witnesses to be called by all parties, together with a brief general statement of the nature of the testimony each such witness is expected to give;

4. any stipulations which the parties may be able to agree upon concerning undisputed claims, facts, testimony, documents or issues; and

5. an estimate of the time required for the hearing.

V. Unless otherwise requested by the respondent/pilot, adjudication hearings, shall be conducted in closed session, unless otherwise expressly waived by the respondent/pilot, all as per law.

W. At the hearing, opportunity shall be afforded to all parties to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts and disposition of the Administrative Notice.

X. Unless stipulation is made between the parties and approved by the board, providing for other means of recordation, all testimony and other proceedings of an adjudication shall be recorded by a certified stenographer who shall be retained by the board to prepare a written transcript of such proceedings. The cost of the stenographer shall be initially be at the expense of the board; however, and in the event that the respondent/pilot is otherwise suspended, fined, or reprimanded then the respondent/pilot shall be liable for and may be assessed and taxed for all costs. If the respondent/pilot is referred or recommended to the Office of the Governor for action, then the respondent/pilot shall be liable for and may be assessed and taxed for all costs. Any and all witness, expert witness or hearing-related costs may likewise be assessed and taxed as to the respondent/pilot. Witness fees (expert or otherwise) and related hearing costs caused by the respondent/pilot shall be his/her responsibility; in no way whatsoever shall the board be liable for nor responsible for costs or fees caused by the respondent/pilot.

Y. During evidentiary hearing, the presiding officer shall rule upon all evidentiary objections and other procedural questions, but in his discretion may consult with the entire

panel in or out of executive session, all as per law. At any such hearing, the board may be assisted by legal counsel, who is independent of the Independent Prosecutor and who has not participated in the investigation or prosecution of the case.

Z. The record in a case of adjudication shall include, but is not limited to:

1. the Administrative Notice, notice of hearing, respondent's response to the complaint, if any, subpoenas issued in connection with discovery, and all pleadings, motions, and intermediate rulings;

2. evidence received or considered at the hearing;

3. a statement of matters officially noticed except those so obvious that statement of them would serve no useful purpose;

4. offers of proof, objections, and rulings thereon;

5. proposed findings and exceptions, if any;

6. the decision, opinion, report or other disposition of the case made by the board;

7. findings of fact;

8. conclusions of law.

AA.1. In an adjudication hearing, the board may give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Effect shall be given to the rules of privilege recognized by law. The board may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written or recorded form.

2. All evidence, including records and documents in the possession of the board which the parties desire the board to consider, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

3. Notice may be taken of judicially cognizable facts and generally recognized technical or scientific facts within the board's knowledge. The board's experience, technical competence and knowledge may be utilized in the evaluation of the evidence.

4. Any member of the board serving as presiding officer in an adjudication hearing shall have the power to and shall administer oaths or affirmations to all witnesses appearing to give testimony, shall regulate the course of the hearing, set the time and place of continued hearings, fix the time for the filing of briefs and other documents, if they are required or requested, and may direct the parties to appear and confer to consider simplification of the issues.

BB.1. The final decision of the board in an adjudication proceeding shall be in writing and shall include findings of fact and conclusions of law, and shall be signed by the presiding officer of the hearing panel on behalf and in the name of the board.

2. Upon issuance of a final decision, a copy thereof shall promptly be served upon all parties of record, or upon respondent personally in the absence of counsel, in the same manner of service prescribed with respect to service of Administrative Notices.

CC.1. A decision by the board in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the board pursuant to written motion filed with the board within 10 days from service of the decision on respondent or on its own motion. A motion for rehearing, reopening, or reconsideration shall be made and served in the form and manner prescribed hereinabove and shall set forth the grounds upon which such motion is based, as provided herein.

2. The board may grant rehearing, reopening, or reconsideration if it is shown that:

- a. the decision is clearly contrary to the law and the evidence;
- b. the respondent has discovered since the hearing evidence important to the issues which he or she could not have with due diligence obtained before or during the hearing;
- c. other issues not previously considered ought to be examined in order to properly dispose of the matter; or
- d. there exists other good grounds for further consideration of the issues and the evidence in the public interest.

DD. As per law and as may be levied and as may be recommended, the board shall have the specific authority to recommend imposition of a fine on any pilot, to recommend reprimand or removal from duty any pilot, or to recommend to the governor that the commission of any pilot be suspended or revoked if a pilot is found in violation of any rule or regulation adopted by the board of examiners.

EE. The authority established in these rules is in addition to and in no way limits the authority of the board to seek to remove a pilot from duty pursuant to the provisions of R.S. 34:1041 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 29:

Henry G. Shows, Jr.
Chairman.

0301#013

DECLARATION OF EMERGENCY

Department of Social Services Office of Community Services

Refugee Resettlement Program
(LAC 67:V.501-515)

Pursuant to R.S. 49:953(B) of the Administrative Procedure Act, the Department of Social Services, Office of Community Services (DSS/OCS) has adopted the following Emergency Rule continuing state administration of the Refugee Resettlement Program under its aegis and incorporating policy responsive to changes in the Code of Federal Regulations, 45 CFR 400.56-63 revised October 1, 2000 relative to services to public/private Refugee Cash Assistance (RCA) participants. The Refugee Resettlement Program is funded by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement. The program includes three

components: Refugee Cash Assistance, Refugee Medical Assistance and Refugee Social Services. DSS/OCS will deliver the Refugee Cash Assistance and Social Services components. The Department of Social Services, Office of Family Support (DSS/OFS) and the Department of Health and Hospitals shall deliver Refugee Medical Assistance via Memorandum of Understanding with DSS/OCS and each other.

This Emergency Rule is being promulgated simultaneously with an Emergency Rule by DSS/OFS repealing its administration of the Refugee Resettlement Program. This Emergency Rule is effective January 1, 2003 and shall remain in effect for 120 days.

Title 67

SOCIAL SERVICES

Part V. Office of Community Services

Subpart 2. Community Services

Chapter 5. Refugee Resettlement Program

Subchapter A. Goals and Services

§501. Authority

A. The state of Louisiana administers the Refugee Resettlement Program through the Department of Social Services, Office of Community Services (DSS/OCS) in accordance with federal regulations including 45 CFR 400. The Office of Community Services is responsible for the administration and delivery of services through direct provision, memoranda of understanding with other state agencies, and, purchase of services.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:1226 (December 1991), Department of Social Services, Office of Community Services, LR 29:

§503. Program Goals

A. The Refugee Resettlement Program is designed to effectively resettle refugees and to promote economic self-sufficiency for refugees within the shortest possible time after their entrance into the state. Those considered for receipt of the Refugee Resettlement Program services and benefits include individuals with the following Immigration and Naturalization Services statuses:

1. refugees;
2. asylees;
3. Cuban and Haitian entrants;
4. certain Amerasians from Vietnam; and
5. victims of a severe form of trafficking who receive certification from the Office of Refugee Resettlement.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 29:

§505. Program Services

A. Services provided in the Refugee Resettlement Program are defined in the Louisiana State Plans for the Administration of the Refugee Resettlement Program and the Public Private Partnership/Refugee Cash Assistance Program which comply with 45 CFR 400 as amended. There are three components of the Refugee Resettlement Program. They are: Refugee Cash Assistance, Refugee Medical Assistance and Refugee Social Services.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 29:

Subchapter B. Refugee Cash Assistance

§507. Application, Eligibility, and Incentive Bonuses for Refugee Cash Assistance

A. Application. The Office of Community Services will administer a Public Private Partnership/Refugee Cash Assistance program by contracting with local private resettlement agencies to provide direct cash assistance to eligible refugee clients. Any individual wishing to apply for benefits may do so. A determination of eligibility must be made within 30 days of the date of application.

B. Eligibility

1. General eligibility requirements for refugee cash assistance is limited to those who:

a. are new arrivals to the United States whose residence in the country is within the Refugee Cash Assistance (RCA) eligibility period determined by the Office of Refugee Resettlement Director;

b. are asylees recently granted asylum whose time since the date being granted asylum is within the RCA eligibility period determined by the Office of Refugee Resettlement Director;

c. are ineligible for TANF and SSI;

d. meet immigration status and identification requirements in Subpart D of 45 CFR Part 400, or who are the dependent children of, and part of the same family unit as, individuals who meet the requirements, subject to the limitation in Sec. 400.208 with respect to non-refugee children;

e. are not full-time students in institutions of higher education, as defined by the Office of Refugee Resettlement Director;

f. are residents of Louisiana in the jurisdiction of the local resettlement agency handling the application; and,

g. meet the following financial eligibility requirements.

2. Financial eligibility requirements are as follows.

a. The family unit will have gross income at or below 200 percent of the federal poverty level.

b. There will be a total earned income disregard for the first four months of their time eligibility period.

c. There will be a \$200 earned income disregard for the fifth month through the last month of their eligibility period.

3. Incentive Bonuses

a. Incentive bonuses will be available to eligible individuals up to a capped maximum of the standard payment amount times the months of the established eligibility period and are as follows:

i. a \$200 one time bonus per eligible individual for accepting a full time job and staying on that job for at least ten working days (\$100 bonus for part time employment);

ii. a \$200 one time bonus per eligible individual for remaining employed on the 90th day after being placed in a job and the 90-day retention date must be within the period of eligibility;

iii. an employable eligible individual may have the local resettlement agency make payment toward the cost of driving lessons, up to \$200, to an accredited driving instruction school, if driving lessons are needed by the individual, the individual is eligible to apply for a valid drivers license, and learning to drive is part of the employability plan for the individual.

C. Participants receiving RCA will also be eligible to receive employment, language training, and related support services under the Refugee Social Services Program.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 29:

§509. Amount of Refugee Cash Assistance

A. The cash assistance standard payment amounts per month for the period of eligibility are as follows.

Size of Family Unit	Payment Amount
1	\$260
2	\$335
3	\$400
4	\$455
Incremental	\$50

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 29:

§511. Mandatory Participation in Employment Services

A. All non-exempt eligible members of a family unit must participate in an employment plan developed by the local resettlement agency in conjunction with the non-exempt eligible member in order to be eligible for cash assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 29:

Subchapter C. Refugee Medical Assistance

§513. Eligibility and Furnishing of Services for Refugee Medical Assistance

A. The DSS/OCS will administer Refugee Medical Assistance (RMA) in accordance with program regulations for Title IV-A and Title XIX of the Social Security Act and in accordance with the Memoranda of Understanding for actual delivery of services with the Department of Social Services, Office of Family Support and the Department of Health and Hospitals as reflected in the Louisiana approved Medicaid and SCHIP State Plans. Eligibility requirements for RMA will be in accordance with 45 CFR 400.94, 400.100-104. If a refugee who is receiving RMA receives earnings from employment, the earnings shall not affect the refugees continued medical assistance eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474(3).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 29:

Subchapter D. Refugee Social Services

§515. Application, Eligibility, and Furnishing of Refugee Social Services

A. Applications for services must be completed for all individuals and households who are referred for services or request services under this program prior to the delivery of services. Application forms should be completed as soon as possible after the initial request or referral for services but no later than 30 calendar days after the request or referral.

B. To be eligible for social services, an applicant must provide proof in the form of documentation issued by the Immigration and Naturalization Service of one of the following statuses under the Immigration and Nationality Act as a condition of eligibility:

1. paroled as a refugee or asylee under Section 212(d)(5);
2. admitted as a refugee under Section 207;
3. granted asylum under Section 208;
4. admitted as a Cuban or Haitian Entrant in accordance with requirements in 45 CFR part 401;

5. admitted as an Amerasian from Vietnam pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 as contained in Section 101(e) of Public Law 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in Title II of the Foreign Operation, Export Financing, and Related program Appropriations Acts, 1989, (Public Law 100-461 as amended).

C. Recipients of employment services and language training services must be sixteen years of age or older and not full-time students in elementary or secondary school, except that such a student may be provided services in order to obtain part-time or temporary (e.g. summer) employment while a student or full-time permanent employment upon completion of schooling.

D. Services to be provided include:

1. Employment Services which are defined as the provision of assistance for individuals to obtain and maintain suitable paid employment;

2. English as a Second Language (ESL) which is defined as the provision of formal or informal English instruction with emphasis on survival and/or vocational English or assistance in obtaining such from other established English programs;

3. Social Adjustment Services which are defined as the provision of therapeutic, educational, cultural and social enrichment activities to promote acculturation and inter/intra personal functioning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474(3)

HISTORICAL NOTE: Department of Social Services, Office of Community Services, LR 29:

Interested persons may submit written comments to Steven Thibodeaux, Department of Social Services, Office of Community Services, P.O. Box 57149, New Orleans, LA 70157-7149. He is responsible for responding to all inquiries regarding this Emergency Rule.

Gwendolyn P. Hamilton
Secretary

0301#006

DECLARATION OF EMERGENCY

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

**Child Care Assistance Program Incentive Bonus
(LAC 67:III.5107)**

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 the following changes in the Child Care Assistance Program effective January 29, 2003. This Emergency Rule will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule of October 1, 2002, since it is effective for a maximum of 120 days and will expire before the final rule takes effect. (The final rule regarding the Incentive Bonuses will be published in February 2003).

Current regulations governing child care assistance provide for a quality incentive bonus that is paid to Child Care Assistance Program (CCAP) eligible Class A providers who achieve and maintain National Association for the Education of Young Children (NAEYC) accreditation. The bonus, paid once each calendar quarter, is equal to 10 percent of all child care payments received during the prior calendar quarter by that provider from the certificate portion of the Child Care and Development Fund. In an effort to encourage more providers to attain NAEYC accreditation, the agency will increase the incentive bonus to 20 percent of all payments received by that provider.

Additionally, a quality incentive bonus will be available to Family Child Day Care Home (FCDCH) providers who participate in the Department of Education (DOE) Child and Adult Care Food Program. The bonus will be paid once each calendar quarter and will be equal to 10 percent of all child care payments received during the prior calendar quarter by that provider from the certificate portion of the Child Care and Development Fund.

Pursuant to Act 152 of the 2002 First Extraordinary Session of the Louisiana Legislature, funds from Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant were appropriated for expanding access and improving quality for low-income child care. A portion of these funds was transferred to the Child Care and Development Fund to maximize flexibility of program design. Authorization for emergency action in the expenditure of TANF funds is contained in Act 13 of the 2002 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance

Subchapter B. Child Care Assistance Program

§5107. Child Care Providers

A. - E. ...

F. 1. Quality incentive bonuses are available to:

a. CCAP eligible Class A providers who achieve and maintain National Association for the Education of Young Children (NAEYC) accreditation. The bonus will be

paid once each calendar quarter, and will be equal to 20 percent of all child care payments received during the prior calendar quarter by that provider from the certificate portion of the Child Care and Development Fund;

b. CCAP eligible Family Child Day Care Home (FCDCH) providers who participate in the Department of Education (DOE) Child and Adult Care Food Program. The bonus will be paid once each calendar quarter, and will be equal to 10 percent of all child care payments received during the prior calendar quarter by that provider from the certificate portion of the Child Care and Development Fund.

2. These bonus amounts may be adjusted at the discretion of the Assistant Secretary, based upon the availability of funds.

G.1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193.

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:

Gwendolyn P. Hamilton
Secretary

0301#0042

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Food Stamp Program C 2002 Farm Bill (LAC 67:III.Chapter 19)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt changes to LAC 67:III, Subpart 3, effective January 29, 2003. This Emergency Rule shall remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule of October 1, 2002, since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. (The final Rule regarding the 2002 Farm Bill will be published in April 2003).

Pursuant to Public Law 107-171, The Food Stamp Reauthorization Act of 2002, the agency is amending §§1932, 1949, 1953, 1961, and 1983, to comply with mandates issued by the United States Department of Agriculture, Food and Nutrition Service. P.L. 107-171, also known as the 2002 Farm Bill, authorizes changes in alien regulations whereby a disabled alien will be eligible for benefits for an unlimited period of time; the addition of Individual Development Accounts as an excludable resource; an increase in the resource limit for households that include a disabled member; and changes in the method by which the standard deduction is determined.

Emergency action in this matter is necessary as failure to promulgate the Rule in a timely manner could result in the imposition of sanctions or penalties by the USDA, Food and Nutrition Service, the governing authority of the Food Stamp Program in Louisiana.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter B. Application Processing

§1932. Time Limitations for Certain Aliens

A. ...

B. The following qualified aliens are eligible for an unlimited period of time:

1. - 3. ...

4. individuals who are lawfully residing in the United States and are receiving benefits or assistance for blindness or disability as defined in §3(r) of the Food Stamp Act of 1997.

5. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with P. L. 104-193, P. L. 105-33, P. L. 105-185, and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711(April 1999), LR 29:

§1949. Exclusions from Resources

A. The following are excluded as a countable resource:

1. - 4. ...

5. effective October 1, 2002, an Individual Development Account (IDA) which is a special account established in a financial institution for specific purposes.

B. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.8 and 273.9C(v), P.L. 103-66, P.L. 106-387, 45 CFR 263.20.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security in LR 13:656 (November 1987). Amended in LR 13:249 (August 1987), LR 17:953 (October 1991). Amended by the Department of Social Services, Office of Family Support in LR 18:142 (February 1992), LR 18:686 (July 1992), LR 18:1267 (November 1992), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:186 (February 1995), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 28:1031 (May 2002), LR 29:

§1953. Income Eligibility Standards

A. The income eligibility standards for the Food Stamp Program shall be as follows.

1. - 3. ...

4. The income eligibility limits, as described in this Paragraph, are revised annually, to reflect OMB's annual adjustment to the nonfarm poverty guidelines for the 48 states and the District of Columbia, for Alaska, and for Hawaii.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.9, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended LR 9:130 (March 1983), LR 29:

§1961. Adjustment of Standard Deduction

A. Effective October 1, 2002, the standard deduction shall be set at 8.31 percent of the poverty level based on household size of up to 6 persons with a minimum deduction of \$134. The standard deduction may be adjusted in accordance with directives from the United States Department of Agriculture, Food and Nutrition Services.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.9, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), LR 29:

§1983. Income Deductions and Resource Limits

A. ...

B. The resource limit for a household is \$2,000, and the resource limit for a household that includes at least one elderly or disabled member is \$3,000.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:285 (May 1986), amended LR 12:423 (July 1986), LR 12:824 (December 1986), LR 13:181 (March 1987), LR 14:684 (October 1988), LR 15:14 (January 1989). Amended by the Department of Social Services, Office of Family Support, LR 19:303 (March 1993), LR 19:905 (July 1993), LR 20:780 (July 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:186 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:

Gwendolyn P. Hamilton
Secretary

0301#044

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Repeal of Refugee Cash Assistance Program
(LAC 67:III.3501 and 3701-3710)

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 repeal Title 67, Part III, Chapters 37 and 39, effective January 1, 2003. This Emergency Rule will remain in effect for a period of 120 days.

Pursuant to 45 CFR Part 400, the Office of Refugee Resettlement has granted states the option of providing Refugee Cash Assistance services through a public/private partnership. The Department of Social Services has opted to provide services for RCA through a public/private partnership whereby the state will contract with refugee resettlement agencies that will provide refugee cash assistance benefits. The new program, Public Private Partnership/Refugee Cash Assistance Program, will be administered by the Office of Community Services (OCS) through contracts with various entities. OCS will promulgate rules to establish regulations governing the program under Title 67, Part V, of the Louisiana Administrative Code effective January 1, 2003. In order to prevent the duplication of services and conflicting eligibility requirements that could result in federal penalties and sanctions, the Office of Family Support will no longer administer the program and will therefore repeal Part III, Chapters 35 and 37, the Refugee Cash Assistance Program effective January 1, 2003.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Chapter 35. Administration

§3501. Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with applicable sections of 45 CFR.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:1226 (December 1991), repealed LR 29:

Chapter 37. Application, Eligibility and Furnishing Assistance

Subchapter A. Coverage and Conditions of Eligibility

§3701. Eligibility Determination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400(E), R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:353 (February 1998), repealed LR 29:

§3703. Eligibility Periods

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.202.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:953 (October 1991), LR 18:22 (January 1992), repealed LR 29:

§3704. Application Time Limit and Initial Payment

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:353 (February 1998), repealed LR 29:

§3705. Coverage and Conditions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.62(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:401 (May 1984), repealed LR 24:353 (February 1998).

§3707. Resources

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.61.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:354 (February 1998), repealed LR 29:

§3708. Income

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.61.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:354 (February 1998), repealed LR 29:

§3709. Ineligibility Based on Lump Sum Income

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.61.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:354 (February 1998), repealed LR 29:

§3710. Earned Income Deductions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.61 and 233.20(a)(11).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:354 (February 1998), repealed LR 29:

Gwendolyn P. Hamilton
Secretary

0301#007

DECLARATION OF EMERGENCY

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

TANF Initiatives
(LAC 67:III.5533, 5565, 5567, 5569, and 5571)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to amend §5533 and adopt §§5565, 5567, 5569, and 5571, effective January 28, 2003. This Emergency Rule will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule of September 30, 2002, since it is effective for a maximum of 120 days and will expire before the final rule takes effect. (The final rule regarding the TANF Initiatives will be published in February 2003).

Pursuant to Act 13 of the 2002 Regular Session of the Louisiana Legislature, the Office of Family Support will adopt four new TANF Initiatives including Family Strengthening and Healthy Marriages Program, Parental Involvement Services Program, Alternatives to Abortion Services Program, and Parenting/Fatherhood Services Program, to further the goals and intentions of the Temporary Assistance For Needy Families (TANF) Block Grant to Louisiana. Additionally, the agency is amending §5533, Transportation Services Program, to provide low-income families with a variety of transportation services in order to overcome transportation barriers.

The authorization for emergency action is contained in Act 13 of the 2002 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

§5533. Transportation Services Program

A. Effective September 30, 2002, the agency shall enter into contracts with public agencies, non-profit, or for-profit organizations to provide low-income families with transportation services to assist them in overcoming transportation barriers. These services may include but are not limited to: vehicle ownership, commuter shuttles, reverse-commute shuttles, vanpools, and other modes of transportation. The agency may also make funding available for transportation of participants in TANF Initiative Programs.

B. Eligibility for services is limited to persons participating in a TANF Initiative Program or to members of a needy family. A needy family consists of minor children, custodial and non-custodial parents, legal guardians, and caretaker relatives of minor children, who have earned income at or below 200 percent of the federal poverty level. An eligible person who is employed may be provided on-going services. An eligible, unemployed person may be provided short-term, non-recurrent services that shall not exceed four months and shall be associated with an episode of need or crisis situation.

C. 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 or to end dependence of needy parents by promoting job preparation, work, and marriage.

D. 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; and Act 12, 2001 Reg. Session, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), LR 29:

**§5565. Family Strengthening and Healthy Marriages
Effective September 30, 2002**

A. The Department of Social Services, Office of Family Support, shall enter into Memoranda of Understanding or contracts to provide services to improve and promote family relationships, encourage marriage, reduce incidence of out-of-wedlock births, decrease the rate of divorce, and provide services that will educate and supply young people with the guidance to break the cycle of living in fatherless homes. These intervention and support services are designed to enable low-income parents to act in the best interest of their children.

B. Services offered by providers meet the TANF goals to end dependence of needy parents by promoting job preparation, work, and marriage, to prevent and reduce the incidence of out-of-wedlock births, and to encourage the formation and maintenance of two-parent families and may be accomplished through a variety of projects including but not limited to:

1. development of an information clearing house;
2. best practices research;
3. development of a statewide network of marriage trainers and additional partners such as health care providers, members of the judiciary, and faith-based partners, to assist in implementing the initiative; and
4. development of handbooks and videos, media buys for outreach, curriculum development, and demonstration projects.

C. Eligibility for services is limited to needy families which consists of minor children, custodial and non-custodial parents, legal guardians, or caretaker relatives of minor children who have earned income 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 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:

**§5567. Parental Involvement Services Program
Effective September 30, 2002**

A. The Office of Family Support shall enter into contracts to provide pro bono or low cost legal services that may include: mediation; development of parenting plans or other services to obtain regular visitation arrangements with the children; or legal assistance to non-custodial parents in resolving disputes resulting from a deviation in an existing visitation order. Referrals that assist low-income, non-custodial parents to overcome social, financial, and emotional barriers that hinder access to their children will also be provided. These services are designed to enable low-income parents to act in the best interest of their children.

B. These services meet the TANF goals to end dependence of needy parents by promoting job preparation, work, and marriage, to prevent and reduce the incidence of out-of-wedlock births, and to encourage the formation and maintenance of two-parent families by improving the parent's ability to act in the best interest of their children, providing the children continuous and quality access to both parents, improving the well-being of the children, and encouraging healthy relationships, youth development, and responsible fatherhood.

C. Eligibility for services is limited to non-custodial parents of minor children who have earned income 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 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:

**§5569. Alternatives to Abortion Services Program
Effective September 30, 2002**

A. 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 or potentially pregnant women, their male partners, and/or minor children whose earned 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 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:

**§5571. Parenting/Fatherhood Services Program
Effective September 30, 2002**

A. The Office of Family Support shall enter into contracts with public agencies, non-profit, or for-profit organizations to create programs that will assist low-income fathers with various skills including employment, life, parenting, and other skills in order to increase their ability to provide emotional and financial support for their children, and to create a network of community- and faith-based programs that will provide linkages to and for state entities, specifically Child Support Enforcement Services.

B. These services meet the TANF goals to end the dependence of needy parents by promoting job preparation, work, and marriage, to prevent and reduce the incidence of out-of-wedlock births and to encourage the formation and maintenance of two-parent families by eliminating emotional, social, financial, and legal barriers that hinder a father's ability to be fully engaged in his children's lives.

C. Eligibility for services is limited fathers of minor children, who have earned income 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 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:

Gwendolyn Hamilton
Secretary

0301#043

DECLARATION OF EMERGENCY

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

2003 Commercial King Mackerel Season

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons and all rules and regulations pursuant thereto by emergency rule, and R.S. 56:6(25)(a) and 56:326.3 which provide that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following season and trip limit for the commercial harvest of king mackerel in Louisiana state waters.

The commercial season for king mackerel in Louisiana state waters will open at 12:01 a.m., July 1, 2003 and remain open until the allotted portion of the commercial king mackerel quota for the Western Gulf of Mexico has been harvested or projected to be harvested.

The Commission grants authority to the Secretary of the Department of Wildlife and Fisheries to close the commercial king mackerel season in Louisiana state waters when he is informed by the National Marine Fisheries Service (NMFS) that the commercial king mackerel quota for the Western Gulf of Mexico has been harvested or is

projected to be harvested, such closure order shall close the season until 12:01 a.m., July 1, 2004, which is the date expected to be set for the re-opening of the 2004 commercial king mackerel season in Federal waters.

The Commission also authorizes the Secretary to open an additional commercial king mackerel season in Louisiana state waters if he is informed that NMFS has opened an additional season and to close such season when he is informed that the commercial king mackerel quota for the western Gulf of Mexico has been filled, or is projected to be filled.

Nothing herein shall preclude the legal harvest of king mackerel by legally licensed recreational fishermen. Effective with any closure, no person shall commercially harvest, transport, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell king mackerel. Effective with the closure, no person shall possess king mackerel in excess of a daily bag limit. Provided however that fish in excess of the daily bag limit which were legally taken prior to the closure may be purchased, possessed, transported, and sold by a licensed wholesale/retail dealer if appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6 are properly maintained. Those other than wholesale/retail dealers may purchase such fish in excess of the daily bag limit from wholesale/retail dealers for their own use or for sale by a restaurant as prepared fish.

Terry D. Denmon
Chairman

0301#032

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2003 Commercial Red Snapper Seasons

The red snapper fishery in the Gulf of Mexico is cooperatively managed by the Louisiana Department of Wildlife and Fisheries (LDWF) and the National Marine Fisheries Services (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., generally three miles offshore. NMFS will provide rules for commercial harvest seasons for red snapper in the EEZ off of Louisiana. NMFS and the Gulf Council typically request consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following season for commercial harvest of red snapper in Louisiana state waters.

The season for the commercial fishery for red snapper in Louisiana state waters will open at 12 noon February 1,

2003. The commercial fishery for red snapper in Louisiana waters will close at 12 noon February 10, 2003, and thereafter open at 12 noon on the first of each month and close at 12 noon on the tenth of each month, for each month of 2003 until two-thirds (2/3) of the 2003 commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested.

The Commission grants authority to the Secretary of the Department of Wildlife and Fisheries to set the closing date for the commercial red snapper season in Louisiana state waters when he is informed that two-thirds (2/3) of the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested, such closure order shall close the season until 12 noon October 1, 2003, which is the date expected to be set for the re-opening of the 2003 commercial red snapper season in Federal waters.

The season for the commercial fishery for red snapper in Louisiana state waters will re-open at 12 noon October 1, 2003. The commercial fishery for red snapper in Louisiana waters will close at 12 noon October 10, 2003, and thereafter open at 12 noon on the first of each month and close at 12 noon on the tenth of each month for each month of 2003, until the remainder of the 2003 commercial quota is harvested.

The Commission grants authority to the Secretary of the Department of Wildlife and Fisheries to set the closing date for the commercial red snapper season in Louisiana state waters when he is informed that the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be harvested; such closure order shall close the season until the date set for the opening of the year 2004 commercial red snapper season in Federal waters.

The Commission also grants authority to the Secretary of the Department of Wildlife and Fisheries to change the opening dates for the commercial red snapper season in Louisiana state waters if he is informed by the Regional Administrator of NMFS that the season dates for the commercial harvest of red snapper in the federal waters of the Gulf of Mexico as set out herein have been modified, and that the Regional Administrator of NMFS requests that the season be modified in Louisiana state waters.

Nothing herein shall preclude the legal harvest of red snapper by legally licensed recreational fishermen. Effective with any commercial closure, no person shall commercially harvest, transport, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell red snapper. Effective with the closure, no person shall possess red snapper in excess of a daily bag limit. Provided however that fish in excess of the daily bag limit which were legally taken prior to the closure may be purchased, possessed, transported, and sold by a licensed wholesale/retail dealer if appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6 are properly maintained, and those other than wholesale/retail dealers may purchase such fish in excess of the daily bag limit from wholesale/retail dealers for their own use or for sale by a restaurant as prepared fish.

Terry D. Denmon
Chairman

0301#031

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2003 Recreational Red Snapper Season

The red snapper fishery in the Gulf of Mexico is cooperatively managed by the Department of Wildlife and Fisheries (LDWF), the Wildlife and Fisheries Commission (LWFC) and the National Marine Fisheries Service (NMFS) with advice from the Gulf of Mexico Fishery Management Council (Gulf Council). Regulations promulgated by NMFS are applicable in waters of the Exclusive Economic Zone (EEZ) of the U.S., which in Louisiana is generally three miles offshore. Rules were established by NMFS to close recreational harvest season in the EEZ off of Louisiana effective midnight October 31, 2002 until 12:01 a.m., April 21, 2003 by reducing the bag limit to zero, and NMFS requested that consistent regulations be established in Louisiana waters. NMFS typically requests consistent regulations in order to enhance the effectiveness and enforceability of regulations for EEZ waters.

In order to enact regulations in a timely manner so as to have compatible regulations in place in Louisiana waters for the 2003 recreational red snapper season, it is necessary that emergency rules be enacted.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967

which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish; the Wildlife and Fisheries Commission hereby sets the following seasons for recreational harvest of red snapper in Louisiana state waters.

The season for the recreational fishery for red snapper in Louisiana state waters will remain closed until 12:01 a.m., April 21, 2003 by reducing the bag limit to zero for that time period. The season will open at 12:01 a.m., April 21, 2003 and continue until midnight October 31, 2003. If the secretary is notified that the opening and closing of Federal seasons is changed, he is hereby authorized to change the opening and closing dates for state waters accordingly.

Effective with the recreational red snapper season closure, any person, except those who possess a Class 1 or Class 2 commercial red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish and who are legally taking red snapper during an open commercial season, shall not possess any red snapper whether taken from within or without Louisiana territorial waters.

Terry D. Denmon
Chairman

0301#030

Rules

RULE

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School Administrators C Adult Education Programs Section (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted an amendment to Bulletin 741, *Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The change of the age requirement for entering Adult Education programs will allow 16-year-old students, under certain conditions of waiver, to pursue adult education training in preparation for testing for the GED. The conditions of waiver for students to exit school to enroll in Adult Education programs are in response to Act 59 of the First Extraordinary Session of the 2002 Legislature.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education in LR 27:694-695 (May 2001), LR 27:695-702 (May 2001), LR 27:815-820 (June 2001), LR 27:1005 (July 2001), LR 27:1181, 1182, 1183 (August 2001), LR 27:1512 (September 2001), LR 27:1674 (October 2001), LR 27:1832, 1833, 1840 (November 2001), LR 27:2086, 2095 (December 2001), LR 28:269, 272 (February 2002), LR 28:1724 (August 2002), LR 29:33 (January 2003).

Bulletin 741C Louisiana Handbook for School Administrators

1.124.00 The Adult Education program shall be administered by the State Department of Education (SDE) and operated by eligible entities as stipulated in Title II of the Workforce Investment Act. The State Department of Education shall certify adult education sites of instruction using procedures as approved by the State Board of Elementary and Secondary Education.

Refer to the Louisiana State Plan for Adult Education and R.S. 17:14 for administration of the program.

The parent, tutor, or other person responsible for the school attendance of a child who is under the age of 18 and who is enrolled in school beyond his sixteenth birthday may request a waiver from the local superintendent for the child

to exit school to enroll and attend an adult education program approved by SBESE. In the case of a child with no parent, tutor, or other person responsible for his school attendance, the local school superintendent may act on behalf of the student in making such a request if one or more of the following hardships exist and if appropriate documentation is on file at the local school board office:

- pregnant or actively parenting
- incarcerated or adjudicated
- institutionalized or living in a residential facility
- chronic physical or mental illness
- family and/or economic hardships

The local school superintendent or his/her designee may approve the request without requesting action from the State Board of Elementary and Secondary Education (SBESE). If the request to exit school to enroll in a SBESE approved adult education program is denied at the local level, a student may request the waiver from the Department of Education for approval by the SBESE with documentation of reason for denial at the local level.

* * *

Weegie Peabody
Executive Director

0301#018

RULE

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Radiographer Trainee Requirements
(LAC 33:XV.503, 573, 575, 577, 578, 579, and 590)(RP031)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection regulations, LAC 33:XV.503, 573, 575, 577, 578, 579, and 590 (Log #RP031).

The Rule revises requirements for radiographer trainees, removes the term radiographer assistant, and adds a new requirement for reciprocity of radiographers. Persons who currently hold radiographer trainee positions will no longer be required to move up to the next level of licensed radiographer in order to retain their job as a permanent radiographer trainee. Trainees will continue to work under the supervision of a licensed radiographer instructor. By establishing a permanent trainee series for industrial radiographers, industrial radiography companies will be allowed to retain experienced employees at the trainee level who do not desire to move up to the next level of licensed radiographer or who are unable to qualify as a licensed radiographer. The Rule recognizes the importance of retaining experienced employees at the trainee level that benefits both the employee and the employer while

providing no less protection of public health and the environment. Retaining experienced trainees, rather than continually hiring new trainees, saves in hiring and training costs for the employer and is beneficial to protection of public health and the environment. The basis and rationale for this Rule are to establish a permanent trainee level in the industrial radiographer field.

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part XV. Radiation Protection

Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations

§503. Definitions

A. As used in this Chapter, the following definitions apply.

* * *

Radiographer Assistant Crepealed.

Radiographer Trainee Any individual who has satisfied the conditions of LAC 33:XV.575.B.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 23:1138 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2581 (November 2000), LR 26:2772 (December 2000), LR 27:1231 (August 2001), LR 29:34 (January 2003).

Subchapter B. Personal Radiation Safety Requirements for Radiographers

§573. Conducting Industrial Radiographic Operations

A. Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or, if the radiographer is a qualified instructor, a qualified radiographer trainee, as required by Subsection D of this Section. The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present.

B. - C. ...

D. At temporary job sites each licensee or registrant shall provide, as a minimum, two-person crews. Such crews shall consist of at least two qualified radiographers or an approved instructor directly supervising a qualified radiographer trainee.

E. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:1234 (August 2001), amended LR 28:1951 (September 2002), LR 29:34 (January 2003).

§575. Training and Testing

A. No licensee or registrant shall permit any individual to act as a radiographer, as defined in this Chapter, until such individual completes the following requirements.

1. The individual shall be instructed by a licensed instructor for at least 40 hours in the subjects outlined in Appendix A of this Chapter. The course of instruction must be approved by the department prior to the time of instruction by submitting documentation of instructor licensure and course description.

a. The department must be notified by the licensee at least two weeks prior to presentation of the course.

b. The department must be notified of the cancellation of the course at least 24 hours prior to its scheduled time of presentation.

2. The individual shall complete on-the-job training supervised by one or more radiographer instructors.

a. The instructor shall be authorized on the license or registration certificate.

b. The on-the-job training shall include at least:

i. 200 hours of active participation in radioactive materials industrial radiography operations for an individual to perform industrial radiography utilizing radioactive materials; and/or

ii. 120 hours of active participation in x-ray industrial radiography operations for an individual to perform industrial radiography utilizing x-rays.

c. The hours of on-the-job training do not include safety meetings or classroom training or the use of a cabinet x-ray unit.

d. The current Form DRC-20, available from the department or the departmental website, www.deq.state.la.us, must be submitted to the Office of Environmental Services, Permits Division documenting the on-the-job training.

3. The individual shall receive copies of and instruction in the regulations contained in this Chapter and the applicable sections of LAC 33:XV.Chapters 4 and 10, appropriate license, and the licensee's or registrant's operating and emergency procedures.

4. The individual shall demonstrate competence in accordance with Paragraphs A.5 and 6 of this Section to use the sources of radiation, radiographic exposure devices, related handling tools, and radiation survey instruments that may be employed in his assignment.

5. The individual shall successfully complete a company-specific written examination and field test covering the subjects listed in Paragraphs A.3 and 4 of this Section.

6. The individual shall successfully complete, within the last five years, a radiation safety examination administered by the department, another agreement state, the U.S. Nuclear Regulatory Commission, or the American Society of Non-Destructive Testing (ASNT). The examination must be successfully completed at least once every five years.

7. The individual shall have in his or her possession a valid radiographer I.D. card issued by the department, another agreement state, the U.S. Nuclear Regulatory

Commission, or the American Society of Non-Destructive Testing (ASNT).

B. No licensee or registrant shall permit any individual to act as a radiographer trainee, as defined in this Chapter, until such individual completes the following requirements.

1. The requirements of Paragraph A.1 of this Section shall be met.

2. The individual shall complete on-the-job training supervised by one or more radiographer instructors.

a. The instructor shall be authorized on the license or registration certificate.

b. The on-the-job training, as part of a three-person crew composed of an instructor, a radiographer, and the radiographer trainee applicant, shall include at least:

i. 40 hours of active participation in radioactive materials industrial radiography operations for an individual to perform industrial radiography utilizing radioactive materials; and/or

ii. 40 hours of active participation in x-ray industrial radiography operations for an individual to perform industrial radiography utilizing x-rays.

c. The hours of on-the-job training do not include safety meetings or classroom training or the use of a cabinet x-ray unit.

3. The individual shall receive copies of and instruction in the regulations contained in this Chapter and the applicable sections of LAC 33:XV.Chapters 4 and 10, appropriate license, and the licensee's or registrant's operating and emergency procedures.

4. The individual shall demonstrate competence to use the sources of radiation, radiographic exposure devices, related handling tools, and radiation survey instruments that may be employed in his assignment.

5. The individual shall successfully complete a company-specific written examination and field test covering the subjects listed in Paragraphs B.3 and 4 of this Section.

6. The current Form DRC-20, available from the department or the departmental website, www.deq.state.la.us, must be submitted to the Office of Environmental Services, Permits Division documenting the on-the-job training, instruction in the subjects outlined in Appendix A in this Chapter, and successful completion of a company-specific written examination.

7. The individual shall have in his or her possession, a valid radiographer trainee I.D. card issued by the department or equivalent certification recognized by another agreement state or the U.S. Nuclear Regulatory Commission.

8. Each radiographer trainee I.D. card is valid for a five-year period, unless revoked or suspended in accordance with LAC 33:XV.579.

C. Each licensee or registrant shall maintain, for inspection by the department, until disposition is authorized by the department, the following records for each radiographer and radiographer trainee.

1. Records of Training and Certification. The records must include radiographer certification documents and verification of certification status, copies of written tests, dates and results of oral tests and field examinations, and the names of individuals conducting and receiving the oral and field examinations.

2. Records of Annual Refresher Safety Training and Quarterly Inspections of Job Performance. The records must list the topics discussed during the refresher safety training, the dates the annual refresher safety training was conducted, and names of the instructors and attendees. For inspections of job performance, the records must also include a list showing the items checked and any noncompliance observed by the radiation safety officer or designee.

D. Each licensee or registrant shall conduct a program of internal audits to ensure that the Radiation Protection Regulations (LAC 33:XV), Louisiana radioactive material license conditions, and the licensee's or registrant's operating and emergency procedures are followed by each radiographer and radiographer trainee. Each radiographer and radiographer trainee shall be audited at quarterly intervals. Records of internal audits shall be maintained for review by the department for two consecutive years from the date of the audit.

E. The licensee or registrant shall provide annual refresher safety training to all radiographers and radiographer trainees at intervals not to exceed 12 months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 20:999 (September 1994), LR 23:1138 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), LR 27:1235 (August 2001), LR 28:1951 (September 2002), LR 29:34 (January 2003).

§577. Personnel Monitoring Control

A. No licensee or registrant shall permit an individual to act as a radiographer, instructor, or radiographer trainee unless, at all times during radiographic operations, each such individual wears a direct-reading pocket dosimeter, an alarm ratemeter, and either a film badge, an optically-stimulated luminescence dosimeter (OSL), or a thermoluminescent dosimeter (TLD), except that for permanent radiography facilities where other appropriate alarming or warning devices are in routine use, the wearing of an alarming ratemeter is not required.

B. - H.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), LR 27:1235 (August 2001), LR 28:1951 (September 2002), LR 29:35 (January 2003).

§578. Reciprocity

A. - A.1. ...

2. the requirements and procedures for certification in the state of jurisdiction issuing the certification afford the same or comparable certification standards as those afforded by LAC 33:XV.575;

3. the applicant presents the certification to the Office of Environmental Services, Permits Division prior to entry into Louisiana; and

4. no escalated enforcement action is pending with the Nuclear Regulatory Commission or in any other state.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), LR 29:35 (January 2003).

§579. Identification (I.D.) Cards for Radiographers or Radiographer Trainees

A. Issuance

1. An I.D. card shall be issued to each person who successfully completes the requirements of LAC 33:XV.575.A or B.

2. A radiographer I.D. card shall contain the radiographer's photograph. The department will take the photograph at the time the examination is administered. The radiographer trainee I.D. card does not require a photograph.

3. An I.D. card remains the property of the state of Louisiana and may be revoked or suspended under the provisions of this Section.

A.4. - B. ...

C. Renewal of a Radiographer I.D. Card

1. Applications for examination to renew an I.D. card shall be filed in accordance with LAC 33:XV.575.A.

2. The examination for renewal of an I.D. card shall be administered in accordance with LAC 33:XV.575.

3. A renewal I.D. card shall be issued in accordance with this Section.

D. Renewal of a Radiographer Trainee I.D. Card

1. Applications for a renewal radiographer trainee I.D. card shall be filed in accordance with LAC 33:XV.575.B.

2. A renewal I.D. card shall be issued in accordance with this Section.

E. Revocation or Suspension of an I.D. Card

1. Any radiographer or radiographer trainee who violates these Rules may be required to show cause at a formal hearing why his or her I.D. card should not be revoked or suspended in accordance with these regulations.

2. When a department order has been issued for an industrial radiographer or radiographer trainee to cease and desist from the use of sources of radiation or the department revokes or suspends his or her I.D. card, the industrial radiographer or radiographer trainee shall surrender the I.D. card to the department until the order is changed or the suspension expires.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 29:36 (January 2003).

Subchapter C. Precautionary Procedures in Radiographic Operations

§590. Specific Requirements for Radiographic Personnel Performing Industrial Radiography

A. - C. ...

D. No individual other than a radiographer or a radiographer trainee who is under the personal supervision

of a radiographer instructor shall manipulate controls or operate equipment used in industrial radiographic operations. The radiographer trainee shall also be under the personal supervision of a radiographer instructor when using radiographic exposure devices, associated equipment, or a sealed source or while conducting radiation surveys required by LAC 33:XV.587 to determine that the sealed source has returned to its shielded position or the radiation machine is off after an exposure. The personal supervision must include:

1. the radiographer instructor's physical presence at the site where the sources of radiation are being used;

2. the availability of the radiographer instructor to give immediate assistance if required; and

3. the radiographer instructor's direct observation of the trainee's performance of the operations referred to in this Section.

E. ...

1. has met the requirements of LAC 33:XV.575.A;

E.2. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 23:1139 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 27:1237 (August 2001), LR 28:1952 (September 2002), LR 29:36 (January 2003).

James H. Brent, Ph.D.
Assistant Secretary

0301#047

RULE

Office of the Governor Division of Administration Racing Commission

Net Slot Machine Proceeds (LAC 35:III.5737 and 5738)

Editor's Note: The original text in Section 5737 ("Commission Office") was moved to Section 5738 to allow slot machine subject matter to be consecutive. This information is being repromulgated in Section 5738 with no changes for informative purposes only.

The Louisiana State Racing Commission hereby adopts the following rule.

Title 35

HORSE RACING

Part III. Personnel, Registration and Licensing Chapter 57. Associations- Duties and Obligations §5737. Net Slot Machine Proceeds

A. The commission, pursuant to R.S. 27:354, finds that it is in the best interests of licensed associations, breeders associations, horsemen, and the state that the annual payments provided for in R.S. 27:361 be paid in monthly installments.

B. The definitions set forth in R.S. 27:353 are incorporated herein by reference.

C. Not later than the date on which an association installs slot machines at its facility, it shall open three separate checking accounts as provided for herein. One

account shall be a control bank account into which not less than 18 percent of the net slot machine proceeds for the activity month shall be deposited in sufficient time to be distributed or disbursed not later than the 20th day of the following month as required by these rules. The association shall also open two distinct interest bearing accounts, one for thoroughbred purse proceeds and one for quarter horse purse proceeds, into which the association shall make its deposits for purse supplements totaling 15 percent of net slot machine proceeds and from which funds, including interest earned, such purse supplements shall be made available as provided by law and these rules.

D. While an association is conducting live racing, the monies due to be paid pursuant to R.S. 27:361.B.(4)(a) shall be made available monthly for use as purses prior to the 20th day of the month following the month in which they are earned, during the current race meeting.

E. While an association is not conducting live racing, the monies due to be paid pursuant to R.S. 27:361.B.(4)(a) shall be deposited in the appropriate breed account either:

1. for accrual until the first day of the next live race meeting conducted by that association for that breed, at which time such accumulated monies, including interest, shall be used to supplement appropriate purses during that race meeting; or

2. with prior written agreement of the Louisiana HBPA for reimbursement to the association for actual funds advanced to supplement purses at a preceding race meeting in anticipation of the revenue to be earned from slot machines. However, an association shall not be reimbursed except from proceeds earned during the same annual period during which it advanced the purse supplements.

F. The monies due to be paid by an association pursuant to R.S. 27:361.B.(4)(b) and (c) shall be remitted monthly to the appropriate breeders association and the monies due to be paid by an association pursuant to R.S. 27:361.B.(4)(a)(i) and (ii) shall be remitted monthly to the HBPA, prior to the 20th day of the month following the month in which they are earned.

G. Each racing association conducting slot machine gaming shall file with the commission a complete report, on a form acceptable to the commission, not later than the 20th day of each month, setting forth the amounts deposited and payments made from the net slot machine proceeds earned the preceding month, as well as payments for purses and payments to breeders associations and to the HBPA. Copies of those bank accounts required to be maintained by Subsection C of this rule shall be submitted to the commission along with the monthly report.

H. Each racing association, after conducting slot machine gaming for 12 months, shall file an annual report with the commission, on forms acceptable to the commission, not later than the 20th day of the following month, and on that date each following year, which report shall certify under oath by a responsible officer the association's compliance with all requirements under R.S. 27:361.B.(4) and under this rule. Each such 12-month period shall constitute an annual period for the purposes of this rule.

I. All records and reports pertaining to slot machines, including checking accounts, maintained by an association shall be subject to inspection, reporting procedures and audits by the commission. All records and reports on

revenues and expenses from slot machines shall be included as part of the association's annual CPA opinion audit submitted to the commission.

J. Before receiving any payments provided by R.S. 27:361.B.(4)(b) or (c), the respective Executive Committee of the Louisiana Thoroughbred Breeders Association and Executive Committee of the Louisiana Quarter Horse Breeders Association shall file with the commission the schedule or formula and within a time period which it has established for the distribution of such funds. Any amendments or modifications to such distribution schedule or formula shall be filed with the commission within 30 days of its adoption by the Executive Committee. A true and complete copy of each such filing with the commission shall be delivered to each racing association and the filing shall so certify delivery. Each Executive Committee shall also file a monthly report with the commission of revenue received, payments made, and the bank balance on hand along with a copy of the bank statement.

K. After the expiration of one year from the filing of its first distribution schedule or formula with the commission but within 20 days thereafter, and on that date each following year, the respective Executive Committee of the Louisiana Thoroughbred Breeders Association and Executive Committee of the Louisiana Quarter Horse Breeders Association shall file with the commission a report which shall certify under oath by a responsible officer the association's compliance with its applicable distribution schedule or formula and within a time period which it has established for the distribution of such funds.

L. An association shall publicly disclose its schedule for the distribution of funds for purse supplements to be made pursuant to R.S. 27:361.B.(4)(a). Excluding those funds statutorily dedicated to races restricted to accredited Louisiana breeds, the remaining funds shall be distributed proportionately according to the conditions of the races in which the remaining funds are used to insure parity among restricted and non-restricted races.

M. Whenever it appears to the executive director of the commission that a violation may have occurred, he shall furnish the apparent violator with a warning letter, sent by ordinary mail and by fax, affording the party 15 days from the date of the transmission of the letter to correct the violation.

N. If the apparent violation has not been timely corrected, the executive director, or his designee, shall within 10 days give written notice, by certified mail, to the party that its responsible officers are to appear before him for an informal conference to determine whether a violation has occurred and, if so, whether the violation can be corrected in the absence of imposing a fine or indefinitely suspending the license of the party, or refusing to allow the party to receive payments under this rule. Such informal hearing shall be conducted in accordance with the Administrative Procedure Act applicable to such hearing.

O. If the executive director, or his designee, determines after affording the party an opportunity for an informal conference that a violation has occurred and that a fine, license suspension, or other appropriate action should be taken, he shall file a *rule to show cause* with the commission for the notified party and its responsible officers to appear before the commission and show cause why disciplinary

action or sanctions should not be imposed. The *rule to show cause* shall be forwarded by certified mail and by fax to the party. The cited party shall have 10 days from transmission, excluding holidays and weekends, to file with the commission a written response, under oath, and to submit a list of the names and addresses of all witnesses it desires to be subpoenaed for the hearing, including those to produce documents and other things. The failure to timely file a verified response may, in the commission's discretion, result in the cited party being refused to participate in the hearing on the *rule to show cause*.

P. At the conclusion of the hearing, the commission shall take action appropriate to the violation if it finds that one has occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:353, R.S. 27:354 and R.S. 27:361.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 29:36 (January 2003).

§5738. Commission Office

A. Each association shall provide and furnish an adequate office for the use of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:435 (December 1976), LR 3:31 (January 1977), LR 4:278 (August 1978), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 29:38 (January 2003).

Charles A. Gardiner III
Executive Director

0301#017

RULE

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

Home/Community Based Service
Waiver Program Children's Choice
(LAC 50:XXI.11523)

Editor's Note: The Children's Choice Waiver portion of the Rule published in the December 2002 *Louisiana Register*, page 2533 entitled Provider Enrollment Requirement, is being reprinted in codified format.

Title 50 PUBLIC HEALTH MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers Subpart 9. Children's Choice Chapter 115. Providers Subchapter B. Provider Requirements §11523. Enrollment

A. ...

B. Providers shall attend all mandated meetings and training sessions as directed by BCSS as a condition of enrollment and continued participation as waiver providers. Attendance at a provider enrollment orientation shall be

required prior to enrollment as a Medicaid provider of services. The frequency of the provider enrollment orientations shall be determined by the Bureau of Community Supports and Services, but they shall be conducted at least semi-annually.

C. - N. ...

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 LR 28:1984 (September 2002), amended LR 28:2534, (December 2002), repromulgated LR 29:38 (January 2003).

David W. Hood
Secretary

0301#066

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Community Supports and Services

Targeted Case Management Services

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

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends the July 20, 1999 Rule to adopt the following requirements governing the provision of case management services to targeted population groups and certain home and community based services waiver groups.

II. Standards of Participation

A. - B.5. ...

6. All enrolled providers of optional targeted and waiver case management must submit to the Bureau of Community Supports and Services an agency quality improvement plan (QAP) for approval within 90 days of enrollment. Six months following approval of the QAP and annually thereafter, the agency must submit an agency self-evaluation using the requirements contained in the Medicaid *Case Management Services Provider Manual*.

B.7. - C.2. ...

III. Standards for Payment

A. - A.2. ...

3. Each enrolled case management agency shall employ or contract with a licensed registered nurse to serve as a consultant.

a. Each case management agency must have a written job description and consultation plan that describes how the nurse consultant will participate in the comprehensive plan of care (CPOC) development for medically complex individuals and others as indicated by the high risk indicators.

b. The nurse consultant shall provide consultation to the case management agency staff on health-related issues as well as education and training for case managers and case manager supervisors.

c. The nurse consultant shall be available on-site at the case management agency location at least four hours per week.

B. - B.2.d. ...

3. Education and Experience of Nurse Consultant. The nurse consultant must meet the following educational qualifications:

a. be a licensed registered nurse with a bachelor's degree in nursing. No substitutions for the bachelor's degree in nursing is allowed; and

b. have one year of paid experience as a registered nurse in a public health or human service field providing direct recipient services or case management.

B.4. - C.3. ...

David W. Hood
Secretary

0301#055

RULE

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

**Disproportionate Share Hospital Payment Methodologies
Final Payment and Small Rural Hospitals**

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

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the August 20, 2002 Rule governing the disproportionate share payment methodologies as follows.

I. General Provisions

A. - D. ...

E. Qualification is based on the hospital's latest filed cost report. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports will be assumed to be ineligible for disproportionate share (DSH) payments. Hospitals will only be considered for DSH payments if their disproportionate share qualification documentation is returned timely. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments for non-state operated hospitals, even if subsequently submitted documentation demonstrates an

increase in uncompensated care costs for the qualifying hospital.

F. - I. ...

§III. Reimbursement Methodologies

A. ...

B. Small Rural Hospitals

1. - 1.g. ...

h. has no more than 60 hospital beds or has notified the Department of Health and Hospitals as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located, as measured by the 2000 census:

i. in a municipality with a population of less than 13,000; and

ii. in a parish with a population of less than 32,000.

2. - 3. ...

4. A pro rata decrease necessitated by conditions specified in I.B. above for rural hospitals described in this section will be calculated using the ratio determined by dividing the qualifying rural hospitals uncompensated costs by the uncompensated costs for all rural hospitals described in this section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state appropriated DSH amount. No additional payments shall be made after the final payment for the state fiscal year is disbursed by the Department. Recoupments shall be initiated upon completion of an audit if it is determined that the actual uncompensated care costs for the state fiscal year for which the payment is applicable is less than the actual amount paid.

C. - D.2.c. ...

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

David W. Hood
Secretary

0301#052

RULE

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

**Early and Periodic Screening, Diagnosis, and Treatment
Program Psychological and Behavioral Services
(LAC 50:XV.Chapter 77)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XV.Chapter 77 governing Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) psychological and behavioral services in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This promulgated Rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTHC MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 5. Early and Periodic Screening,
Diagnostic, and Treatment

Chapter 77. Psychological and Behavioral Services

§7701. Recipient Criteria

A. In order to be eligible for services, a Medicaid recipient must be under the age of 21, be a member of the Chisholm lawsuit class and meet one of the following criteria:

1. have a diagnosis of Pervasive Developmental Disorder (PDD) according to a clinically appropriate diagnostic screening tool or other assessment; or
2. have an impaired functional status that can be addressed by psychological treatment on an instrument or other assessment of individual functioning that is appropriate for individuals with developmental disabilities; or
3. engage in behaviors so disruptive or dangerous that harm to others is likely (e.g., hurts or attempts to hurt others, such as hitting, biting, throwing things at others, using or threatening to use a weapon or dangerous object). Behaviors must be recurrent, not a single instance; or
4. engage in behaviors that have resulted in actual physical harm to the child himself/herself, such as bruising, lacerations or other tissue damage, or would result in physical harm if the child was not physically restrained. Behaviors must be recurrent, not a single instance. Behaviors are not the result of clinically suicidal intent.

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 29:40 (January 2003).

§7703. Covered Services

A. The following services, as identified by the accompanying Current Physicians' Terminology (CPT) procedure codes, are covered under EPSDT psychological and behavioral services:

1. necessary evaluations CCPT codes 90801 and 96100;
2. family education and training CCPT code 90847;
3. clinical interventions CCPT codes 90804 and 90806; and
4. periodic follow-up CCPT codes 90847, 90804, and 90806.

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 29:40 (January 2003).

§7705. Provider Qualifications

A. In order to receive reimbursement as a Medicaid provider of EPSDT psychological and behavioral services, a psychologist must provide verification that he or she meets all of the following qualifications:

1. have a Ph.D;
2. be licensed to practice within the State of Louisiana; and
3. be professionally qualified to treat children, or to treat children and/or adults with PDD, including autism and/or developmental disorders.

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 29:40 (January 2003).

§7707. Reimbursement Methodology

A. Reimbursement for EPSDT psychological and behavioral services shall be based on 70 percent of the allowable rate on the 2002 Medicare Fee Schedule for Area 1.

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 29:40 (January 2003).

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

David W. Hood
Secretary

0301#051

RULE

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

Nursing Facilities Services Requirements
(LAC 50:II.10167)

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

Title 50

PUBLIC HEALTHC MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 3. Requirements for Payments

Chapter 101. Requirements for Nursing Facilities

Subchapter L. Sanctions and Appeal Procedures

§10167. General Provisions

A. - C.3.a.ii. ...

iii. Class C violations are subject to a civil fine which shall not exceed \$1,000 for the first violation. The civil fine for a second Class C violation occurring within an 18-month period from the first violation shall not exceed \$2,000 per day. The third Class C violation may result in the initiation of proceedings to terminate the facility's Medicaid agreement and to revoke its license.

iv. - K.10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

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 LR 29:40 (January 2003).

David W. Hood
Secretary

0301#054

RULE

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

**Pharmacy Benefits Management Program
Catheters and Catheter Trays**

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

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amends the April 20, 1990 Rule governing coverage of prescription drugs and medical supplies under the Pharmacy Benefits Management Program to remove the coverage of indwelling catheters and catheter trays. The following medical supplies shall be covered and reimbursed under the Durable Medical Equipment Program.

Service Description	Fee
Catheter and Catheter Tray	\$11.19
Catheter Tray	\$ 4.05
Catheter	\$ 7.14

David W. Hood
Secretary

0301#053

RULE

**Department of Insurance
Office of the Commissioner**

**Rule 12C Transmission of Forms and Documents
(LAC 37:XI.901)**

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the commissioner of Insurance has amended Rule 12, Informational Transmittal Rule.

The Department of Insurance hereby adopts and re-enacts this amended Rule to become effective upon publication of the January 2003 edition of the *Louisiana Register*. This action complies with the statutory law administered by the Department of Insurance.

**Title 37
INSURANCE**

Part XI. Rules

Chapter 9. Rule Number 12C Transmission of Forms and Documents

§901. Transmission of Forms and Documents Filed with the Department of Insurance

A. All forms, documents, applications, filings, financial reports, and any and all other forms and types of documents required by law or voluntarily filed with the commissioner of Insurance by any company regulated by the Office of the

Commissioner shall be filed by depositing the same in the United States mail, postage prepaid, and/or electronic transmission. Payment of fees, including license fees, and premium taxes shall be exempt from this rule.

B. No document of any sort or kind described in §901.A will be accepted or received by the personnel of the department as filed with the department unless the same is transmitted to the department via the United States mail and/or electronic transmission.

C. Upon receipt of such documents mailed to the department, the employees of the department charged with the duty of receiving the same shall cause the envelope in which the document was mailed to the department to be attached to the document received in such a way that it shall remain permanently attached to the same, and no employee of the department may remove said envelope for any reason, except as provided for by law.

D. Transmission of documents by facsimile machine, private courier service, or hand delivery is permissible as long as the originals are mailed in the United States Postal Service and received by the Department of Insurance on or before the twentieth day after receipt of the facsimile transmission, private courier delivery, or hand delivery. A document received in accordance with §901 shall be deemed received on the date of the receipt of the original facsimile transmission, private courier delivery, or hand delivery. Any departmental approval shall be indicated on the initial facsimile transmission, private courier delivery, or hand delivery.

E. Notwithstanding §901.A through D, requests for public records shall be in accordance with procedures established for public records requests and record management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22.2.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:1210 (December 1991), amended LR 18:620 (June 1992), amended by the Department of Insurance, Office of the Commissioner, LR 29:41 (January 2003).

J. Robert Wooley
Acting Commissioner

0301#064

RULE

**Department of Insurance
Office of the Commissioner**

**Rule 14C Records Management
(LAC 37:XI.2501)**

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Acting Commissioner of Insurance has adopted Insurance regulations.

The LDI considered the following laws, among others, and the intended action complies with the statutory law administered by the LDI: R.S. 44:1 et seq., R.S. 22:1 et seq.; R.S. 22:2.1.A; R.S. 14:67; R.S. 14:132, and R.S. 9:2601 et seq.

The Rule establishes that any public record maintained by the commissioner of insurance may be kept in any written, photographic, microfilm, or other similar form or method, or may be kept by any magnetic, electronic, optical, or similar form of data compilation that has reasonable safeguards against erasure or alteration, including the use of programs, methods, procedures and/or services that provide secured, portable document formats and digital signatures, and for which the Department of Insurance has obtained the necessary license(s) and/or authorities to insure reasonable safeguards and/or authorities to insure reasonable safeguards against erasure or alteration.

**Title 37
INSURANCE
Part XI. Rules**

**Chapter 25. Rule 14C Records Management
§2501. Records Management; General**

A. Any public record maintained by the commissioner of insurance may be kept in any written, photographic, microfilm, or other similar form or method, or may be kept by any magnetic, electronic, optical, or similar form of data compilation that has reasonable safeguards against erasure or alteration, including the use of programs, methods, procedures and/or services that provide secured, portable document formats and digital signatures, and for which the Department of Insurance has obtained the necessary license(s) and/or authorities to insure reasonable safeguards against erasure or alteration.

AUTHORITY NOTE: R.S. 49:950 et seq.; R.S. 44:1 et seq., R.S. 22:1 et seq.; R.S. 22:2.1.A; R.S. 14:67; R.S. 14:132; and R.S. 9:2601 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 29:42 (January 2003).

J. Robert Wooley
Acting Commissioner

0301#015

RULE

**Department of Revenue
Policy Services Division**

**Offset of Individual Income Tax Refunds
Against Debts Owed Certain Persons
(LAC 61:I.1306)**

Under the authority of R.S. 47:299.34 and 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, adopted LAC 61:I.1306 relative to the offset of individual income tax refunds against debts owed certain persons.

Revised Statute 47:299.31 et seq. permits certain persons owed child support to make a claim against any income tax refund due to an individual who has failed to provide child support payments required by an order and against whom a judgment has been rendered. The secretary is authorized by R.S. 47:299.34 to establish a reasonable and efficient system for permitting a claim of offset by a claimant. This Rule provides the requirements for submitting offset claims including the information that must be submitted, the time

limits for submitting claims, and the method of making remittances to the claimant.

Title 61

REVENUE AND TAXATION

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

Chapter 13. Income: Personal

**§1306. Offset of Individual Income Tax Refunds
Against Debts Owed Certain Persons**

A. The claimant must submit a written offset claim with a certified copy of the judgment that makes past-due payments under a child-support award executory. The claim must be submitted before participation in the program and by December 1 each year thereafter. After the first year of participation, a copy of the claim and judgment can be submitted if the information requested in Subsection B has not changed.

B. For each offset claim, the claimant must provide the following information:

1. the name of the debtor;
2. the amount of offset claimed;
3. the social security number of the debtor;
4. the most current address of the debtor available to the claimant; and
5. any additional information requested that will facilitate identification of the debtor and processing of the offset claim.

C. Remittances will be made to the claimant within three months after the debtor has waived the right to contest the offset or final disposition by the claimant or by a court.

D. A fee for processing the claim will be withheld from each refund issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:299.34.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 29:42 (January 2003).

Cynthia Bridges
Secretary

0301#016

RULE

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

**Child Care Assistance Program Repair and
Improvement Grants
(LAC 67:III.5102, 5103, and 5107)**

The Department of Social Services, Office of Family Support, has amended the LAC 67:III, Subpart 12, the Child Care Assistance Program.

To provide for the eligibility of more applicants, the agency expanded the definition of a disabled adult to include an adult household member who is unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination.

Funds from Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant were appropriated to expand the Repair and Improvement Grant Program in an effort to assist more providers with the cost of repairs and improvements that are needed to improve the quality of child

care to either licensed or registered providers, or to those who have applied to become licensed or registered.

These changes were effected by Declaration of Emergency effective September 1, 2002. Authorization for emergency action in the expenditure of TANF funds is contained in Act 13 of the 2002 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance

Subchapter B. Child Care Assistance Program

§5102. Definitions

Head of Household Can individual who may apply for child care assistance for a child that customarily resides more than half the time with him/her. The individual may be the parent of a child needing child care assistance or may be the adult household member with primary responsibility for the child's financial support and care if the child's parent is not living in the home, or is living in the home but is under age 18 and not emancipated by law, or is disabled and is unable to care for himself/herself and his/her child(ren) as verified by a doctor's statement or worker determination.

Household Ca group of individuals who live together, consisting of the head of household, that person's legal spouse or non-legal spouse (if the parent of a child in the household), the disabled adult parent who is unable to care for himself/herself and his/her child(ren) who are in need of care, and all children under the age of 18 who are dependent on the head of household and/or spouse, including the minor unmarried parent (MUP) who is not legally emancipated and the MUP's children.

Training or Employment Mandatory Participant (TEMP) Ca household member who is required to be employed or attending a job training or educational program, including the head of household, the head of household's legal spouse or non-legal spouse (if the parent of a child in the household), 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.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000), amended LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003).

§5103. Conditions of Eligibility

A. Family Independence Temporary Assistance Program (FITAP) recipients who are satisfactorily participating in the Family Independence Work Program (FIND Work), as determined by the case worker, are categorically eligible. The program will pay 100 percent of the FITAP/FIND Work participant's child care costs, up to the maximum amounts listed in §5109.B. The following eligibility criteria must be met.

1. The household must include a child in current need of child care services who is under the age of 13, or age 13 through 17 and physically or mentally incapable of caring for himself or herself, as verified by a physician or certified

psychologist, or by receipt of Supplemental Security Income (SSI), or who is under court supervision.

B. Low-income families not receiving FITAP cash assistance, including former FITAP recipients who are given priority consideration, must meet the following eligibility criteria.

I. - 3. ...

4. Effective September 1, 2002, unless disabled as established by receipt of Social Security Administration Disability benefits, Supplemental Security Income, Veteran's 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:

B.4.a. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193.

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).

§5107. Child Care Providers

A. - F. ...

G The Child Care Assistance Program 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. Effective September 1, 2002 the program will pay for 75 percent of the cost of such a repair or improvement, up to the following maximums.

a. For Class A centers the maximum grant amount will be equal to \$100 times the number of children listed in the licensed capacity, or \$10,000, whichever is less.

b. For Family Child Day Care Home (FCDCH) providers the maximum grant amount will be \$600.

c. These amounts may be adjusted at the discretion of the Assistant Secretary, based upon the availability of funds.

2. A provider can receive no more than one such grant for any state fiscal year. To apply, the provider must submit an application form indicating that the repair or improvement 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 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, 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.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193; Act 152, 2002 First Extraordinary Session, and Act 13, 2002 Reg. Session.

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).

Gwendolyn P. Hamilton
Secretary

0301#039

RULE

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

TANF Initiatives Early Childhood Supports and Services Program and Adult Education Basic Skills Training, and Job Skills Training and Retention Services (LAC 67:III.5507 and 5559)

In accordance with R.S.49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, has adopted LAC 67:III, Subpart 15, Chapter 55, §5559 Early Childhood Supports and Services, as a TANF Initiative and has amended §5507, Adult Education, Basic Skills Training, Jobs Skills Training and Retention Services Program.

Declarations of Emergency signed August 2 and August 14, 2002, effected the Rules. The authorization for emergency action in the expenditure of TANF funds is contained in Act 13 of the 2002 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

§5507. Adult Education, Basic Skills Training, Job Skills Training and Retention Services Program

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to create programs to provide adult education, basic skills training, jobs skills training, and retention services to low-income families. Employed participants will be provided child care and transportation services. Unemployed participants will be provided short-term child care and transportation services.

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 12, 2001 Reg. Session; Act 152, 2002 First Extraordinary Session; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:870 (April 2002), amended LR 29:44 (January 2003).

§5559. Early Childhood Supports and Services Program Effective August 2, 2002

A. The Department of Social Services, Office of Family Support, shall enter into a Memorandum of Understanding or contracts to create programs to identify and provide supports and services to young children, ages 0-5, and their families who are at risk of developing cognitive, behavioral, and relationship difficulties. Services may include but are not limited to:

1. referral to appropriate supports and services provided by network members and other resources in the community;

2. case management;
3. clinical case management;
4. behavior modification;
5. counseling;
6. parent support groups;
7. training and technical assistance;
8. consultation to other providers and agencies;
9. infant mental health screening;
10. infant mental health assessment;
11. non-recurrent, short-term emergency intervention funds for use in a crisis situation; and
12. other services as specified in the Individualized ECSS Family Services Plan.

B. Services offered by providers meet one or more of the following TANF goals:

1. to provide assistance to needy families so that children can be cared for in their own home or the home of a relative;
2. to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage; and
3. to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to at-risk families that include a child age 05 years, and who have earned income at or below 200 percent of the federal poverty level.

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

E. Services will be offered in the following parishes: Desoto, East Baton Rouge, Lafayette, Ouachita, St. Tammany, and Terrebonne. Services may be expanded into other parishes at the discretion of the assistant secretary based on the availability of funds and a determination of need.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:44 (January 2003).

Gwendolyn P. Hamilton
Secretary

0301#038

RULE

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

TANF Initiatives Individual Development Accounts (LAC 67:III.1235 and 5555)

In accordance with R.S.49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, adopted LAC 67:III, Subpart 15, Chapter 55, §5555 as part of the TANF Initiatives and amended §1235 of the Family Independence Temporary Assistance Program (FITAP).

Pursuant to Act 13 of the 2002 Regular Session of the Louisiana Legislature, the agency is implementing the Individual Development Account (IDA) Program, to provide asset and savings opportunities to low-income families for home ownership, post-secondary education, and small

business capitalization, as well as provide financial management education.

Additionally, the agency amended §1235 by revising the IDA excludable resource in FITAP, to coincide with federal regulations as stated in the new program.

The Rule was effected by a Declaration of Emergency signed July 1, 2002.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1235. Resources

A. Assets are possessions which a household can convert to cash to meet needs. The maximum resource allowable for an assistance unit is \$2,000. All resources are considered except:

1. - 20. ...

21. an Individual Development Account (IDA) which is a special account established in a financial institution for specific purposes. Only one IDA per assistance unit is allowed. The balance of the account cannot exceed \$6000, including interest, at any time. IDA funds may be used for one of three purposes. Withdrawal of funds for purposes other than those listed below shall be deemed as a countable resource. Effective July 1, 2002, IDA funds may be used for the following purposes only:

a. postsecondary educational expenses paid from an IDA directly to an eligible educational institution;

b. first home purchaseCqualified acquisition costs with respect to a qualified principal residence for a qualified first-time homebuyer, if paid from an IDA directly to the persons to whom the amounts are due; and

c. business capitalizationCamounts paid from an IDA directly to a business capitalization account which is established in a federally-insured financial institution and is restricted to use solely for qualified business capitalization expenses.

A.22. - B. ...

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. 46:231.2, P.L. 106-387, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2451 (December 1999), amended LR 27:736 (May 2001), LR 27:866 (June 2001), LR 28:1031 (May 2002), LR 29:45 (January 2003).

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

Chapter 55. TANF Initiatives

§5555. Individual Development Account Program

Effective July 1, 2002

A. OFS shall establish the Individual Development Account (IDA) Program to provide asset and savings opportunities to low-income families for specific purposes as well as provide financial management education. The agency will contract with qualified non-profit organizations, or state or local governments who work with non-profit organizations, to develop and administer the IDA Program for low-income families.

B. An IDA is a financial account established by, or on behalf of, an individual eligible for assistance to allow that individual to accumulate funds for specific purposes. Funds deposited into the account may be matched by the agency using Temporary Assistance For Needy Families (TANF) Block Grant funds. The balance of the account cannot exceed \$6000, including interest, at any time. Funds deposited by the individual into the account must be derived from earned income. All matching contributions must be deposited in a separate matching fund account and used in accordance with the purposes outlined in §5555.C. The program will also provide financial management and organization education to eligible families.

C. IDA funds may be used for the following qualified purposes only:

1. postsecondary educational expenses paid from an IDA directly to an eligible educational institution;

2. first home purchaseCqualified acquisition costs with respect to a qualified principal residence for a qualified first-time homebuyer, if paid from an IDA directly to the persons to whom the amounts are due; and

3. business capitalizationCamounts paid from an IDA directly to a business capitalization account which is established in a federally-insured financial institution and is restricted to use solely for qualified business capitalization expenses.

D. Definitions

*Eligible Educational Institution*C

a. an institution described in Section 481(a)(1) or 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1) or 1141(a)), as such sections are in effect on the date of the enactment of this Subsection [enacted August 22, 1996].

b. an area vocational education school (as defined in Subparagraph (C) or (D) of Section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)), which is in any state (as defined in Section 521(33) of such Act [20 USCS §521(33)]), as such Sections are in effect on the date of the enactment of this Subsection [enacted August 22, 1996].

*Post-Secondary Educational Expenses*Ctuition and fees required for the enrollment or attendance of a student at an eligible education institution, and fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

*Qualified Acquisition Costs*Cthe costs of acquiring, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

*Qualified Business*Cany business that does not contravene any law or public policy (as determined by the federal secretary of the Department of Health and Human Services).

*Qualified Business Capitalization Expenses*Cqualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

*Qualified Expenditures*Cexpenditures included in a qualified plan including capital, plant, equipment, working capital, and inventory expenses.

*Qualified First-Time Homebuyer*Ca taxpayer (and if married, the taxpayer's spouse), who has no present

ownership interest in a principal residence during the 3-year period ending on the date of acquisition of the principal residence to which this Subsection applies. Date of acquisition means the date on which a binding contract to acquire, construct, or reconstruct the principal residence to which this Subparagraph applies is entered into.

*Qualified Plan*Ca business plan which:

- a. is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity;
- b. includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and
- c. may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

*Qualified Principal Residence*Ca principal residence (within the meaning of Section 1034 of the Internal Revenue Code of 1986 [26 USCS §1034], the qualified acquisition costs of which do not exceed 100 percent of the average area purchase price applicable to such residence (determined in accordance with Paragraphs (2) and (3) of Section 143(e) of such Code [26 USCS §143(e)]).

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; and Act 13, Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 29:45 (January 2003).

Gwendolyn P. Hamilton
Secretary

0301#040

RULE

Department of Social Services Office of Rehabilitation Services Vocational Rehabilitation Services

General Provisions (LAC 67:VII.Chapter 1)

In accordance with the provisions of R.S. 49:953(B) of the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) has amended §101, Agency Profile and §103, Enabling Legislation, §107 Applicant/Client Appeal Right, and §115, Financial of its Vocational Rehabilitation Policy Manual. In §101, Agency Profile and §103, Enabling Legislation, the agency removed the reference to the Blind Register from policy, as it is not mandated. In §107 Applicant/Client Appeal Rights, the agency extended the required timeline for conducting an appeal and specifying when written notice of appeal rights must be provided to an applicant or consumer as per Federal Regulations 34 CFR Part 361.57 effective January 17, 2001. In §115, Financial, the agency amended guidelines to distinguish between trial work and extended evaluation; clarified that personal assistance services are not based on economic need; and removed the RS-14 form from

policy, but maintain the basic living requirement and other necessary policy required to determine a consumer's financial need for certain vocational rehabilitation services. This Rule does not change the vocational rehabilitation services that are based on the agency's financial need policy.

Title 67

SOCIAL SERVICES

Part VII. Rehabilitation Services

Chapter 1. General Provisions

§101. Agency Profile

A. - H. ...

I. Data Collection. Staff shall ensure the provision of client and financial data necessary for the operation of the agency's information and financial system.

J. - T. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), repromulgated LR 21:189 (February 1995), amended LR 21:473 (May 1995), LR 21:837 (August 1995), LR 25:1263 (July 1999), LR 29:46 (January 2003).

§103. Enabling Legislation

A. - C.1. ...

2. Act 19 of 1988 effected the merger of the Division of Rehabilitation Services with the Division of Blind Services to form Louisiana Rehabilitation Services.

3. Act 109 of 1984, R.S. 39:1595.3, and Act 291 of 1986, R.S. 39:1594(I), enacted and authorized the State Use Law.

4. Act 10 of 1994, R.S. 18:59(I)(2), 61(A)(1), 62(A), 103(A), enacted and authorized to provide for the implementation of the National Voter Registration Act of 1993.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:473 (May 1995), LR 25:1265 (July 1999), LR 29:46 (January 2003).

§107. Applicant/Client Appeal Rights

A. - A.1. ...

2. All applicants/clients must be provided written notification of appeal rights at the time of application, placement into a category in the order of selection, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services, including evaluations and assessment services and plan development (IPE), will continue during the administrative review appeal process unless the services being provided were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

3. In order to insure that an applicant/client is afforded the option of availing themselves of the opportunity to appeal agency decisions impacting their vocational rehabilitation case, written notification by the counselor and/or regional manager must include:

A.3.a. - B.4. ...

5. All applicants/clients must be provided written notification of appeal rights at the time of application, placement into a category in the order of selection, development of the Individualized Plan for Employment,

and upon reduction, suspension, or cessation of vocational rehabilitation services. Services, including evaluations and assessment services and plan development (IPE), will continue during the mediation process unless the services being provided were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

6. In order to insure that an applicant/client is afforded the option of availing themselves the opportunity to appeal agency decisions impacting their vocational rehabilitation case, written notification by the counselor and/or regional manager must include:

a. - f.(note) ...

C. Fair Hearing

1. The fair hearing process may be requested by applicants/clients to appeal disputed findings of an administrative review, or as a direct avenue of appeal bypassing the administrative review or the mediation process option. The fair hearing must be conducted by an impartial hearing officer within 60 days of the initial written request. At the time the fair hearing is requested, the applicant/client shall be offered mediation as an option to resolve a dispute.

2. An impartial hearing officer shall be selected on a random basis or by agreement between the Louisiana Rehabilitation Services Director and the applicant/client. This officer shall be selected from among a pool of qualified persons identified jointly by Louisiana Rehabilitation Services and members of the Louisiana Rehabilitation Council. The impartial hearing officer shall provide the decision reached in writing to the applicant/client and to Louisiana Rehabilitation Services within 30 days of completion of the hearing.

3. All applicants/clients must be provided written notification of appeal rights at the time of application, placement into a category in the order of selection, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services, including evaluations and assessment services and plan development (IPE), will continue during the fair hearing process unless the services being provided were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

4. In order to insure that the applicant/client is afforded the option of availing themselves the opportunity to pursue a fair hearing, written notification by the counselor and/or regional manager must include:

C.4.a. - D.1. ...

2. The decision of the impartial hearing officer will be final unless the applicant/client or the agency requests a review of the impartial hearing officer's decision by making a written request to the secretary of the Department of Social Services within 20 days of mailing the decision. The secretary cannot delegate the responsibility for making this final decision to any other officer or employee of Louisiana Rehabilitation Services. The applicant/client and the agency shall be provided an opportunity to submit additional evidence and information relevant to the final decision.

D.3. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), repromulgated LR 21:189 (February 1995), amended LR 24:958 (May 1998), LR 25:1266 (July 1999), LR 26:1634 (August 2000), LR 29:46 (January 2003).

§115. Financial

A. - B.1. ...

2. LRS will consider, through budgetary analysis of assets, income, disability-related expenses and comparable services and benefits, the financial need of eligible individuals; individuals who are participating in trial work periods; and individuals under extended evaluations for purposes of determining the extent of the individual's participation in the costs of certain vocational rehabilitation services.

a. - a.vi. ...

vii. supported employment;

viii. on-site training; and

ix. on-the-job training;

x. assistive technology devices and services;

xi. personal assistance services provided

simultaneously with any of the above-listed vocational rehabilitation services. (Examples include attendant, reader, scribe, interpreter, ASL, braille, notetaker, and adjustment/orientation and mobility training services.)

b. - b.viii. ...

ix. vocational and other training services, such as college/university and proprietary school training.

x. other goods and services not specifically identified in Clauses b.i. through ix above.

xi. post-employment services consisting of the services listed above.

c. The only exception to item ix. above is as follows:

i. to preserve LRS' continuity of services provision in the order of selection, LRS exempted those eligible individuals who had an IWRP/IPE in effect prior to July 20, 1999, which is the date of the adoption of this rule change; therefore, Clause b.ix. above will only apply to those individuals who had an IWRP/IPE developed after July 20, 1999.

d. - h. ...

i. Simultaneously with the comprehensive assessment, at the annual review of the IPE, and at any time there is a change in the financial situation of either the client or the family, the counselor will perform a budget analysis for each client requiring vocational rehabilitation services as listed above in §115.B.2.b.i.-xi. The amount of client participation in the cost of their vocational rehabilitation program will be based upon the most recent budget analysis at the time the relevant IPE or amendment is developed.

3. State and departmental purchasing procedures. All applicable state, departmental and agency purchasing policies and procedures must be followed.

3.a. - d. ii. ...

C. LRS shall determine an individual's financial need for certain vocational rehabilitation services based on the individual's disability related expenses, available assets, and the basic living requirement chart below.

The Basic Living Requirement (BLR)

Persons	Allowable BLR**
1	\$21,475
2	\$29,025
3	\$36,575
4	\$44,125
5	\$51,675
6	\$59,225
7	\$66,775
8	\$74,325
Other	

**For each additional person over 8, add \$3020.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:837 (August 1995), LR 24:959 (May 1998), LR 25:1273 (July 1999), LR 27:212 (February 2001), LR 27:1561 (September 2001), LR 29:47 (January 2003).

Gwendolyn Hamilton
Secretary

0301#037

RULE

**Department of Transportation and Development
Office of the Secretary**

Existing Significant Trees within the Highway
Right-of-Way, Zone of Construction
or Operational Influence (LAC 70:I.317)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et. seq., the Department of Transportation and Development has amended Section 317 of Chapter 3 of Title 70 entitled "General Policy Governing Treatment of Existing Significant Trees within the Highway Right-of-Way, Zone of Construction or Operational Influence," in accordance with R.S. 47:820.6.

**Title 70
TRANSPORTATION**

Part I. Highway Construction

Chapter 3. Roadside Vegetation Management

§317. General Policy Governing the Treatment of Existing Significant Trees within the Highway Right-of-Way, Zone of Construction or Operational Influence

A. Purpose. The purpose of this directive is to establish a general policy governing the treatment of significant trees by the Department within the highway right-of-way, zone of construction or operational influence.

B. Definitions

Historic Tree Ca tree that stands at a place where an event of historic significance occurred that had local, regional, or national importance. A tree may also be considered historic if it has assumed a legendary stature in the community; is mentioned in literature or documents of historic value; is considered unusual due to size or age; or has landmark status.

Significant Tree Cone of the following: Live Oak, Red Oak, White Oak, Magnolia, or Cypress that is considered aesthetically important, is 18" or greater in diameter at breast height (4' - 6" above the ground), and has a form that separates it from the surrounding vegetation or is considered historic. Significant trees must be in good health and not in a declining condition.

C. Design Considerations. The Landscape Architectural Staff and District Roadside Development Coordinators shall be consulted during the scoping and/or environmental phase. The Landscape Architectural staff shall identify significant trees during the scoping and/or environmental phase. The Design Section shall indicate significant trees on the plans and implement a context sensitive design (i.e., preservation, specified limited impact, or special treatment) to accommodate these trees where practical.

D. Construction Considerations. The Project Engineer shall ensure that the contractor's operations are sensitive to the treatment indicated in the plans.

1. Construction considerations may include the following:

- a. temporary fencing to protect trees from construction equipment;
- b. avoidance of root zones;
- c. care of overhanging branches, etc.

2. Significant tree issues arising on construction projects shall be managed by the District Roadside Development Coordinators, who shall seek the guidance of the Landscape Architectural staff when questions arise.

E. Considerations for Utility Companies. Utility operators shall not prune trees identified as significant by the Department. Alternate construction methods, such as changing the alignment, will be required to avoid impacting the significant tree(s). Removal of significant trees may be necessary when electrical utility lines cannot be aligned to avoid removal. Consideration will be given to boring to place utilities under significant Live Oaks or trees of historical significance where all other means of avoiding the trees have failed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:267 - 268 and R.S. 47:820.6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR. 18:204 (February 1991), amended LR. 26:1675 (August 2000), LR 29:48 (January 2003).

Kam K. Movassaghi, Ph.D., P.E.
Secretary

0301#045

RULE

**Department of Wildlife and Fisheries
Office of Fisheries**

Experimental Fisheries Program Permits
(LAC 76:VII.701)

The secretary of the Department of Wildlife and Fisheries has amended the Rule which provides for the harvest of underutilized species under the experimental fisheries program and the issuance of permits.

**Title 76
WILDLIFE AND FISHERIES**

Part VII. Fish and Other Aquatic Life

Chapter 7. Experimental Fisheries Program

§701. Permits

A. - B.10. ...

11. When a permit is issued, only the permitted specie(s) can be retained unless other provisions are specifically stated in the permit. All other species shall be immediately returned to waters from which they were caught. No other fish may be in the possession of the permittee and all fish on board the permitted vessel shall have the head and caudal fin (tail) intact.

12. ...

13. When permitted gear is on board permitted vessel or in possession of permittee, permittee and vessel are assumed to be operating under conditions of the permit. No gear other than permitted gear may be on board or in possession of permittee unless specifically provided for in the permit.

B.14. - D.1. ...

2. Permit applications for the development of new gear shall include complete descriptions of the gear and methods used, including drawings or pictures, the specie(s), or group of fishes to be fished and the area to be fished.

3. - 6. ...

7. If any permittee does not report monthly as required by Paragraph B.9, his permit may be suspended and the permittee may lose all rights and privileges to participate in the program in future years.

8. The Harvest of Shad (*Dorosoma sp.*) and Skipjack (*Alosa chrysochloris*) with an Experimental Seine

a. Closed Seasons, Times and Areas

i. The season for the commercial taking of shad and skipjack under the provision of the experimental seine permit shall be closed during the months of July, August, September and October of each year. Shad and skipjack may not be taken commercially with an experimental seine at any time outside of this season.

ii. Commercial harvest of shad and skipjack with an experimental seine under the provisions of this section shall not be allowed on Saturday and Sunday. There shall be no commercial taking of shad and skipjack with an experimental seine during the period after sunset and before sunrise.

iii. Experimental seines shall not be used in areas closed to seining.

b. Commercial Taking

i. Only shad and skipjack may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permitted and all fish on board of the permitted vessel shall have the head and caudal fin (tail) intact.

ii. An experimental seine is a seine with a mesh size not less than 1" bar and 2" stretched and not more than 2" bar and 4" stretched, not exceeding 1,200 feet in length. The experimental seine may not be constructed of monofilament.

iii. Only "strike" fishing will be permitted; this means the school of fish to be taken must be visible from the surface and the seine then placed around the selected school.

iv. The use of more than one experimental seine from any one or more vessels at any time is prohibited.

v. No more than two vessels may fish an experimental seine at one time.

vi. Experimental seines shall not be used in a manner that unduly restricts navigation of other vessels.

vii. Experimental seines shall not be left unattended as defined in R.S. 56 and shall be actively fished at all times by the permittee.

viii. Each experimental seine shall have attached to each end a 1-gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number shall be legibly displayed on the jug.

ix. The permitted gear shall only be fished in the freshwater areas of the state.

x. All provisions of R.S. 56 shall apply to persons involved in any experimental fishery or possessing any commercial gear.

c. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of shad and skipjack by properly licensed and permitted fishermen.

d. Permits

i. Any person who has been convicted of an offense under the provisions of the experimental fishery permit program shall not participate in the harvest, in any manner, of fish taken under an experimental permit.

ii. No person shall receive more than one experimental seine permit to commercially take shad and skipjack.

iii. This permit along with other applicable licenses authorize the bearer to sell his shad and skipjack herring.

iv. Violating any provision or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in R.S. 56.

v. The permitted gear must be properly licensed as a fish seine.

e. General Provisions. Effective with the closure of the season for using the experimental seine permit for shad and skipjack, the possession of the experimental seine on the waters of the state shall be prohibited. Nothing shall prohibit the possession, sale, barter or exchange off the water of shad and skipjack legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

9. Shad (*Dorosoma sp.*) and Skipjack (*Alosa chrysochloris*) Gill Net Permit (Lake Des Allemands Only)

a. Closed Seasons, Times and Areas

i. The season for the commercial taking of shad and skipjack under the provision of the experimental gill net permit shall be closed during the months of July, August, September and October of each year. Shad and skipjack may not be taken commercially with an experimental gill net at any time outside of this season.

ii. Commercial harvest of shad and skipjack with an experimental gill net under the provisions of this Section

shall not be allowed on Saturday and Sunday. There shall be no commercial taking of shad and skipjack with an experimental gill net during the period after sunset and before sunrise.

iii. Experimental gill net shall not be used in areas closed to gill netting.

b. Commercial Taking

i. Only shad and skipjack may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permitted and all fish on board of the permitted vessel shall have the head and caudal fin (tail) intact.

ii. An experimental gill net is a gill net with a mesh size not less than 1" bar and 2" stretched and not more than 2" bar and 4" stretched, not exceeding 1,200 feet in length.

iii. Only "strike" gill net fishing will be permitted; this means the school of fish to be taken must be visible from the surface and the gill net then placed in or directly near the selected school. Once deployed, the experimental gill net is to remain stationary until being run (gill net remains in place while fish are removed) or gill net is retrieved (gill net remains in place until lifted into boat).

iv. The use of more than one experimental gill net from any one or more vessels at any time is prohibited.

v. No more than two vessels may fish an experimental gill net at one time.

vi. Experimental gill net shall not be used in a manner that unduly restricts navigation of other vessels.

vii. Experimental gill net shall not be left unattended as defined in R.S. 56.

viii. Each experimental gill net shall have attached to each end a 1-gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number shall be legibly displayed on the jug.

ix. The permitted gear shall only be fished in Lac Des Allemands. Streams, bayous, canals and other connecting waterbodies are not included in this permit.

x. All provisions of R.S. 56 shall apply to persons involved in any experimental fishery or possessing any commercial gear.

c. Commercial Limits. During the season, there shall be no daily take or possession limit for the commercial harvest of shad and skipjack by properly licensed and permitted fishermen.

d. Permits

i. Any person who has been convicted of an offense under the provisions of the experimental fishery permit program shall not participate in the harvest, in any manner, of fish taken under an experimental permit.

ii. No person shall receive more than one gill net permit to commercially take shad and skipjack.

iii. This permit along with other applicable licenses authorize the bearer to sell his shad and skipjack herring.

iv. Violating any provision or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in R.S. 56.

v. The permitted gear must be properly licensed as a freshwater gill net.

e. General Provisions. Effective with the closure of the season for using the experimental gill net permit for shad and skipjack, the possession of the experimental gill net on the waters of the state shall be prohibited. Nothing shall prohibit the possession, sale, barter or exchange off the water of shad and skipjack legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

10. Experimental Freshwater River Shrimp (*Macrobrachium ohione*) Permit

a. May experimentally fish a wire mesh shrimp net, 1/4-inch bar, 6 feet in length in the Intercoastal Canal and Mississippi River within 1.5 miles of the boat ramp adjacent to the locks in Port Allen.

b. Only freshwater river shrimp may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permittee.

c. The permittee shall have the permit in possession at all times when using permitted gear; permittee shall be on board permitted vessel when operating under conditions of permit.

d. The permitted gear must be properly licensed as a Shrimp Trawl and may be fished in freshwater areas only.

e. Permitted gear must be marked using a 1 gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number should be legibly displayed on the jug.

f. This permit may be canceled at any time if in the judgment of the secretary or his designee, the permit is being used for purposes other than that for which the permit was issued.

g. Violating any provision or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in R.S. 56.

11. Experimental Freshwater Minnow Dip Net Permit

a. May experimentally fish for bait fishes with a wire mesh dip net, 1/4-inch bar, no greater than 3 feet cylindrical open end net shaped in a cone, affixed to a handle that may be attached to a boat and is held by hand.

b. Only freshwater minnows may be taken; all threatened, endangered, specifically protected and game fish species (as defined in R.S. 56:327.A) shall be immediately returned to waters from which they were caught.

c. Permittee may only possess minnows taken under this permit and legal freshwater commercial species.

d. The permittee shall have the permit in possession at all times when using permitted gear; permittee shall be on board permitted vessel when operating under conditions of permit.

e. The permitted gear must be properly licensed as a commercial dip net and may be fished in freshwater areas only.

f. Permittee may only possess the permitted gear and set lines while fishing under the permit.

g. Permittee may possess or fish no more than 2 dip nets as described in Subparagraph a above on board a vessel under this permit.

h. Permitted gear handle must be painted with international orange paint.

i. This permit may be canceled at any time if in the judgement of the secretary or his designee, the permit is being used for purposes other than that for which the permit was issued.

j. Violating any provisions or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in R.S. 56:32.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:571.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 12:119 (February 1986), LR 12:847 (December 1986), amended by the Office of Fisheries, LR 15:1098 (December 1989), LR 29:49 (January 2003).

James H. Jenkins, Jr.
Secretary

0301#033

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Control of Wild Nuisance Quadrupeds (LAC 76:V.125)

Editor's Note: This Rule is being repromulgated for corrections. This Rule was promulgated in the December 2002 edition of the Louisiana Register and may be viewed on page 2570.

The Wildlife and Fisheries Commission has adopted Rules governing control of nuisance wild quadrupeds.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§125. Control of Nuisance Wild Quadrupeds

A. This Rule applies only to the control of the wild quadrupeds listed below and only when they are conclusively proven to be creating a nuisance or causing damage to property. The burden of establishing that the animal in question is causing the property damage shall rest with the property owner.

B. The following wild quadrupeds may be taken year-round without permit by the property owner or his designee, with written landowner permission, but only by trapping or shooting during legal daylight hours: coyote, armadillo, nutria, beaver, skunks, and opossums.

C. Squirrels, rabbits, foxes, bobcats, mink, otter, muskrat, raccoons and any of the other species listed above may be trapped alive and relocated to suitable habitat without permit provided the following conditions are met.

1. Written permission is obtained from the property owner where the animals are to be released and such written permission is carried in possession while transport and release activities are taking place.

2. Animals are treated in a responsible and humane manner and released within 12 hours of capture.

D. Traps shall be set in such a manner that provides the trapped animal protection from harassment from dogs and other animals and direct sun exposure.

E. Nuisance animals listed above may be so controlled by the property owner or his designee with written landowner permission, to prevent further damage.

F. Property owners must comply with all additional local laws and/or municipal ordinances governing the shooting or trapping of wildlife or discharge of firearms.

G. No animal taken under this provision or parts thereof shall be sold. A valid trapping license is required to sell or pelt nuisance furbearers during the open trapping season.

H. No species taken under the provisions of this rule shall be kept in possession for a period of time exceeding 12 hours.

I. This rule has no application to any species of bird as birds are the subject of other state and federal laws, rules and regulations.

J. Game animals, other than squirrels and rabbits, may only be taken by hunting during the open season under the conditions set forth under Title 56 of the Louisiana Revised Statutes and the rules and regulations of the Department of Wildlife and Fisheries.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, 56:6(10) and (15), R.S. 56:112, et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 28:2570 (December 2002), repromulgated LR 29:51 (January 2003).

Thomas M. Gattle, Jr.
Chairman

0301#008

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Office of the Commissioner

Contagious Diseases (LAC 7:XXI.121)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Office of the Commissioner, proposes to amend regulations regarding the reporting of contagious diseases.

This regulation is being updated to reflect the current list of animal and poultry diseases that are of regulatory importance and present potential risk to human health. Some of these diseases are added since they are no longer found in Louisiana and special attention must be accorded them if and when they are diagnosed. Others are new and emerging diseases that were not a concern in the past.

These rules comply with and are enabled by R.S. 3:2093, R.S. 3:2094, and R.S. 3:2095.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 1. General Provisions

§121. Requiring the Reporting of Contagious Diseases

A. In order to improve the protection of the animals and poultry populations from the effects of contagious diseases, all veterinarians licensed in the state of Louisiana are required to report to the state veterinarian, by telephone, fax, or electronic mail within 24 hours after diagnosis or tentative diagnosis, the occurrence or suspected occurrence of the following contagious diseases or symptoms: including but not limited to classical swine fever (hog cholera), anthrax, vesicular conditions, all equine encephalomyelitis conditions, transmissible spongiform encephalopathies (including chronic wasting disease, scrapie, bovine spongiform encephalopathy), pseudorabies (Aujeszky's Disease), tuberculosis, brucellosis, rabies, Newcastle Disease and other paramyxovirus infections, avian influenza (highly pathogenic), ornithosis (chlamydiosis, psittacosis), salmonellas (pullorum disease or fowl typhoid), infectious laryngotracheitis (other than vaccine induced), any disease classified by USDA as a foreign animal disease, or any other disease condition which may seriously threaten the welfare of the animal and poultry populations of this state.

B. Reports should include the:

1. name, address and phone number of the owner;
2. location of the premises;
3. morbidity and mortality rate at the time of reporting;
4. number of susceptible animals in the immediate area; and
5. approximate number of animals or poultry exposed.

C. Reports of disease outbreaks will be coordinated by the state veterinarian.

D. Livestock owners who suspect the occurrence of contagious disease should immediately contact the local practicing veterinarian, area regulatory veterinarian or county agent who, in turn, will be responsible for reporting to the state veterinarian.

E. An investigation of the reported contagious disease will be made by representatives of the livestock sanitary board, preferably with the veterinarian or county agent reporting the disease. If necessary to protect the animal and poultry populations, a quarantine may be imposed on involved and exposed animals and areas. The quarantine will remain in effect until the threat has been removed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, R.S. 3:2094 and R.S. 3:2095.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:234 (March 1985), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 15:813 (October 1989), LR 16:391 (May 1990), LR 23:197 (February 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 29:

Family Impact Statement

The proposed amendments to LAC 7:XXI.Chapter 1 regarding the reporting of contagious diseases should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

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

Interested persons should submit written comments on the proposed rules to Dr. Maxwell Lea through the close of business on March 25, 2003 at 5825 Florida Boulevard, Baton Rouge, LA 70806. No preamble regarding these Rules is necessary.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Contagious Diseases

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

It is estimated that there will be no implementation costs or savings to state or local government units. This Rule is being updated to make veterinarians and other individuals involved in animal health issues aware of those animal and poultry diseases that need to be reported to state and federal authorities. The addition of certain diseases to the "reportable disease list" is

necessary since some of these diseases are no longer seen in Louisiana, some are new diseases, some are of human health concern, and some are of concern as possible agents of bioterrorism.

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

It is anticipated that there will be no effect on revenue collections for state or local governmental units.

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

It is estimated that there will be no effect on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is estimated that there will be no effect on competition and employment.

Bob Odom
Commissioner
0301#027

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School Administrators C Transfer Policy Changes
(LAC 28:I.901)

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 an amendment to Bulletin 741, *Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975).

At the December 2002, meeting of the State Board of Elementary and Secondary Education (SBESE) the board voted to approve revisions to *Bulletin 741*, standards 2.026.06 and 2.026.08. These changes were originally approved by BESE in December 1999, but were incorrectly advertised in the *Louisiana Register*. The changes align the standards with the Board adopted "Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School System: Participation in LEAP 21." The revisions clarify the testing procedures for out-of-state students and for Louisiana residents transferring from any out-of-state school.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 28:269 (February 2002), LR 28:272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 29:

Transfer Policy Changes

§2.026.06 Transfer of Student Records from Approved School

A student transferred from a state-approved school, in- or out-of-state, shall be allowed credit for work completed in the former school. When a student transfers from one school to another, a properly certified transcript, showing the student's record of attendance, achievement, immunization records, and the units if credit earned, shall be required.

Effective with the 2000-2001 school year, students in grades 5 and 9 transferring to the school system from any in-state nonpublic school (state approved and unapproved), or any home schooling program, or Louisiana resident transferring from any out-of-state school shall be required to pass the English language arts and Mathematics portions of the state-developed *LEAP 21* placement test.

§2.026.08 Transfer of Student Records from Schools that are not State-Approved

Local school officials from any state-approved school receiving a student from an unapproved school, in- or out-of-state, will determine the placement and/or credits for the student. The principal and/or superintendent may require the student to take an entrance examination on any subject matter for which credit is claimed. The school issuing the high school diploma shall account for all credits required for graduation, and its records will show when and where the credit was earned.

Effective with the 2000-2001 school year, students in grades 5 and 9 transferring to the public school system from any in-state unapproved school, or any home schooling program, or Louisiana resident transferring from any out-of-state school shall be required to pass the English language arts and Mathematics portions of the state-developed *LEAP 21* placement test.

* * *

Interested persons may submit comments until 4:30 p.m., March 11, 2003, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741C Louisiana Handbook for School Administrators C Transfer Policy Changes

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

There should be no additional implementation costs (savings) to state or local governmental units. The revision clarifies testing procedures for out-of-state students and for Louisiana residents transferring from any out-of-state school.

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

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

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

There should be no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There should be no affect on competition and employment.

Marlyn Langley
Deputy Superintendent
Management and Finance
0301#035

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT
Tuition Trust Authority
Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.301)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1). The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Title 28
EDUCATION

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

Chapter 3. Definitions

§301. Definitions

Cost of Attendance the total amount it will cost a student to go to school, usually expressed as an academic year figure. This cost is determined by the school in compliance with Title IV of the Higher Education Act of 1965, as amended, and is annually updated and adopted by the institution. The cost of education covers tuition and fees, on-campus room and board (or a housing and food allowance for off-campus students) and allowances for books, supplies, transportation, child care, costs related to a disability, and miscellaneous expenses. Also included are reasonable costs for eligible programs of study abroad. An allowance (determined by the school) is included for reasonable costs connected with a student's employment as part of a cooperative education program.

Dependent Student a student who is dependent on his or her parents or legal guardian for support and therefore is required to include parental information on the Free Application for Federal Student Aid (FAFSA) or renewal FAFSA.

* * *

TOPS Cumulative Grade Point Average (Academic) the grade point average calculated by LOSFA on all academic courses taken by a student at postsecondary institutions to determine whether the student has maintained Steady Academic Progress and whether the student has met the minimum grade point average required to maintain eligibility for continuation of a TOPS Award. The cumulative grade point average shall be calculated on a 4.00 scale and must include all academic courses from all postsecondary institutions attended for which the student has been awarded a grade. Academic courses taken at a college or university while the student was still in high school and at

postsecondary institutions other than the institution at which the student is currently enrolled must be included in the calculation. Grades earned in non-academic courses and courses taken on a pass/fail basis are not considered in the calculation of the cumulative grade point average.

TOPS Cumulative Grade Point Average (Non-Academic) the grade point average calculated by LOSFA on all non-academic courses taken by a student at postsecondary institutions to determine whether the student has maintained Steady Academic Progress and whether the student has met the minimum grade point average required to maintain eligibility for continuation of a TOPS Award. The cumulative grade point average shall be calculated on a 4.00 scale and must include all non-academic courses from all postsecondary institutions attended for which the student has been awarded a grade. Non-academic courses taken at a college or university while the student was still in high school and at postsecondary institutions other than the institution at which the student is currently enrolled must be included in the calculation. Grades earned in academic courses and courses taken on a pass/fail basis are not considered in the calculation of the cumulative grade point average.

TOPS Cumulative High School Grade Point Average effective for high school graduates beginning with Academic Year (High School) 2002-2003, the grade point average calculated by LOSFA including only the grades achieved in those courses that were used to satisfy core curriculum requirements. In the event a student has received credit for more than 16.5 hours of courses that are included in the core curriculum, the TOPS Cumulative High School Grade Point Average shall be calculated by using the course in each core curriculum category for which the student received the highest grade. For example, if a student has taken more than one Advanced Mathematics course, the Cumulative Grade Point Average shall be determined by using only the course in which the student has received the highest grade.

For those high schools that utilize other than a 4.00 scale, all grade values shall be converted to a 4.00 scale utilizing the following formula:

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} = \frac{X \text{ (Converted Quality Points)}}{4.00 \text{ (Maximum Scale)}}$$

For school's awarding a maximum of 5 points for honors courses, the formula shall be used to convert the honors course grade of "C" as shown in the following example.

$$\frac{3.00}{5.00} = \frac{X}{4.00}$$

By cross multiplying,

$$5X = 12; X = 2.40$$

Quality points = Credit for course multiplied by the value assigned to the letter grade.

* * *

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26: 2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1842, 1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 29:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., January 20, 2002, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

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

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There are no material implementation costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No impact on revenue collections is anticipated to result from these Rule changes.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No impact on competition and employment is anticipated to result from this Rule.

George Badge Eldredge
General Counsel
0301#029

H. Gordon Monk
Staff Director
Legislative Fiscal Office

**NOTICE OF INTENT
Tuition Trust Authority
Office of Student Financial Assistance**

Student Tuition and Revenue Trust
(START Saving) Program
(LAC 28:VI.107)

The Louisiana Tuition Trust Authority (LATTA) announces its intention to amend Rules of the Student Tuition and Revenue Trust (START Savings) Program (R.S. 3091-3099.2). This proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

**Title 28
EDUCATION**

**Part VI. Student Financial Assistance—Higher
Education Savings**

**Chapter 1. General Provisions
§107. Applicable Definitions**

* * *

Maximum Allowable Account Balance—the amount, determined annually, and effective on August 1 of each year, and expressed as a current dollar value, which is equal to five times the Qualified Higher Education Expenses at the highest cost institution in the state. Once the cumulative contributions, earnings on contributions, Earnings Enhancements and interest accrued thereon of an Education Savings Account equals or exceeds the Maximum Allowable Account Balance, principal deposits will no longer be accepted for the account. However, if subsequent increases occur in the Maximum Allowable Account Balance, principal deposits may resume until the cumulative credits equal the most recently determined Maximum Allowable Account Balance.

* * *

Other Persons—with respect to any designated Beneficiary, is any person, other than the Beneficiary, whether natural or juridical, who is not a Member of the Family, including but not limited to individuals, groups, trusts, estates, associations, organizations, partnerships, corporations, and custodians under the Uniform Transfer to Minors Act (UTMA).

* * *

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 29:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., January 20, 2002, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Student Tuition and Revenue Trust
(START Saving) Program**

- 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 as a result of these changes.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No impact on revenue collections to the Office of Student Financial Assistance is anticipated to result from the revision.

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

Expanding definitions provides more information to the public.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this Rule.

George Badge Eldredge
General Counsel
0301#028

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

**Fee Increases for FY03 and FY04
(LAC 33:V.5111)(OS041)**

Editor's Note: Section 5111 is being reprinted to correct typographical errors. The original Notice of Intent may be viewed on pages 2601-2628 of the December 2002 edition of the *Louisiana Register*.

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 Environmental Quality regulations, LAC 33:I, III, V, VII, IX, XI, and XV (Log #OS041).

Act 134 of the 2002 Extraordinary Session of the Louisiana Legislature provided for a 20 percent increase in fees effective for Fiscal Year 2003 and a 10 percent increase in fees above that effective for Fiscal Year 2004. This action is required to fund some portion or all of the 150 positions that are currently authorized in the FY02 budget, but which are below the line in the FY03 Executive Budget. The basis and rationale for this rule are to provide additional funds for the continued operation of the department.

The department has submitted a report to the Legislative Fiscal Office and the Joint Legislative Committee on the Budget demonstrating that the environmental and public health benefits outweigh the social and economic costs reasonably expected to result from the proposed rule. This report is published in the Potpourri Section of the December 20, 2002, issue of the *Louisiana Register*. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

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

Chapter 51. Fee Schedules

§5111. Calculation of Application Fees

A. ...

B. Application Fee Schedule

Table 1 (effective July 1, 2002 - June 30, 2003)	
Item	Fee
Site analysis—per acre site size	\$ 300 ¹
Process and plan analysis	\$1,200
Facility analysis—per facility ²	\$ 600
Management/financial analysis	\$1,200

Table 2 (effective July 1, 2003)	
Item	Fee
Site analysis—per acre site size	\$3,301
Process and plan analysis	\$1,320
Facility analysis—per facility ²	\$ 660
Management/financial analysis	\$1,320

[Note: Fee equals total of the four items.]

¹ Up to 100 acres, no additional fee thereafter.

² Incinerator, land farm, treatment pond, etc. each counted as a facility.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 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 11:533 (May 1985), LR 12:318 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 18:724 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:287 (March 2001), LR 29:

A public hearing will be held on January 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by OS041. Such comments must be received no later than January 31, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884 or to fax (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of OS041.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

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

RULE TITLE: Fee Increases for FY03 and FY04

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

There will be no implementation costs or savings to state governmental units. Local governmental units that hold valid operating permits will see a 20 percent increase in fees for FY03 and an additional 10 percent for FY04.

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

There will be an estimated \$7,200,000 increase in revenue collections for the Department in FY 02-03 and an estimated \$11,520,000 increase in revenue collections each fiscal year thereafter.

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

The estimated costs enumerated in Section II above will be borne by the regulated community.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

James H. Brent, Ph.D.
Assistant Secretary
0301#012

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

**Hazardous Waste Site Cleanup Fund Prioritization
(LAC 33:I.Chapter 41)(OS046)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to adopt the Office of the Secretary regulations, LAC 33:I.Chapter 41 (Log #OS046).

The proposed Rule sets standards for site prioritization of hazardous and nonhazardous waste sites. The Hazardous Waste Site Cleanup Fund (HWSCF) will be utilized to cover cost from abatement of sites determined to be a priority by these standards and approval of the secretary. This action is mandated by R.S. 30:2205.D, as amended by the 2002 Regular Session of the legislature. The basis and rationale for this rule are to set up regulations to prioritize sites requiring funds from the HWSCF.

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. Notifications

Chapter 41. Hazardous Waste Site Cleanup Fund Site Prioritization

§4101. Purpose

A. The purpose of this Chapter is to establish procedures for prioritizing sites for funding from the Hazardous Waste Site Cleanup Fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., in particular, 30:2205.D.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:

§4103. Applicability

A. This Chapter applies to hazardous and nonhazardous sites to be funded by the Hazardous Waste Site Cleanup Fund and will become effective on [FINAL PROMULGATION DATE TO BE INSERTED].

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., in particular, 30:2205.D.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:

§4105. Prioritization Scheme

A. Each site shall be prioritized by a numerical ranking system based on:

1. health risks;
2. groundwater and surface water contamination;
3. owner/operator recalcitrance or refusal to comply with department-required actions;
4. site owner/operator financial abilities;
5. eligibility for any other viable funding mechanism;
6. availability of money within the fund; and
7. determination by the secretary that the fund should be used to facilitate actions in a timely manner to abate emergencies.

B. The goal of the prioritization scheme is to allow the department to maximize risk reduction in proportion to the fund dollars spent. The department will use the prioritization numerical ranking system as a tool to aid the department in managing risk reduction in proportion to the fund dollars spent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., in particular, 30:2205.D.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:

A public hearing will be held on February 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Incorporation by Reference (IBR) of 40 CFR 60
(LAC 33:III.3003)(AQ230*)

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by OS046. Such comments must be received no later than March 3, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of OS046.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Hazardous Waste Site Cleanup Fund Prioritization**

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

There will be a negligible amount of funds utilized from the Hazardous Waste Site Cleanup Fund (HWSCF) and a negligible number of department man-hours to prioritize waste sites in accordance with the criteria in the proposed rule. The promulgation of this rule will enable the department to allocate, on a priority basis, the funds available in the HWSCF for the remediation of both hazardous and nonhazardous waste sites. There is no direct anticipated impact on local governmental units.

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

No increases or decreases in revenues are anticipated.

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

There will be no direct or indirect effect on persons or non-governmental groups by the proposed action.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no known impacts of the proposed action on competition and employment in the public and private sectors.

James H. Brent, Ph.D.
Assistant Secretary
0301#049

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.3003 (Log #AQ230*).

This proposed rule is identical to federal regulations found in 40 CFR 60.2575-60.2875, (July 1, 2001), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed Rule; therefore, the rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

It has been brought to the department's attention, by EPA Region VI, that the contents of the department's emission guidelines for commercial and industrial solid waste incineration units do not match the contents of LAC 33:III.3003.B.6. This Rule change proposes to correct this inadvertent error. The draft emission guidelines plan actually includes 40 CFR 60.2575 through 2875. The basis and rationale for this rule are to amend the regulations to correctly identify the contents of the department's emission guidelines for commercial and industrial solid waste incineration units.

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

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference (IBR)

§3003. IBR 40 Code of Federal Regulations (CFR) Part 60

A. - B.5. ...

6. The department's emission guideline plan, required by the CAA, Section 111(d), for Commercial and Industrial Solid Waste Incineration (CISWI) Units includes 40 CFR 60.2575-60.2875 and Tables 1-5. Until the department has a mechanism to approve training programs in compliance with 40 CFR 60.2635, the department shall accept accreditation approved by other states complying with 40 CFR 60.2635.

C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), LR 25:1239 (July 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000), LR 26:2460 (November 2000), LR 26:2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2181 (October 2002), LR 29:

A public hearing will be held on February 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by AQ230*. Such comments must be received no later than February 24, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by email to lynnw@deq.state.la.us. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of AQ230*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

0301#050

NOTICE OF INTENT

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

RCRA XII Package

(LAC 33:V.105, 109, 321, 529, 535, 537, 2001, 2219, 2603, 3001, 3105, 3115, 4513, 4901, and 4903)(HW083*)

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

initiated to amend the Hazardous Waste regulations, LAC 33:V.Chapters 1, 3, 5, 20, 22, 26, 30, 31, 43, and 49 (Log #HW083*).

This proposed rule is identical to federal regulations found in 66 FR 50332-50334, 10/3/01; 66 FR 58258-58300, 11/20/01, amended 67 FR 17119-17120, 4/9/02; 67 FR 2962-3029, 1/22/02; 67 FR 6792-6818, 2/13/02; 67 FR 6968-6996, 2/14/02; 67 FR 11251-11254, 3/13/02, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953.F.(3) and (4).

This proposed Rule includes changes to the Hazardous Waste regulations on the following topics that are required by the Environmental Protection Agency for continued authorization of the RCRA program in the state of Louisiana: Mixture and Derived-From Revision II; Inorganic Chemical Manufacturing Wastes Identification and Listing; CAMU Amendments; Hazardous Air Pollutant Standards for Combustors: Interim Standards; Hazardous Air Pollutant Standards for Combustors: Corrections; Va catur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste. The hazardous waste regulations for the state must be equivalent to those of the federal in order for the state to be authorized for the new portions of the RCRA program. The basis and rationale for this Rule are to mirror the federal regulations.

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

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 1. General Provisions and Definitions

§105. Program Scope

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to the denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

A. - D.1.o. ...

p. spent materials (as defined in LAC 33:V.109) (other than hazardous wastes listed in LAC 33:V.Chapter 49) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

i. the spent material is legitimately recycled to recover minerals, acids, cyanide, water, or other values;

ii. the spent material is not accumulated speculatively;

iii. except as provided in Clause D.1.p.iv of this Section, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of nonearthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the nonearthen portion) and have a roof suitable for diverting rainwater away from the foundation; a tank must be freestanding, not be a surface impoundment (as defined in LAC 33:V.109), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate that may be subject to wind dispersal, the owner/operator must operate these units in a manner that controls fugitive dust. Tanks, containers, and buildings must be designed, constructed, and operated to prevent significant releases to the environment of these materials;

iv. the administrative authority may make a site-specific determination, after public review and comment, that only solid mineral processing spent materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed, and operated to prevent significant releases of the spent material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers, and buildings eligible for exclusion;

(a). the decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the spent material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway; and the possibility and extent of harm to human and environmental receptors via each exposure pathway;

(b). pads must meet the following minimum standards: be designed of nonearthen material that is compatible with the chemical nature of the mineral processing spent material; be capable of withstanding physical stresses associated with placement and removal; have run-on/runoff controls; be operated in a manner which controls fugitive dust; and have integrity assurance through inspections and maintenance programs;

(c). ...

v. the owner or operator provides notice to the Office of Environmental Services, Permits Division providing the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process; and

vi. for purposes of Subparagraph D.2.h of this Section, mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste;

D.1.q. - 2.p. ...

i. the solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, and K178, if these wastes had been generated after the effective date of the listing;

ii. - iv. ...

v. as of February 13, 2001, the leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this Clause after the emergency ends.

D.3. - O.2.c.vi. ...

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 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid And Hazardous Waste, Hazardous Waste Division, LR 23:564 (May 1997), LR 23:567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687 (September 1998), LR 24:1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:

§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*Ca solid waste, as defined in this Section, is a hazardous waste if:

1. - 4.a. ...

b.i. Except as otherwise provided in Clause 4.b.ii, Subparagraph 4.f, or Paragraph 6 of this definition, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation runoff) is a hazardous waste. (However, materials that are reclaimed from solid waste and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

4.b.ii. - e. ...

f. A hazardous waste that is listed in LAC 33:V.4901 solely because it exhibits one or more characteristics of ignitability as defined under LAC 33:V.4903.B, corrosivity as defined under LAC 33:V.4903.C, or reactivity as defined under LAC 33:V.4903.D is not a hazardous waste if the waste no longer exhibits any characteristic of hazardous waste identified in LAC 33:V.4903. The exclusion also pertains to any mixture of a solid waste and a hazardous waste listed in LAC 33:V.4901 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity, as regulated under Subparagraph 2.c of this definition, and any solid waste generated from treating, storing, or disposing of a hazardous waste listed in LAC 33:V.4901 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity, as regulated under Clause 4.b.i of this definition. Wastes excluded under this Subparagraph are subject to LAC 33:V.Chapter 22 (as applicable), even if they no longer exhibit a characteristic at the point of land disposal. Any mixture of a solid waste excluded from regulation under LAC 33:V.105.D.2.h and a hazardous waste listed in LAC 33:V.Chapter 49 solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity, as regulated under Subparagraph 2.d of this definition, is not a hazardous waste if the mixture no longer exhibits any characteristic of hazardous waste identified in LAC 33:V.Chapter 49 for which such hazardous waste was listed.

4.g. - 6.b. ...

* * *

*Solid Waste*C

1.a. - 3.b.ii. ...

c. *reclaimed*C materials noted with an "*" in column 3 of Table 1 in this Chapter are solid wastes when reclaimed (except as provided under LAC 33:V.105.D.1.p). Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed;

3.d. - Table 1. ...

* * *

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 (March 1990), LR 16:220 (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:

Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits

§321. Modification of Permits

A. - C.10. ...

a. Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that were in effect prior to October 11, 2000 (see 40 CFR 63, revised as of July 1, 2000) in order to request a permit modification under this Section.

C.10.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 13:433 (August 1987), LR 15:378 (May 1989), LR 16:614 (July 1990), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1691 (September 1998), LR 25:435 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2466 (November 2000), LR 28:1000 (May 2002), LR 29:

Chapter 5. Permit Application Contents

Subchapter E. Specific Information Requirements

§529. Specific Part II Information Requirements for Incinerators

Except as LAC 33:V.Chapter 31 and Subsection F of this Section provides otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of Subsection A, B, or C of this Section.

A. - E.3. ...

F. When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE (i.e., by conducting a comprehensive performance test and submitting a notification of compliance), the requirements of this Section do not apply, except those provisions the administrative authority determines are necessary to ensure compliance with LAC 33:V.3117.A and C if the owner or operator elects to comply with LAC 33:V.2001.A.1.a to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the administrative authority may apply the provisions of this Section, on a case-by-case basis, for purposes of information collection in accordance with LAC 33:V.303.Q and 311.E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011.D.24(a) and 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 10:280 (April 1984), LR 22:817 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:2199 (November 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:292 (March 2001), LR 29:

§535. Specific Part II Information Requirements for Boilers and Industrial Furnaces Burning Hazardous Waste for Energy or Material Recovery and not for Destruction

A. - F. ...

G. When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE (i.e., by conducting a comprehensive performance test and submitting a notification of compliance), the requirements of this Section do not apply, except those provisions the administrative authority determines are necessary to ensure compliance with LAC 33:V.3005.E.1 and 2.c if the owner or operator elects to comply with LAC 33:V.2001.A.1.a to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the administrative authority may apply the provisions of this Section, on a case-by-case basis, for purposes of information collection in accordance with LAC 33:V.303.Q and 311.E.

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 15:737 (September 1989), amended LR 18:1375 (December 1992), LR 21:266 (March 1995), LR 22:817 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:292 (March 2001), LR 29:

Subchapter F. Special Forms of Permits

§537. Permits for Boiler and Industrial Furnaces Burning Hazardous Waste for Recycling Purposes Only (Boilers and Industrial Furnaces Burning Hazardous Waste for Destruction Are Subject to Permit Requirements for Incinerators)

A. - C.2. ...

D. When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE (i.e., by conducting a comprehensive performance test and submitting a notification of compliance), the requirements of this Section do not apply, except those provisions the administrative authority determines are necessary to ensure compliance with LAC 33:V.3005.E.1 and 2.c if the owner or operator elects to comply with LAC 33:V.2001.A.1.a to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the administrative authority may apply the provisions of this Section, on a case-by-case basis, for purposes of information collection in accordance with LAC 33:V.303.Q and 311.E.

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 15:737 (September 1989), amended LR 18:1375 (December 1992), LR 21:266 (March 1995), LR 22:818 (September 1996), LR 22:832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2468 (November 2000), LR 27:292 (March 2001), LR 29:

Chapter 20. Integration with Maximum Achievable Control Technology (MACT) Standards

§2001. Options for Incinerators and Cement and Lightweight Aggregate Kilns to Minimize Emissions from Startup, Shutdown, and Malfunction Events

NOTE: This Chapter is written in a special format to make it easier to understand the regulatory requirements. Like other department regulations, this establishes enforceable legal requirements. For this Chapter, I and you refer to the owner/operator.

A. Facilities with Existing Permits

1. Revisions to Permit Conditions after Documenting Compliance with MACT. The owner or operator of a RCRA - permitted incinerator, cement kiln, or lightweight aggregate kiln may request that the administrative authority address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to LAC 33:V.3105.B and LAC 33:V.3001.B.

a. Retain Relevant Permit Conditions. Under this option, the administrative authority will:

i. retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2); and

ii. specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.

b. Revise Relevant Permit Requirements

i. Under this option, the administrative authority will:

(a). identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and

(b). retain or add these permit requirements to the permit to apply only when the facility is operating under its startup, shutdown, and malfunction plan.

ii. Changes that May Significantly Increase Emissions

(a). You must notify the administrative authority in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the administrative authority of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(b). The administrative authority may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either upon permit renewal or, if warranted, by modifying the permit under LAC 33:V.323.B.2.c or LAC 33:V.321.C.

c. Remove Permit Conditions. Under this option:

i. you must document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the administrator under 40 CFR 63.1206(c)(2)(ii)(B); and

ii. the administrative authority will remove permit conditions that are no longer applicable according to LAC 33:V.3105.B and LAC 33:V.3001.B.

2. Addressing Permit Conditions Upon Permit Reissuance. The owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that has conducted a comprehensive performance test and submitted to the administrator a Notification of Compliance documenting compliance with the standards of 40 CFR Part 63, Subpart EEE may request in the application to reissue the permit for the combustion unit that the administrative authority control emissions from startup, shutdown, and malfunction events under any of the following options.

a. RCRA Option A. Under this option, the administrative authority will:

i. include, in the permit, requirements that ensure compliance with LAC 33:V.3117.B and C or LAC 33:V.3005.E.1 and 2.c to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and

ii. specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.

b. RCRA Option B

i. Under this option, the administrative authority will:

(a). include, in the permit, conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and

(b). specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.

ii. Changes That May Significantly Increase Emissions

(a). You must notify the administrative authority in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the administrative authority of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a

result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(b). The administrative authority may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either upon permit renewal or, if warranted, by modifying the permit under LAC 33:V.323.B.2.c or LAC 33:V.321.C.

c. CAA Option. Under this option:

i. you must document that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the administrator under 40 CFR 63.1206(c)(2)(ii)(B); and

ii. the administrative authority will remove permit conditions that are no longer applicable under LAC 33:V.3105.B and LAC 33:V.3001.B.

B. Interim Status Facilities

1. Interim Status Operations. In compliance with LAC 33:V.4513 and LAC 33:V.3001.B, the owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that is operating under the interim status standards of LAC 33:V.Chapters 30 and 43 may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the administrator a Notification of Compliance documenting compliance with the standards of 40 CFR Part 63, Subpart EEE.

a. RCRA Option. Under this option, you must continue to comply with the interim status emission standards and operating requirements of LAC 33:V.Chapters 30 and 43 relevant to control of emissions from startup, shutdown, and malfunction events. Those standards and requirements apply only during startup, shutdown, and malfunction events.

b. CAA Option. Under this option, you are exempt from the interim status standards of LAC 33:V.Chapters 30 and 43 relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the administrative authority that the startup, shutdown, and malfunction plan required under 40 CFR 63.1206(c)(2) has been approved by the administrator under 40 CFR 63.1206(c)(2)(ii)(B).

2. Operations Under a Subsequent RCRA Permit. When an owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that is operating under the interim status standards of LAC 33:V.Chapters 30 and 43 submits a RCRA permit application, the owner or operator may request that the administrative authority control emissions from startup, shutdown, and malfunction events under any of the options provided by Subparagraph A.2.a, b, or c of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:

Chapter 22. Prohibitions on Land Disposal
Subchapter A. Land Disposal Restrictions

§2219. Waste Specific Prohibitions C Inorganic Chemical Wastes

A. Effective May 20, 2002, the wastes specified in 40 CFR Part 261 as EPA Hazardous Waste Numbers K176, K177, and K178, soil and debris contaminated with these wastes, radioactive wastes mixed with these wastes, and soil and debris contaminated with radioactive wastes mixed with these wastes are prohibited from land disposal.

B. The requirements of Subsection A of this Section do not apply if:

1. the wastes meet the applicable treatment standards specified in LAC 33:V.2223 and Table 2 of this Chapter;

2. persons have been granted an exemption from a prohibition in accordance with a petition under LAC 33:V.2241, with respect to those wastes and units covered by the petition;

3. the wastes meet the applicable treatment standards established in accordance with a petition granted under LAC 33:V.2231;

4. hazardous debris has met the treatment standards in LAC 33:V.2223 or the alternative treatment standards in LAC 33:V.2230; or

5. persons have been granted an extension to the effective date of a prohibition in accordance with LAC 33:V.2239, with respect to those wastes covered by the extension.

C. To determine whether a hazardous waste identified in this Section exceeds the applicable treatment standards specified in LAC 33:V.2223, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable levels in LAC 33:V.2223 and Table 2 of this Chapter, the waste is prohibited from land disposal, and all requirements of this Chapter are applicable, except as otherwise specified.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 29:

Appendix

Table 2. Treatment Standards for Hazardous Wastes

Waste Code	Waste Description and Treatment/Regulatory Subcategory ¹	Regulated Hazardous Constituent		Wastewaters	Non-wastewaters
		Common Name * * *	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP" or Technology Code ⁴
[See Prior Text in D001 – K175]					
K176	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide).	Antimony	7440-36-0	1.9	1.15 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.11 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
K177	Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide).	Antimony	7440-36-0	1.9	1.15 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Lead	7439-92-1	0.69	0.75 mg/l TCLP
K178	Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.	1,2,3,4,6,7,8-Heptachlorodibenzo"p"dioxin (1,2,3,4,6,7,8-HpCDD)	35822-39-4	0.000035 or CMBST ¹¹	0.0025 or CMBST ¹¹
		1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF)	67562-39-4	0.000035 or CMBST ¹¹	0.0025 or CMBST ¹¹
		1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF)	55673-89-7	0.000035 or CMBST ¹¹	0.0025 or CMBST ¹¹
		HxCDDs (All Hexachlorodibenzo"p"dioxins)	34465-46-8	0.000063 or CMBST ¹¹	0.001 or CMBST ¹¹
		HxCDFs (All Hexachlorodibenzofurans)	55684-94-1	0.000063 or CMBST ¹¹	0.001 or CMBST ¹¹
		1,2,3,4,6,7,8,9-Octachlorodibenzo"p"dioxin (OCDD)	3268-87-9	0.000063 or CMBST ¹¹	0.005 or CMBST ¹¹

Waste Code	Waste Description and Treatment/Regulatory Subcategory ¹	Regulated Hazardous Constituent		Wastewaters	Non-wastewaters
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP" or Technology Code ⁴
		1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF)	39001-02-0	0.000063 or CMBST ¹¹	0.005 or CMBST ¹¹
		PeCDDs (All Pentachlorodibenzo"p"dioxins)	36088-22-9	0.000063 or CMBST ¹¹	0.001 or CMBST ¹¹
		PeCDFs (All Pentachlorodibenzofurans)	30402-15-4	0.000035 or CMBST ¹¹	0.001 or CMBST ¹¹
		TCDDs (All tetrachlorodibenzo-p-dioxins)	41903-57-5	0.000063 or CMBST ¹¹	0.001 or CMBST ¹¹
		TCDFs (All tetrachlorodibenzofurans)	55722-27-5	0.000063 or CMBST ¹¹	0.001 or CMBST ¹¹
		Thallium	7440-28-0	1.4	0.20 mg/l TCLP
*** [See Prior Text in P001 – U411]					

Notes 1- 12 ...
NOTE: NA means not applicable.

Chapter 26. Corrective Action Management Units and Special Provisions for Cleanup

§2603. Corrective Action Management Units (CAMUs)

A. - E.4.a.ii. ...

iii. The administrative authority may also designate other constituents as principal hazardous constituents that the administrative authority determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

E.4.b. - K. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1192 (June 2002), amended LR 29:

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

§3001. Applicability

A. The regulations of this Chapter apply to hazardous waste burned for energy or material recovery in a boiler or industrial furnace (as defined in LAC 33:V.109) irrespective of the purpose of burning or processing, except as provided by Subsections B-D, G, and H of this Section. In this Chapter, the term "burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient. The emissions standards of LAC 33:V.3009-3015 apply to facilities operating under interim status or under a hazardous waste permit as specified in LAC 33:V.3005 and 3007.

B. Integration of the MACT Standards

1. Except as provided by Paragraph B.2 of this Section, the standards of this Chapter no longer apply when an affected source demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, Subpart EEE by conducting a comprehensive performance test and submitting to the administrative authority a notification of compliance under 40 CFR 63.1207(j) and 63.1210(b) documenting compliance with the requirements of 40 CFR Part 63, Subpart EEE. Nevertheless, even after this demonstration of compliance

with the MACT standards, RCRA permit conditions that were based on the standards of this Chapter will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

2. The following standards continue to apply:

a. if the owner or operator elects to comply with LAC 33:V.2001.A.1.a to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, LAC 33:V.3005.E.1, requiring operations in accordance with the operating requirements specified in the permit at all times that hazardous waste is in the unit, and LAC 33:V.3005.E.2.c, requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes. These provisions apply only during startup, shutdown, and malfunction events;

b. the closure requirements of LAC 33:V.3005.I and 3007.L;

c. the standards for direct transfer of LAC 33:V.3023;

d. the standards for regulation of residues of LAC 33:V.3025; and

e. the applicable requirements of LAC 33:V.901, 905, 907, 909, Chapters 15, 17 (Subchapters B and C), 33, 35, 37, and 43 (Subchapters A-G, R, and V), 4301.A-C, G, and I, and 4306.

C. - D.2.b. ...

3. To be exempt from LAC 33:V.3005-3023, an owner or operator of a lead or nickel-chromium or mercury recovery furnace (except for owners or operators of lead recovery furnaces subject to regulation under the Secondary Lead Smelting NESHAP) or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing must provide a one-time written notice to the administrative authority identifying each hazardous waste burned, specifying whether the owner or operator claims an exemption for each waste under Paragraph D.1 or 3 of this Section. The owner or operator must comply with the requirements of Paragraph D.1 of this

Section for those wastes claimed to be exempt under that Section and must comply with the requirements below for those wastes claimed to be exempt under this Section.

D.3.a. - H. ...

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 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:821 (September 1996), LR 22:835 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 27:297 (March 2001), LR 27:712 (May 2001), LR 29:

Chapter 31. Incinerators

§3105. Applicability

A. - B. ...

1. Except as provided by Paragraphs B.2, 3, and 4 of this Section, the standards of this Subsection no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, Subpart EEE by conducting a comprehensive performance test and submitting to the administrative authority a notification of compliance under 40 CFR 63.1207(j) and 63.1210(b) documenting compliance with the requirements of 40 CFR Part 63, Subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of LAC 33:V.901, 905, 907, and Chapters 15-21, 23-29, and 31-37 will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

2. ...

3. The particulate matter standard of LAC 33:V.3111.A.4 remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of 40 CFR 63.1206(b)(14).

4. The following requirements remain in effect for startup, shutdown, and malfunction events if the owner or operator elects to comply with LAC 33:V.2001.A.1.a to minimize emissions of toxic compounds from these events:

a. LAC 33:V.3117.A, requiring that an incinerator operate in accordance with operating requirements specified in the permit; and

b. LAC 33:V.3117.C, requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.

C. - Table 1.Footnote 1. ...

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 11:1139 (December 1985), LR 13:433 (August 1987), LR 14:424 (July 1988), LR 15:737 (September 1989), LR 16:399 (May 1990), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:944 (September 1995), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:318 (February 1998), LR 24:681 (April 1998), LR 24:1741 (September 1998), LR 25:479 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:301 (March 2001), LR 28:1004 (May 2002), LR 29:

§3115. Incinerator Permits for New or Modified Facilities

A. - D. ...

E. When an owner or operator demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE (i.e., by conducting a comprehensive performance test and submitting a notification of compliance), the requirements of this Section do not apply, except those provisions the administrative authority determines are necessary to ensure compliance with LAC 33:V.3117.A and C if the owner or operator elects to comply with LAC 33:V.2001.A.1.a to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the administrative authority may apply the provisions of this Section, on a case-by-case basis, for purposes of information collection in accordance with LAC 33:V.303.Q and 311.E.

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 16:614 (July 1990), LR 18:1256 (November 1992), LR 22:828 (September 1996), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:683 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2484 (November 2000), LR 27:302 (March 2001), LR 29:

Chapter 43. Interim Status

Subchapter N. Incinerators

§4513. Applicability

A. - B. ...

1. Except as provided by Paragraphs B.2 and 3 of this Section, the standards of this Chapter no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, Subpart EEE by conducting a comprehensive performance test and submitting to the administrative authority a notification of compliance under 40 CFR 63.1207(j) and 63.1210(b) documenting compliance with the requirements of 40 CFR Part 63, Subpart EEE.

2. The following requirements continue to apply even where the owner or operator has demonstrated compliance with the MACT requirements of 40 CFR Part 63, Subpart EEE, LAC 33:V.4521 (closure), and the applicable requirements of LAC 33:V.4301.A - C, G, and I, 4306, and Chapter 43 (Subchapters A - G, R, and V).

3. LAC 33:V.4517.A, generally prohibiting burning of hazardous waste during startup and shutdown, remains in effect if the owner or operator elects to comply with LAC 33:V.2001.B.1.a to minimize emissions of toxic compounds from startup and shutdown.

C. - C.4. ...

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 15:737 (September 1989), amended LR 16:220 (March 1990), LR 18:1375 (December 1992), LR 20:1000 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:303 (March 2001), LR 29:

Chapter 49. Lists of Hazardous Wastes

§4901. Category I Hazardous Wastes

A. - C. ...

Table 2. Hazardous Wastes from Specific Sources		
Industry and EPA Hazardous Waste Number	Hazard Code	Hazardous Waste

[See Prior Text in Wood Preservation, K001 – Inorganic Chemicals, K106]		
K176	(E)	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates (e.g., antimony metal or crude antimony oxide).
K177	(T)	Slag from the production of antimony accumulated or disposed, including slag from the production of intermediates (e.g., antimony metal or crude antimony oxide).
K178	(T)	Residues from manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process.

[See Prior Text in Pesticides, K031 – Coking, K148]		

D. - G ...

Table 6. Table of Constituents that Serve as a Basis for Listing Hazardous Waste	

[See Prior Text in F001 – K175, Mercury]	
EPA Hazardous Waste Number K176	Arsenic
	Lead
EPA Hazardous Waste Number K177	Antimony
EPA Hazardous Waste Number K178	Thallium

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:320 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:790 (November 1988), LR 15:182 (March 1989), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829 (September 1996), LR 22:840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:304 (March 2001), LR 27:715 (May 2001), LR 28:1009 (May 2002), LR 29:

§4903. Category II Hazardous Wastes

A. - E. ...

1. A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, Method 1311 described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference at LAC 33:V.110, the extract from a representative sample of the waste contains any of the contaminants listed in Paragraph E.2.Table 5 of this Section at the concentration equal to or greater than the respective value given in that table. Where the waste contains less than

0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purposes of this Section.

E.2. - F. ...

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 16:1057 (December 1990), LR 17:369 (April 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 22:829 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:

A public hearing will be held on February 24, 2003, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Attendees should report directly to the hearing location for DEQ visitor registration, instead of to the security desk in the DEQ Headquarters building. Should individuals with a disability need an accommodation in order to participate, contact Lynn Wilbanks at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by HW083*. Such comments must be received no later than February 24, 2003, at 4:30 p.m., and should be sent to Lynn Wilbanks, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-0389 or by e-mail to lynnw@deq.state.la.us. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Records Management Section at (225) 765-0843. Check or money order is required in advance for each copy of HW083*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo

James H. Brent, Ph.D.
Assistant Secretary

0301#048

NOTICE OF INTENT

Department of Health and Hospitals Board of Nursing

Licensure as Advanced Practice Registered Nurse
(LAC 46:XLVII.4507)

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Nursing (Board) pursuant to the authority vested in the board by R.S. 37:918-919 intends to amend the Professional and Occupational Standards pertaining to licensure as Advanced Practice Registered Nurse. The proposed amendments of the Rules are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses

Subpart 2. Registered Nurses

Chapter 45. Advanced Practice Registered Nurses §4507. Licensure as Advanced Practice Registered Nurse

A. - F.1.b. ...

c. evidence of current certification/recertification by a national certifying body accepted by the board; or

d. APRNs initially licensed in accordance with R.S. 37:912.B(3)(4) or 920.A.(2) and 4507.A.2 whose specialty and/or functional role does not provide for certification/recertification shall apply for a six month temporary permit, and practice under the temporary permit and current practice standards set forth by the respective advanced practice nursing specialty and/or functional role; and submit the following documentation with the application for reinstatement for each year of inactive or lapsed status:

i. a minimum of 300 hours of practice in advanced practice registered nursing as defined in R.S. 37:913.(3)(a) for each year of inactive or lapsed status up to a maximum of 800 hours; and

ii. a minimum of 2 college credit hours per year of relevance to the advanced practice role; or

iii. a minimum of 30 continuing education (C.E.) contact hours approved by the board each year. Of the 30 contact hours, a maximum of 10 C.E. contact hours may be approved Continuing Medical Education (CMEs); and

e. the required fee as specified in LAC 46:XLVII.3341.

2. Reinstatement of an APRN license, which has lapsed or been inactive four years or more. If the applicant's APRN license has been lapsed or inactive for four or more years, in addition to meeting the above requirements in Subsection F.1.a-e., the applicant shall:

a. - g. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 22:283 (April 1996), amended LR 27:723 (May 2001), LR 29:

Family Impact Statement

The Louisiana State Board of Nursing hereby issues this Family Impact Statement: The proposed Rule related to the board's appointing authority will have no known impact on family formation, stability, and autonomy, as set forth in R.S. 49:972.

Interested persons may submit written comments on the proposed Rules to Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 3510 N. Causeway Blvd., Suite 501, Metairie, LA 70002. The deadline for receipt of all written comments is 4:30 p.m. on February 10, 2003.

Barbara L. Morvant
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Licensure as Advanced Practice Registered Nurse

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

The only implementation cost for the publication of the Rule change in the *Louisiana Register*, estimated to be \$45 in FY 03.

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

There is no estimated effect on revenue collections.

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

Effective January 31, 2003, APRNs who do not meet minimum clinical practice requirements will not be eligible for reinstatement. Current Rules do not provide a mechanism for the APRNs to subsequently obtain the practice requirement to reinstate. The APRN would need to leave the state to obtain the practice hours or retain an inactive license, thus losing valuable services to Louisiana citizens. Proposed Rule provides a safe mechanism for effected APRNs to retain licensure.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Barbara L. Morvant
Executive Director
0301#020

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Medical Examiners

Podiatric Postgraduate Year One (Internship) Registration,
Reinstatement, Continuing Medical Education
(LAC 46:XLV.1301-1305, 1361-1363,
1371-1385, and 1391-1397)

Notice is hereby given, in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950, et seq., that the Louisiana State Board of Medical Examiners (Board),

pursuant to the authority vested in the board by the Louisiana Medical Practice Act, R.S. 37:1261-1292, particularly R.S. 37:1270 and the Louisiana Podiatry Practice Act, R.S. 37:611-628, particularly, R.S. 37:613A(5), intends to amend its existing rules to provide substantive definitions, 46:XLV, Subpart 2, Chapter 13, §§1301-1303; to adopt new rules governing reinstatement of licensure for podiatrists, §1363, for continuing medical education for podiatrists seeking renewal and/or reinstatement of licensure, §§1361, 1371-1385, and to adopt new rules requiring one year of approved postgraduate (internship) training for podiatric applicants seeking initial licensure, §§1305, 1391-1397. The proposed rules and rule amendments are set forth below.

The proposed rules and 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 XLV. Medical Profession

Subpart 2. Licensure and Certification

Chapter 13. Podiatrists

Subchapter A. General Provisions

§1301. Scope of Chapter

A. The Rules of this Chapter govern the licensing of podiatrists to engage in the practice of podiatry in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:612, R.S. 37:613 and R.S. 37:616.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

§1303. Definitions

A. As used in this Chapter the following terms shall have the meanings specified.

Applicant Ca person who has applied to the board for a license or permit to engage in the practice of podiatry in the state of Louisiana or for a registration to engage in the first year of continuing postgraduate podiatric education.

Application Ca written request directed to and received by the board, upon forms supplied by the board, for a license or permit to practice podiatry in the state of Louisiana or for a registration to engage in the first year of continuing postgraduate podiatric education, together with all information, certificates, documents, and other materials required by the board to be submitted with such forms.

Good Moral Character Cas applied to an applicant, means that:

1. the applicant has not, prior to or during the pendency of an application to the board, been guilty of any act, omission, condition, or circumstance which would provide legal cause under R.S. 37:624 for the suspension or revocation of podiatry licensure;

2. the applicant has not, prior to or in connection with his application, made any representation to the board, knowingly or unknowingly, which is in fact false or misleading as to a material fact or omits to state any fact or matter that is material to the application; or

3. the applicant has not made any representation or failed to make a representation or engaged in any act or omission which is false, deceptive, fraudulent or misleading in achieving or obtaining any of the qualifications for a license or permit required by this Chapter.

License Cthe lawful authority of a podiatrist to engage in the practice of podiatry in the state of Louisiana, as evidenced by a certificate duly issued by and under the official seal of the board.

Permit Cthe lawful authority of a podiatrist to engage in the practice of podiatry in the state of Louisiana for a designated, temporary period of time subject to restrictions and conditions specified by the board, as evidenced by a certificate duly issued by and under the official seal of the board. A permit is of determinate, limited duration and implies no right or entitlement to a license or to renewal of the permit.

Podiatrist Ca person possessing a doctor of podiatric medicine degree or an equivalent degree duly awarded by a school or college of podiatry approved by the board.

Podiatry Practice Act or the Act CR.S. 37:611-628, as hereafter amended or supplemented.

Postgraduate Year One (Internship) Registration Cthe lawful authority of a podiatrist to engage in the first year of continuing postgraduate podiatric training in the state of Louisiana at a podiatric medical education or internship program approved by the board, as evidenced by a certificate of registration duly issued by and under the official seal of the board.

State Cany state of the United States, the District of Columbia and Puerto Rico.

B. Masculine terms wheresoever used in this Chapter shall also be deemed to include the feminine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:612, R.S. 37:613, R.S. 37:616 and R.S. 37:618.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

Subchapter B. Requirements and Qualifications for Licensure

§1305. Qualifications for License

A. To be eligible for a license, an applicant shall:

1. be at least 21 years of age;
2. be of good moral character as defined by §1303.A;
3. be a citizen of the United States or possess valid and current legal authority to reside and work in the United States duly issued by the commissioner of the Immigration and Naturalization Service of the United States under and pursuant to the Immigration and Nationality Act (66 Stat. 163) and the commissioner's regulations thereunder (8 CFR);

4. possess a doctor of podiatric medicine or equivalent degree duly issued and conferred by a podiatric school or college approved by the board; and

5. with respect to applications for licensure first received by the board on and after January 1, 2005, have completed at least one year of postgraduate podiatric training in an internship or equivalent program accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association or its successor association, and approved by the board.

B. The burden of satisfying the board as to the qualifications and eligibility of the applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by, and to the satisfaction of, the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:612, R.S. 37:613 and R.S. 37:616.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:612, R.S. 37:613 and R.S. 37:616.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

Subchapter H. Licensure Issuance, Termination, Renewal, Reinstatement

§1361. Renewal of License

A. Every license or permit issued by the board shall be renewed annually on or before the first day of the month in which the licensee was born by submitting to the board a properly completed application for renewal, upon forms supplied by the board, together with the renewal fee prescribed by the board and documentation of satisfaction of the continuing medical education requirement prescribed by Subchapter J of these rules.

B. An application for renewal of license form shall be mailed by the board to each person holding a license issued under this chapter at least 30 days prior to the expiration of the license each year. Such form shall be mailed to the most recent address of each licensee as reflected in the official records of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1270(A)(8) and 37:621.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

§1363. Reinstatement of Expired License

A. A license which has expired may be reinstated by the board subject to the conditions and procedures hereinafter set forth, provided that application for reinstatement is made within four years of the date of expiration. A podiatrist whose license has lapsed and expired for a period in excess of four years or who is otherwise ineligible for reinstatement under this section may apply to the board for an initial original or reciprocal license pursuant to these rules and/or the Podiatry Practice Act.

B. An applicant seeking reinstatement more than one year from the date on which his license expired shall demonstrate, as a condition of reinstatement, satisfaction of the continuing medical education requirement of §1373 of Subchapter J of these rules for each year since the date of the expiration of licensure. As additional conditions of reinstatement the board may require:

1. that the applicant complete a statistical affidavit upon a form supplied by the board and provide a recent photograph;
2. that the applicant possess a current, unrestricted license to practice podiatry issued by another state; and/or
3. if the applicant does not at the time of the application for reinstatement possess a current, unrestricted license to practice podiatry issued by another state, that the applicant take and successfully pass:

- a. all or a designated portion of the examination specified by R.S. 37:613; or
- b. a written certification or recertification examination approved, offered or sponsored by the American Podiatric Medical Association or its successor association and acceptable to the board.

C. An applicant whose license to practice podiatry has been revoked, suspended or placed on probation by the licensing authority of another state or who has voluntarily or involuntarily surrendered his license to practice podiatry in consideration of the dismissal or discontinuance of pending or threatened administrative or criminal charges following

the date on which his license to practice podiatry in Louisiana expired shall be deemed ineligible for reinstatement of licensure.

D. An application for reinstatement of licensure meeting the requirements and conditions of this section may nonetheless be denied for any of the causes for which an application for original licensure may be refused by the board as specified in R.S. 37:624.

E. An application for reinstatement shall be made upon forms supplied by the board and accompanied by two letters of character recommendation from reputable podiatrists of the former licensee's last professional location, together with the applicable fees and costs prescribed by the board, plus a penalty computed as follows.

1. If the application for reinstatement is made less than two years from the date of license expiration, the penalty shall be equal to the renewal fee.

2. If the application for reinstatement is made more than two years but less than three years from the date of license expiration, the penalty shall be equal to twice the renewal fee.

3. If the application for reinstatement is made more than three years from the date of license expiration, the penalty shall be equal to three times the renewal fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:617, R.S. 37:621, R.S. 37:622 and R.S. 37:628.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

Subchapter J. Continuing Medical Education

§1371. Scope of Subchapter

A. The rules of this subchapter provide standards for the continuing medical education (CME) requisite to the renewal or reinstatement of licensure as provided by §1361 and §1363 of these rules and prescribe the procedures applicable to satisfaction and documentation of continuing medical education in connection with applications for renewal or reinstatement of licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1270(A)(8), R.S. 37:621 and R.S. 37:628.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

§1373. Continuing Medical Educational Requirement

A. Subject to the waiver of and exceptions to CME provided by §1383 and §1385, respectively, every podiatrist seeking the renewal or reinstatement of licensure, to be effective on or after January 1, 2005, shall annually evidence and document, upon forms supplied by the board, the successful completion of not less than 20 hours of board approved CME.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1270(A)(8), R.S. 37:621 and R.S. 37:628.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

§1375. Qualifying Continuing Medical Education Programs

A. Any program, course, seminar or other activity offering Category 1 CME shall be deemed approved for purposes of satisfying the continuing medical education requirement under this subchapter, if approved, sponsored or offered by:

1. the American Podiatric Medical Association, or its successor association;

2. an organization or entity accredited by the Accreditation Council for Continuing Medical Education (ACCME);

3. a member board of the American Board of Medical Specialties;

4. an organization or entity accredited by the Louisiana State Medical Society or any other ACCME recognized state medical society.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1270(A)(8) and R.S. 37:628.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

§1377. Documentation Procedure

A. A form for annual documentation and certification of satisfaction of the continuing medical education requirement prescribed by §1373 shall be included with each application for renewal or reinstatement of licensure form mailed by the board pursuant to §1361 or §1363. Such form shall be completed and delivered to the board with the podiatrist's application.

B. Podiatrists will not be required to transmit documentation of compliance with the continuing medical education requirement for renewal or reinstatement of licensure, unless otherwise required by these rules or requested by the board pursuant to §1377.E.

C. A podiatrist shall maintain a record or certificate of attendance for at least four years from the date of completion of the continuing medical education activity. Satisfactory evidence shall consist of a certificate or other documentation which shall, at a minimum, contain the:

1. program title;
2. sponsor's name;
3. podiatrist's name;
4. inclusive date or dates and location of the CME event; and

5. documented verification of successful completion of 20 hours of Category 1 CME by stamp, signature or other official proof acceptable to the board.

D. The board shall select for an audit of continuing medical education activities no fewer than 2 percent of the applicants for renewal or reinstatement each year. In addition, the board has the right to audit any questionable documentation of activities.

E. Verification of continuing medical education satisfying the requirement of this subchapter shall be submitted to the board within 30 days of the date of mailing of notification of audit or such longer period as the board may designate in such notification. A podiatrist's failure to notify the board of a change of mailing address will not absolve the licensee from the audit requirement.

F. Any certification of continuing medical education not presumptively approved by the board pursuant to §1375 shall not be considered as qualifying for CME recognition by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1270(A)(8), R.S. 37:621 and R.S. 37:628.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

§1379. Failure to Satisfy Continuing Medical Education Requirement

A. An applicant for renewal of licensure who fails to evidence satisfaction of the continuing professional education requirement prescribed by these rules shall be

given written notice of such failure by the board. Such notice shall be mailed to the most recent address of the licensee as reflected in the official records of the board. The license of the applicant shall remain in full force and effect for a period of 90 days following the mailing of such notice, following which such license shall be deemed expired, unrenewed and subject to suspension or revocation without further notice unless the applicant shall have furnished the board, within such 90 days, satisfactory evidence by affidavit, that:

1. the applicant has satisfied the applicable continuing medical education requirement;

2. the applicant's failure to satisfy the continuing medical education requirement was occasioned by disability, illness or other good cause as may be determined by the board pursuant to §1383; or

3. the applicant is exempt from such requirement pursuant to §1385.

B. The license of a podiatrist which has expired for nonrenewal or has been suspended or revoked for failure to satisfy the CME requirement of these rules may be reinstated pursuant to §1363 upon written application to the board, accompanied by payment of the application fee prescribed by §1363, in addition to all other applicable fees and costs, together with documentation and certification that the applicant has, for each year since the date on which the applicant's license was last issued or renewed, completed an aggregate of 20 hours of board approved CME.

C. The license of a podiatrist which has been suspended or revoked on more than one occasion for failure to satisfy the CME requirement of these rules shall be deemed in violation of R.S. 37:624(15), providing cause for the board to suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license or permit held or applied for by a podiatrist to practice podiatry in the state of Louisiana culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1270(A)(8), R.S. 37:621, R.S. 37:624 and R.S. 37:628.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

§1381. Falsification of Continuing Medical Education

A. Any licensee or applicant who falsely certifies attendance at and/or completion of the required continuing medical education requirement of §1373 shall be deemed in violation of R.S. 37:624(2) and/or (15), providing cause for the board to suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license or permit held or applied for by a podiatrist to practice podiatry in the state of Louisiana culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1270(A)(8), R.S. 37:624 and R.S. 37:628.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

§1383. Waiver of Requirement

A. The board may, in its discretion, waive all or part of the CME required by these rules in favor of a podiatrist who makes written request to the board and evidences to its satisfaction a permanent physical disability, illness, financial hardship or other similar extenuating circumstances precluding the individual's satisfaction of the CME requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1270(A)(8) and R.S. 37:628.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

§1385. Exceptions to the Continuing Medical Education Requirement

A. The CME requirement prescribed by this subchapter prerequisite to renewal or reinstatement of licensure shall not be applicable to a podiatrist:

1. engaged in military service longer than one year's duration outside of Louisiana;
2. who has held an initial Louisiana license on the basis of examination for less than one year; or
3. who is in a postgraduate year one podiatric training program approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1270(A)(8) and R.S. 37:628.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

Subchapter K. Postgraduate Year One (Internship) Registration

§1391. Necessity for Registration

A. As used in this section, *postgraduate year one (PGY-1)* or *internship* means the first year of postgraduate podiatric training, following graduation from a school or college of podiatry, that is approved by the Council of Podiatric Medical Education of the American Podiatric Medical Association, or its successor, and the board. For purposes of this section PGY-1 includes only the first year of any such training following graduation from a podiatry school or college and does not include training which may be designated PGY-1 level subsequent to prior training at such level in any specialty, field, or program.

B. No person who does not possess a license or permit issued under this Chapter shall enroll or participate in a PGY-1 podiatric educational program, or internship, unless he is duly registered with the board pursuant to this Subchapter.

C. Notwithstanding registration under this subchapter, no person who does not possess a license or permit issued under this Chapter shall enroll or participate in a first year postgraduate podiatric educational program, an internship, or any other program howsoever designated or whenever taken, which permits or requires such persons to exercise independent judgment, assume independent responsibility for patient care or otherwise to engage in the practice of podiatry.

D. Upon a finding that a person or registrant has violated the proscriptions of this section, the board may:

1. suspend or revoke such person's registration under this subchapter or impose probationary conditions thereon;
2. consider and declare such person or registrant ineligible for a podiatry license or permit under this Chapter; and/or
3. cause the institution of judicial proceedings against such person for injunctive relief pursuant to R.S. 37:625.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:613.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

§1393. Qualifications for Registration

A. To be eligible for registration under this subchapter an applicant shall possess all of the substantive qualifications for licensure specified by R.S. 37:613 and §1305 and shall

be a graduate of a podiatry school or college approved by the board.

B. The burden of satisfying the board as to the qualifications and eligibility of the applicant for registration shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by, and to the satisfaction of, the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:613.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

§1395. Procedural Requirements

A. In addition to the substantive qualifications specified in §1393, to be eligible for registration under this Subchapter an applicant shall:

1. submit to the board a completed application, upon forms supplied by the board, subscribed by the applicant and by the administrator or chief executive officer of the hospital or medical institution in which the PGY-1 program is to be conducted, accompanied by a recent photograph of the applicant;

2. make a personal appearance by appointment before a member of the board or its designee, or at the office of the board before its designated officer, and present evidence of the qualifications specified by §1393; provided, however, that an applicant who has completed his podiatric education but who does not yet possess a degree as required by R.S. 37:613(4) may be deemed eligible for registration upon submission to the board of a letter subscribed by the dean of an approved school or college of podiatry, certifying that the applicant has completed his academic and podiatric education at such school or college, that the applicant is a candidate for the degree of doctor of podiatric medicine or its equivalent at the next scheduled convocation of such school or college, and specifying the date on which such degree will be awarded; and

3. pay all applicable fees and costs prescribed by the board.

B. All documents required to be submitted to the board must be the original thereof. For good cause shown, the board may waive or modify this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:613.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

§1397. Issuance and Term of Registration

A. If the qualifications, requirements, and procedures prescribed or incorporated by §1393 and §1395 are met to the satisfaction of the board, the board shall issue a certificate to the applicant evidencing his registration under this subchapter for enrollment and participation in a PGY-1 podiatric training program in the state of Louisiana.

B. Registration issued under this subchapter shall be effective on and as of the date on which an applicant's PGY-1 podiatric training program is to commence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:613.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 29:

Interested persons may submit written data, views, arguments, information or comments on the proposed rules and rule amendments until 4:00 p.m., February 21, 2003, to

John B. Bobear, M.D., Executive Director, Louisiana State Board of Medical Examiners, Post Office Box 30250, New Orleans, LA 70190-0250 (630 Camp Street, New Orleans, LA 70130).

John B. Bobear, M.D.
Executive Director

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

**RULE TITLE: Podiatric Postgraduate Year
One (Internship) Registration, Reinstatement,
Continuing Medical Education**

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

The Board of Medical Examiners anticipates no increased costs associated with implementation of the proposed rules and rule amendments other than those relating to monitoring and auditing of the continuing medical education requirements, estimated to be \$1,400 in FY 2003 and in subsequent years. It is anticipated that \$1,728 will be expended in FY 2003 or the board's administrative expense for promulgation of this proposed Rule and final Rule.

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

It is not anticipated that the proposed Rules and Rule amendments will have any material effect on the revenue collections of the Board of Medical Examiners or any state or local governmental units.

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

Commencing in January 2005 podiatrists applying for initial podiatric licensure, estimated to be less than ten individuals annually, will be required to have completed at least one year of approved postgraduate podiatric training while applicants seeking renewal or reinstatement of Licensure will be required to obtain 20 hours of continuing medical education annually. Given the small number of new applicants requirement will be significant. Additionally, continuing medical education is available at no cost to podiatrists through a number of sources, and when assessed, the fee is typically \$15-\$20 per hour. It is estimated that the cost of obtaining continuing medical education may represent \$100-\$200 annually to an applicant. Finally, each such applicant will be required to document required continuing medical education in connection with licensure renewal or reinstatement resulting in minimal additional paperwork involving one additional form. The proposed rules should not, therefore, result in any material increase or reduction of costs or paperwork for such applicants. Conversely, it is anticipated that the postgraduate training and continuing medical education components of the proposed rules will generate a positive but undeterminable economic impact on issues and costs relating to quality of care which will inure to the benefit of the public podiatrists and the state.

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

It is not anticipated that the proposed rules will have any impact on competition or employment in either that public or private sector.

John B. Bobear
Executive Director
0301#034

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Eligibility C Incurred Medical Expenses

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is adopted 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 adopted a Rule promulgating the Medicaid Eligibility Manual in its entirety by reference in May of 1996 (*Louisiana Register*, Volume 22, Number 5). Section I of the Medicaid Eligibility Manual explains the eligibility factors used to determine Medicaid eligibility, including consideration of medical expenses incurred by long term care facility residents as allowable deductions for the purpose of determining patient liability. In compliance with a recent clarification of federal regulations, the bureau has determined it is necessary to amend the provisions contained in Section I of the Medicaid Eligibility Manual governing the deductions allowed for medical expenses incurred by long term care facility residents. Therefore, the bureau proposes to adopt the following Rule to amend the provisions governing incurred medical expenses that may be considered allowable deductions in the determination of patient liability.

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, and autonomy as described in R.S. 49:972.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the May 20, 1996 Rule governing the treatment of medical expenses incurred by long term care facility residents in the determination of patient liability. Deductions for incurred medical expenses must be budgeted, just as income is budgeted, in the month that it is incurred.

Long Term Care

A. Allowable Deductions. The following criteria apply to all incurred medical expenses.

1. Deductions must be for an expense incurred by a long term care facility resident who is, or was, eligible for Medicaid vendor payment to a long term care facility during the month the expense was incurred.

2. Each deduction must be for a service or item prescribed by a medical professional (e.g., a physician, a dentist, optometrist, etc.) as medically necessary, and approved by the attending physician to be included as part of the facility's plan of care for the resident.

3. Documentation and receipts for the medical expenses shall contain:

a. the resident's name;

- b. the date of the service and/or purchase;
- c. the facility's name;
- d. the resident's Medicaid ID number; and
- e. an itemization of the medical service and/or purchase.

B. Non-Allowable Deductions. Deductions shall not be allowed for the following incurred medical expenses:

1. medical expenses incurred during a month in which the individual is/was not a resident of a long term care facility and eligible for vendor payment to the long term care facility;

2. prescription drugs not covered under the Medicaid Program, unless the prescribing physician has been notified that the drug is not covered by the Medicaid Program and has stated that an equivalent alternative that is covered cannot be prescribed;

3. expenses which are payable under Medicaid, except when documentation is presented to verify that the expense was denied by Medicaid due to service limitations;

4. expenses for services, equipment and supplies denied by Medicaid as not medically necessary;

a. services, equipment or supplies that require prior authorization for Medicaid payment must be submitted to the prior authorization unit for consideration;

5. expenses for services, equipment or supplies denied by Medicare as not medically necessary;

6. expenses for services, equipment or supplies provided as part of the long term care facility reimbursement rate (i.e., personal care needs, medical supplies, transportation, incontinent supplies, including disposable briefs or adult diapers, etc.);

7. expenses for cosmetics and over-the-counter skin care products;

8. expenses for supplies purchased for the convenience or preference of the long term care facility or the resident's family; or

9. cosmetic/elective procedures (i.e., face lifts or liposuction).

C. Deduction Limitations. The following deduction limitations apply to those medically necessary incurred expenses cited.

1. Dental Services. Deductions for dental services shall be limited to the maximum allowed under the established fee schedule that will be reassessed annually. The fee schedule is based on the BlueCross/BlueShield of Louisiana Key Dental Network Fee Schedule. Denture and denture repairs are subject to the service limits of the Adult Denture Program, unless exceptional medical necessity can be demonstrated. Exceptions to the seven year rule may be allowed as an incurred medical expense deduction when medical necessity can be shown. These exceptions are only allowed when traumatic injuries, surgery to the jaws or a disease causes a dramatic change to the oral condition that makes the original dentures unserviceable.

2. Eyeglasses. Deductions for eyeglasses not otherwise covered by the Medicaid Program are limited to \$150 annually. The deduction amount will be reassessed annually.

3. Hearing Aids

a. A one-time deduction, not to exceed \$800, is allowed. The deduction amount will be reassessed annually.

b. Hearing aids are approved only when there is a significant hearing loss documented by audiometric or electro physiologic data provided by a licensed physician. A prescription written by a physician or a licensed audiologist is required for the hearing aid (but not for ear molds or hearing aid repairs). The prescription must be dated within the previous six months and must contain medical clearance that use of a hearing aid device by the resident is not medically contra-indicated. The physician or licensed audiologist must also furnish a report including an audiogram, if applicable, all test results and the degree and type of hearing loss. A hearing loss greater than 20 decibels average hearing level is considered significant in hearing range 500-2000Hz frequency. Additional medical and social information in the report shall include:

- i. the recipient's age;
- ii. whether he/she has previously used a hearing aid;
- iii. whether he/she is currently using an aid and whether it can be repaired;
- iv. how long his/her hearing has been impaired; and
- v. any other pertinent information.

c. Hearing aids can be purchased from either a licensed audiologist or from a licensed hearing aid dispenser. A provision for training the recipient in the proper use and care of the hearing aid shall be a part of the purchase.

D. Facility Responsibilities and Limitations

1. Nursing facilities will be considered a third party with presumptive liability for residents who report that medical items or equipment (i.e. dentures, hearing aids etc.) were lost or damaged in the facility. The facility shall be required to file a claim against its own insurance to recoup for the loss. When a nursing facility accepts a resident, they assume responsibility for the person as well as those personal items that are necessary for the resident's individual functioning.

2. Nursing facilities are prohibited from entering into profit sharing agreements with other providers for any services, supplies or equipment provided for under the incurred medical expenses deduction.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, February 25, 2003 in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, Louisiana. 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.

David W. Hood
Secretary

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

RULE TITLE: EligibilityC Incurred Medical Expenses

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

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately \$208,548 for SFY 2002-03, \$1,100,369 for SFY 2003-04, and \$1,133,380 for SFY 2004-05. It is anticipated that \$378 (\$189 SGF and \$189 FED) will be expended in SFY 2002-2003 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$511,300 for SFY 2002-03, \$2,766,000 for SFY 2003-04, and \$2,848,980 for SFY 2004-05.

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

Deductions for medical expenses incurred by long term care facility residents will be considered as allowable for the purpose of determining patient liability relative to the total amount to be paid to the long term care facility. Implementation of this proposed Rule will increase expenditures in the long term care program by approximately \$719,470 for SFY 2002-03, \$3,866,369 for SFY 2003-04, and \$3,982,360 for SFY 2004-05.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

David W. Hood
Secretary
0301#063

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Food Stamp ProgramC 2002 Farm Bill
(LAC 67:III.1917, 1932, 1949, 1953,
1961, 1965, 1966, 1980, 1983 and 2013)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 3, Food Stamps.

Pursuant to Public Law 107-171, The Food Stamp Reauthorization Act of 2002, the agency is amending §§1932, 1961, and 1983, to comply with mandates issued by the U.S. Department of Agriculture, Food and Nutrition Service that were effective October 1, 2002. This law, also known as the 2002 Farm Bill, authorizes changes in: qualified alien regulations whereby disabled aliens are eligible for benefits for an unlimited period of time; excludable resources and resource limits in that the resource limit for a household containing a disabled member was raised to \$3,000 and Individual Development Accounts will be excluded as a countable resource; and the method in which the standard deduction is determined has been revised. A Declaration of Emergency effecting these changes was signed October 1, 2002, and published in the October issue of the *Louisiana Register*. Additionally, effective April

1, 2003, P.L. 107-171 mandates restoration of food stamp eligibility to legal immigrants who have lived in the United States as a qualified alien for five years or longer.

The Farm Bill also provides multiple options from which states may chose to apply to their programs. The agency proposes to incorporate several of these options by amending §§1965, 1966, 1980, and 2013 in an effort to create less burdensome reporting requirements for the client, simplify policy, reduce workloads, and improve quality. Amendments to these Sections will eliminate the current requirement to prorate the standard or basic utility allowances when households share living quarters; will include legally-obligated child support payments to non-household members as an income exclusion when determining gross income eligibility; and effective July 1, 2003, will include all households in semi-annual reporting except the homeless, migrant or seasonal farm worker households, and elderly or disabled households with 24-month certifications.

Additionally, the agency proposes to amend §§1917 and 1953 for grammatical reasons only.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter B. Application Processing

§1917. Homeless Meal Provider

A. - C. ...

D. Applicant meal providers must apply for approval at the Office of Family Support in their parish. An approval review at the provider's establishment will be conducted by the regional program specialist. After approval has been granted by OFS, the provider must then make application to an FNS field office to receive authorization to accept food stamp benefits.

E. - G ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:7554 et seq., 7 CFR 273.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:437 (August 1987), LR 13:287 (May 1987), amended by the Department of Social Services, Office of Family Support, LR 24:1782 (September 1998), LR 29:

Subchapter D. Citizenship and Alien Status

§1932. Time Limitations for Certain Aliens

A. - A.5. ...

B. The following qualified aliens are eligible for an unlimited period of time:

1. - 3. ...

4. effective October 1, 2002, individuals who are lawfully residing in the United States and are receiving benefits or assistance for blindness or disability as defined in §3(r) of the Food Stamp Act of 1997;

5. - 6. ...

7. effective April 1, 2003, individuals who have been lawful, permanent residents or otherwise qualified aliens for at least five years beginning on the date the immigrant was designated as a qualified alien by the Immigration and Naturalization Service.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33, P.L. 105-185, and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711 (April 1999), LR 29:

Subchapter H. Resource Eligibility Standards

§1949. Exclusions from Resources

A. The following are excluded as a countable resource:

1. - 4. ...

5. effective October 1, 2002, an Individual Development Account (IDA) which is a special account established in a financial institution for specific purposes.

B. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 et seq., 7 CFR 273.8 and 273.9C(v), P.L. 103-66, P.L. 106-387, 45 CFR 263.20, and P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security in LR 13:656 (November 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 21:186 (February 1995), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 28:1031 (May 2002), LR 29:

Subchapter I. Income and Deductions

§1953. Income Eligibility Standards

A. The income eligibility standards for the Food Stamp Program shall be as follows:

1. - 3. ...

4. The income eligibility limits, as described in this Paragraph, are revised annually to reflect OMB's annual adjustment to the nonfarm poverty guidelines for the 48 states and the District of Columbia, for Alaska, and for Hawaii.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.9.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 29:

§1961. Adjustment of Standard Deduction

A. Effective October 1, 2002, the standard deduction shall be set at 8.31 percent of the poverty level based on household size of up to six persons with a minimum deduction of \$134. The standard deduction will be adjusted in accordance with directives from the United States Department of Agriculture, Food and Nutrition Service.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:44712 et seq., 7 CFR 273.9, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:9 (January 1982), amended by the Department of Social Services, Office of Family Support, LR 29:

§1965. Standard Utility Allowance (SUA)

A. - B. ...

C. The full standard utility allowance shall be allowed to all parties who contribute to the utility costs when the household shares a residence and utility costs with other individuals.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:51551 et seq., 7 CFR 272 and 273.9, P.L. 104-193, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:64 (February 1983), amended by the Department of Social Services, Office of Family Support, LR 21:187 (February 1995), LR 23:82 (January 1997), LR 24:108 (January 1998), LR 29:

§1966. Basic Utility Allowance (BUA)

A. Households which do not incur heating or cooling costs separate and apart from their rent or mortgage use a mandatory single Basic Utility Allowance (BUA). To be eligible, a household must be billed on a regular basis for utility costs. Any household living in a housing unit which has central utility meters and which charges the household for excess utility costs only shall use the BUA. The full basic utility allowance shall be allowed to all parties who contribute to the utility costs when the household shares a residence and utility costs with other individuals.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and P.L. 107-171

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998), LR 29:

§1980. Income Exclusions

A. - B. ...

C. Legally obligated child support payments to non-household members are excluded when determining eligibility based on gross income standards.

AUTHORITY NOTE: Promulgated in accordance with P.L. 103-66, 7 CFR 273.9(c)(11), P.L. 104-193, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 21:186 (February 1995), amended LR 23:82 (January 1997), LR 29:

§1983. Income Deductions and Resource Limits

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

B. The resource limit for a household is \$2,000, and effective October 1, 2002, the resource limit for a household that includes at least one elderly or disabled member is \$3,000.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:285 (May 1986), amended LR 12:423 (July 1986), LR 13:181 (March 1987), LR 15:14 (January 1989), amended by the Department of Social Services, Office of Family Support, LR 19:905 (July 1993), LR 21:186 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:

Subchapter R. Semi-Annual Reporting

§2013. Semi-Annual Reporting

A. Effective July 1, 2003, all households shall submit a reporting form to the agency on a semi-annual basis with the following exceptions:

1. - 2. ...

3. elderly, disabled households with 24-month certification periods.

B. - H. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a), P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:867 (June 2001), amended LR 28:103 (January 2002), LR 29:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? Implementation of this Rule will have little impact on the stability of the family.

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

rights of persons regarding the education and supervision of their children.

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

4. What effect will this have on family earnings and family budget? Family earnings and budget should be positively affected by changes to the income exclusions, standard utility allowance, and resource limits.

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

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

All interested persons may submit written comments through February 27, 2003, to Ann S. Williamson, 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 February 27, 2003, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call 225-342-4120 (Voice and TDD).

Gwendolyn P. Hamilton
Secretary

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

RULE TITLE: Food Stamp ProgramC 2002 Farm Bill

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

The proposed action will increase state costs by making more Food Stamp applicants eligible. It is estimated that federal food stamp benefits could increase by \$4,753,500 for FY 02/03 and \$8,482,500 for FY 03/04 and continuing. The administrative cost for expanding semi-annual reporting is estimated to be \$271,656 half of which is funded with federal monies and half with state funds. The total estimated cost for FY 03/04 and continuing is \$8,754,156. The cost of publishing the Rule and printing policy changes and form revisions is estimated to be \$4,020 and routinely included in the agency's annual budget. There will be no costs to local governmental units.

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

The proposed Rule will have 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)

There are no estimated costs to any persons or non-governmental groups as a result of this proposed Rule.

Persons who are determined eligible for food stamp benefits as a result of these proposed changes could realize economic benefits totaling approximately \$4,753,500 for FY 02/03 and \$8,482,500 for FY 03/04 in the form of food stamp

benefits. These benefits will recur annually. Non-governmental groups will not be impacted economically by this Rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule will have no impact on competition or employment.

Ann S. Williamson
Assistant Secretary
0301#041

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Treasury
Board of Trustees of the State
Employees' Retirement System**

**DROPC Legislative Required Changes and Additions
(LAC 58:I.2713, 3503, 3505, 3519 and 3701-3705)**

Under the authority of R.S. 11:515 and in accordance with R.S. 49:951 et seq., the Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") advertises its intent to amend and reenact LAC 58:I.2713 3503, 3505, 3519 and to enact Chapter 37, Sections 3701-3705 relative to the actuarial conversion of leave to its cash value. The proposed amendments to the Rules change the manner for disbursements from the DROP accounts, and certain provisions of the Optional Retirement Plan (ORP) required by Act 136 of the First Extraordinary Session of 2002, and to enact provision to control the actuarial conversion of leave to its cash value. The proposed amendments and enactments have no impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

**Title 58
RETIREMENT**

Part I. State Employees' Retirement System

Chapter 27. DROP Program

Subchapter C. Withdrawal

§2713. Time for Disbursement

A. The DROP account must be totally disbursed within the expected lifetime of the participant in accordance with federal laws. The expected lifetime is determined based on the age of the participant on the date of termination. All funds from the DROP account must be withdrawn in accordance with the Internal Revenue Services Guidelines.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 25:2466 (December 1999), amended LR 29:

Chapter 35. Optional Retirement Plan

§3503. Participation

A. The following state employees shall be eligible to make an irrevocable election to participate in the optional retirement plan:

1. any unclassified state employee who is appointed by a statewide elected official and whose appointment is subject to confirmation by the Louisiana Senate;

2. any unclassified state employee who is a member of the immediate staff of any such employee described in Paragraph 1 of this Section;

3. the chief executive officer of the State Employee Group Benefits Program;

4. any member of the executive career service establishment by the State Civil Service Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000), amended LR 29:

§3505. Election to Participate

A. An irrevocable election to participate in the ORP must be made in writing and filed with the system within 90 days after the eligible employee begins work. Elections shall be effective as of the date of appointment. If an eligible employee fails to make an election to participate in the ORP within 90 days of appointment, he shall become a member of the defined benefit plan as of the date of appointment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1491 (July 2000), amended LR 29:

§3519. Sunset

A. Currently the law provides that the authority to enroll eligible unclassified employees in the ORP shall terminate on December 7, 2003. Those eligible unclassified employees who enroll or transfer prior to that date shall continue participation in the ORP in accordance with the provisions of the ORP even after that date. There is no sunset provision for the executive career services employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 26:1492 (July 2000), amended LR 29:

Chapter 37. Leave Conversion to Retirement Credit or Cash Payment

§3701. Conversion of Leave to Retirement Credit

A. All annual and sick leave certified by the employee's employing agency to be accrued in accordance with the leave accrual rates established by the Department of State Civil Service and for which payment cannot be made in accordance with law at the time of retirement shall be credited to the employee and may be converted to retirement credit in accordance with R.S. 11:424.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 29:

§3703. Lump Sum Payment of Leave

A. An employee, in lieu of conversion of leave to retirement credit, may request in writing that he be paid the actuarial value of such leave, as determined by the retirement system's actuary, in a lump sum cash payment. The employee shall be paid the actuarial value of the

conversion of leave to cash. This lump sum cash payment shall be paid to the employee on the first of the month after all pertinent documentation is received from the employee's employing agency needed to finalize the employee's retirement benefit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 29:

§3705. Tax Liability

A. The employee requesting the lump sum cash conversion of leave shall be solely responsible for any tax consequences of this decision, and the employee must acquire any tax advice from a private source (CPA or tax attorney) as LASERS shall not be responsible for any tax liability that may impact the employee as a result of the decision to take a lump sum cash distribution of leave in lieu of converting leave to retirement credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 29:

Interested persons may submit written opinions, suggestions or data to Kevin P. Torres, General Counsel, Louisiana State Employees' Retirement System, 8401 United Plaza Boulevard, Room 145, Baton Rouge, LA 70809, 4:30 p.m. through, March 20, 2003.

Robert L. Borden
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: DROP Legislative Required Changes and Additions

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

No implementation cost to the state or local governmental units are anticipated because of the proposed Rules.

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

These regulations will have no impact on revenue collections of state or local governmental units.

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

There are no estimated cost and/or economic benefits that should effect any persons or nongovernmental group as a result of these Rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment as a result of these Rules.

Robert L. Borden
Executive Director
0301#022

H. Gordon Monk
Staff Director
Legislative Fiscal Office

Administrative Code Update

CUMULATIVE: JANUARY – DECEMBER 2002

LAC Title	Part.Section	Effect	Location LR 28		LAC Title	Part.Section	Effect	Location LR 28		
			Month	Page				Month	Page	
1	III.Chapters 1-7	Adopted	Jan.	40	28	I.901	Amended	Dec.	2498	
4	III.Chapters 3,5	Adopted	June	1197	I.903	Amended	Feb.	273		
	VII.943	Amended	Dec.	2509	I.903	Amended	Mar.	445		
	VII.Chapter 11	Amended	May	1016	I.903	Amended	Apr.	759		
	VII.1215, 1223, 1225	Amended	May	1016	I.903	Amended	Apr.	760		
	VII.1281, 1283	Adopted	Dec.	2510	I.903	Amended	Apr.	763		
	VII.1741, 1743	Adopted	May	1018	I.903	Amended	Apr.	765		
	VII.1747, 1749	Adopted	May	1018	I.903	Amended	May	990		
	VII.2101-2121	Repromulgated	Oct.	2182	I.903	Amended	Aug.	1727		
	IX.101, 301, 303, 501, 503	Adopted	July	1583	I.903	Amended	Aug.	1728		
	IX.707	Adopted	Nov.	2350	I.903	Amended	Aug.	1729		
	XIII.Chapter 1	Adopted	Nov.	2346	I.903	Amended	Aug,	1730		
	XV.101, 301, 303, 501, 503	Repromulgated	Sept.	1954	I.903	Amended	Dec.	2500		
	7	V.927, 929	Amended	June.	1170	I.903	Amended	Dec.	2502	
		XXI.101, 121	Amended	June	1170	I.903	Amended	Dec.	2505	
		XXIII.121, 125, 129	Amended	Jan.	39	I.904	Amended	June	1187	
XXV.119		Amended	June	1171	I.904	Amended	Sept.	1937		
XXXIX.1307, 1315		Amended	Feb.	267	I.1501-1529	Repealed	Dec.	2497		
10		III.701, 702	Amended	Mar.	482	IV.301, 2103	Amended	Jan.	45	
		III.703	Repealed	Mar.	482	IV.301, 503,507, 701, 705	Amended	Mar.	446	
	XV.323	Adopted	Nov.	2349	IV.301, 703, 803, 805, 903, 907	Amended	Apr.	772		
	XV.505	Adopted	Mar.	484	IV.301, 703, 803, 2103, 2105	Amended	Nov.	2329		
	XV.507	Repromulgated	June	1172	IV.301, 701-705, 805, 903	Amended	Nov.	2331		
	XV.1501-1509	Adopted	Feb.	307	IV.503	Amended	Aug.	1760		
	13	XV.320	Amended	May	989	IV.803, 903, 907, 1303, 1901	Amended	Mar.	446	
		22	I.103	Amended	Dec.	2552	IV.911,1103, 1111, 1903, 2105	Amended	Apr.	772
			I.107	Adopted	Jan.	94	IV.1301, 1903	Amended	Nov.	2331
			I.325	Adopted	Apr.	857	IV.Chapter 15	Repealed	Sept.	1950
I.325			Amended	Sept.	1993	IV.1903, 2103, 2107	Amended	Mar.	446	
I.326			Adopted	Apr.	861	IV.1903	Amended	Aug.	1760	
I.326			Amended	Sept.	1993	IV.2103, 2107, 2109, 2303	Amended	Nov.	2331	
I.359			Amended	Jan.	94	IV.2107, 2303, 2309	Amended	Apr.	772	
I.359			Amended	Aug.	1797	VI.101, 107, 301, 303, 315	Amended	Nov.	2334	
I.369			Amended	Apr.	856	VI.107, 301	Amended	Mar.	450	
I.401			Adopted	May	1026	VI.107, 301, 303, 307, 311, 313	Amended	Apr.	777	
I.Chapter 5			Adopted	Aug.	1782	VI.315	Amended	Aug.	1761	
III.4703			Amended	Mar.	475	XXI.Chapters 1, 3, 5	Adopted	Feb.	274	
V.105	Amended		May	1026	XXXIII.523	Amended	Nov.	2329		
XI.511	Amended		July	1597	XXXVII.Chapters 1-35	Adopted	Feb.	276		
XV.Chapters 1-5	Adopted		June	1200	XXXIX.905, 1301	Amended	June	1189		
25	VII.507	Repromulgated	July	1576	XLV.Chapters 1-11	Adopted	Aug.	1730		
	VII.1101-1109, 2101-2105	Repealed	July	1576	XLIX.101, 349, 2523, 2911, 3307	Amended	Aug.	1737		
	VII.2501-2505, 2701-2703	Repealed	July	1576	XLIX.101, 349, 2523, 2911, 3307	Repromulgated	Sept.	1949		
	VII.4303, 4305, 4311, 4313	Amended	July	1576	XLIX.1503, 2515	Amended	Aug.	1740		
	VII.4501, 4503	Amended	July	1576	XLIX.3309, 3313	Amended	Aug.	1737		
	28	I.103	Amended	Feb.	268	XLIX.3309, 3313	Repromulgated	Sept.	1949	
		I.107	Amended	June	1189	XLIX.Chapter 34	Adopted	Aug.	1737	
I.Chapter 9		Amended	Dec.	2497	XLIX.Chapter 34	Repromulgated	Sept.	1949		
I.Chapter 9		Amended	Dec.	2497	LI.Chapters 1-9	Amended	Aug.	1741		
I.901		Amended	Feb.	269	LIII.Chapter 1-11	Adopted	June	1172		
I.901		Amended	Feb.	272	LV.Chapters 1-11	Adopted	Apr.	765		
I.901		Amended	May	991	LIX.Chapters 1-11	Adopted	Sept.	1939		
I.901		Amended	June	1187	32	III.101, 317, 323, 501, 503, 701	Amended	Nov.	2343	
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I.901		Amended	Aug.	1725		III.405	Amended	Mar.	479	
I.901		Amended	Aug.	1725		III.409, 501, 503, 505, 507	Amended	Mar.	479	
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I.901		Amended	Aug.	1725		V.101, 317, 325, 501, 503, 701	Amended	Nov.	2339	
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I.901	Amended	Sept.	1936	V.701		Repromulgated	Dec.	2509		
I.901	Amended	Sept.	1937	V.409, 501, 503, 505, 507		Amended	Mar.	477		
I.901	Amended	Oct.	2182	V.509, 511, 513, 515, 517		Repealed	Mar.	477		
I.901	Amended	Nov.	2322	VII.Chapters 1-13	Amended	June	1494			
I.901	Amended	Nov.	2323	VII.727, 1503, 1505, 1901	Adopted	June	1494			
					VII.1305	Repealed	June	1494		

Potpourri

POTPOURRI

**Department of Agriculture and Forestry
Office of Agriculture and Environmental Sciences
Boll Weevil Eradication Commission**

Adjudicatory Hearing Establishment of 2003 Assessment

The Boll Weevil Eradication Commission will hold an adjudicatory hearing beginning at 10 a.m., March 20, 2003 at the Louisiana Department of Agriculture and Forestry, First Floor Auditorium, located at 5825 Florida Boulevard, Baton Rouge, LA, relative to the setting of the assessments levied upon cotton producers for each acre of cotton planted for the 2003 crop year pursuant to R.S. 3:1613 and LAC 7:XV.321. Said assessment shall not exceed \$10 per acre of cotton planted for 2003 in the Red River Eradication Zone and \$15 per acre of cotton planted for 2003 in the Louisiana Eradication Zone.

All interested persons are invited to attend and will be afforded an opportunity to participate in the adjudicatory hearing. Written comments will be accepted if received prior to March 20, 2003, P.O. Box 3596, Baton Rouge, LA 70821-3596.

Dan P. Logan, Jr.
Chairman

0301#025

POTPOURRI

**Department of Agriculture and Forestry
Office of Forestry
and
Department of Revenue
Tax Commission**

Timber Stumpage Values

The Louisiana Department of Agriculture and Forestry, Office of Forestry is hereby giving notice of the stumpage values that were adopted at the joint meeting of the Forestry Commission and Tax Commission held on December 9, 2002. The following stumpage values were adopted for the purpose of determining timber severance tax for calendar year 2003.

The Louisiana Forestry Commission, and the Louisiana Tax Commission, as required by R.S. 47:633, determined the

following timber stumpage values based on current average stumpage market values to be used for severance tax computations for 2003.

Trees and Timber	Price/Scale	Price/Ton
Pine Sawtimber	\$345.53/MBF	\$43.18/Ton
Hardwood Sawtimber	\$288.39/MBF	\$30.36/Ton
Pine Chip and Saw	\$ 98.49/CD	\$36.48/Ton
Pulpwood		
Pine Pulpwood	\$ 20.96/CD	\$ 7.76/Ton
Hardwood Pulpwood	\$ 13.95/CD	\$ 4.89/Ton

Signed and attested to this 6th day of January 2003.

Bob Odom
Commissioner

0301#026

POTPOURRI

**Department of Health and Hospitals
Board of Veterinary Medicine**

Board Nominations

The Louisiana Board of Veterinary Medicine announces that nominations for the position of Board Member will be taken by the Louisiana Veterinary Medical Association (LVMA) at the annual winter meeting to be held in late February 2003. Interested persons should submit the names of nominees directly to the LVMA as per R.S. 37:1515. It is not necessary to be a member of the LVMA to be nominated. The LVMA may be contacted at (225) 928-5862.

Wendy D. Parrish
Administrative Director

0301#021

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table 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
Consolidated Gas Supply Corp.	Wildcat	L	E P Brady	2	133271
Iberia Operating Corporation	Black Bayou	L	Vua; Brown-Odom	1	218362
Iberia Operating Corporation	Cankton, North	L	Kermik Kilchrist et al	1	141994
Iberia Operating Corporation	Clear Creek	L	Longbell Lbr Co SWD	3	056148
Iberia Operating Corporation	Clear Creek	L	Longbell Lumber Company	1	058768
Iberia Operating Corporation	Crowley	L	6600 RB SUA; Leger A	1	164473
Iberia Operating Corporation	Crowley	L	M Leger SWD	4	175651
Iberia Operating Corporation	Crowley	L	M Leger A	2	196960
Iberia Operating Corporation	Crowley	L	Florence L Hebert	1	214491
Iberia Operating Corporation	Crowley	L	VUA; Guillot	1	214627
Iberia Operating Corporation	Darrow	L	Pennington SWD	1	103424
Iberia Operating Corporation	Darrow	L	Pennington	1D	105628
Iberia Operating Corporation	Darrow	L	Disc 2 RA SUI; Webb	1	106582
Iberia Operating Corporation	Darrow	L	Webb	1D	107740
Iberia Operating Corporation	Darrow	L	George J Melancon et al	1	108451
Iberia Operating Corporation	Darrow	L	HET 2 RA SUD; Melancon	1-D	111374
Iberia Operating Corporation	Darrow	L	Many	5	115253
Iberia Operating Corporation	Darrow	L	Disc 1 RA SUI; Webb	3	129218
Iberia Operating Corporation	Darrow	L	HET 3 SUJ; Macdonell	6	129403
Iberia Operating Corporation	Darrow	L	HET 1 RA SUA; Madonell	8	135740
Iberia Operating Corporation	Darrow	L	Macdonell	8D	136070
Iberia Operating Corporation	Darrow	L	Disc 2 RA SUZZ; M J Many	2	205325
Iberia Operating Corporation	Darrow	L	D J Falcon SWD	2	207162
Iberia Operating Corporation	Darrow	L	HET 3 RA SUP; Chevron Fee	1	209107
Iberia Operating Corporation	Darrow	L	HET 3 RA SUO; Chevron Fee	2	209583
Iberia Operating Corporation	Darrow	L	HET 3 RA SUQ; Chevron Fee	3	210995
Iberia Operating Corporation	Darrow	L	HET 3 RA SUD; Melancon	6	213209
Iberia Operating Corporation	Darrow	L	Disc 4 SUYY; Warren J Many	1	214212
Iberia Operating Corporation	Scott	L	Stutes RB SUA; M D D Dupont	1	162039
Iberia Operating Corporation	Scott	L	Leodis Trahan SWD	2	972433
Iberia Operating Corporation	Shuteston	L	3600 RA SUB; Brinkhaus	1	120923
Iberia Operating Corporation	Shuteston	L	Armand Brinkhaus	2	126849
Iberia Operating Corporation	Shuteston	L	Armand Brinkhaus	3	163523
Iberia Operating Corporation	White Lake, West	L	SL 5674	A-1	139382
Iberia Operating Corporation	White Lake, West	L	SL 5674	2	139970
Iberia Operating Corporation	White Lake, West	L	6450 RA SUA; SL 5674	5	190397
Iberia Operating Corporation	White Lake, West	L	Big 3-2 RB SUJ; SL 11151	1	191266
Iberia Operating Corporation	White Lake, West	L	SL 5674	6	192067
Iberia Operating Corporation	White Lake, West	L	SL 5674	7	192068
Iberia Operating Corporation	White Lake, West	L	6450 RA SUC; SL 5674	8	194492
Iberia Operating Corporation	White Lake, West	L	Big 3-2 RB SUK; SL 11424	1	194493
Iberia Operating Corporation	White Lake, West	L	Big 3-2 RB SUL; SL 11424	3	197243
Iberia Operating Corporation	White Lake, West	L	Big 3-2 RB SUQ; SL 11424	4	198987
Iberia Operating Corporation	White Lake, West	L	Big 3-2 RB SUO; SL 11424	5	198988
Iberia Operating Corporation	White Lake, West	L	SL 5674	9	199481
Iberia Operating Corporation	White Lake, West	L	Big 3-2 RB SUM; SL 11151	4	202332
Iberia Operating Corporation	White Lake, West	L	6450 RA SUB; SL 5674	10	203113
Iberia Operating Corporation	White Lake, West	L	SL 5674 SWD	1	970826
Iberia Operating Corporation	White Lake, West	L	SL 11151 SWD	1	971949
Red River Oil	Red River-Bull Bayou	S	O H Polly	11	001476
Mallard Enterprises, Inc.	Westwego	L	VUB; Vic A Pitre	2	138663
S W Ray	Tullos Urania	L	Hardtner-Edenborn	3	134470
Continental Asphalt & Petroleum Co.	Wildcat - No La	S	Foursome	4	001272
Terratherm Company	Wildcat	M	Tom Wade Elkins	1	137085
Power Reserves	Mamou	L	M VU; B M Meche et al	1	189660
Earl E. Wall	Gueydan	L	B W Evans	1	089693
Daniel Oil Company	Boston Bayou	L	Vermilion Parish School Board	1	164348
Coastal States - Columbia Gas Dev.	Tigre Lagoon	L	Plan 6 SUA; E. Delcambre	4-D	(30)131776

James H. Welsh
Commissioner of Conservation

0301#019

POTPOURRI

**Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 32 claims in the amount of \$95,141.78 were received for payment during the period October 1, 2002-December 31, 2002. There were 31 claims paid and 1 claim denied.

Loran Coordinates of reported underwater obstructions are:

6581	46377	Cameron
6622	46979	Cameron
8108	46855	Terrebonne
8495	46851	Lafourche
28561	46863	Jefferson
29009	46916	St Bernard
29080	46955	St Bernard

Latitude/Longitude Coordinates of reported underwater obstructions are:

2855.882	8925.803	Plaquemines
2906.954	9039.914	Terrebonne
2911.328	9000.987	Jefferson
2916.407	8957.218	Jefferson
2918.775	8948.851	Jefferson
2918.790	8949.670	Jefferson
2921.468	8937.325	Plaquemines
2922.836	9002.873	Lafourche
2929.197	9220.737	Lafourche
2930.366	8929.413	St Bernard
2930.828	9007.411	Jefferson
2933.639	8931.146	Plaquemines
2934.367	8935.344	St Bernard
2937.231	9007.961	Jefferson
2937.450	9010.241	Lafourche
2939.935	9254.146	Cameron
2943.630	8931.680	St Bernard
2944.579	8936.226	St Bernard
2945.052	8948.914	Plaquemines
2948.049	9155.642	Vermilion
2956.310	8950.320	St Bernard
3006.441	8931.594	Orleans
3009.716	8927.514	Orleans

A list of claimants and amounts paid can be obtained from Verlie Wims, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Jack C. Caldwell
Secretary

0301#046

POTPOURRI

**Department of Social Services
Office of Community Services**

Notice of Anticipated Funds Availability
2003 Louisiana Emergency Shelter Grants Program

The Louisiana Department of Social Services (DSS) anticipates the availability of \$1,561,895 in grant funds for distribution to applicant units of local government under the 2003 State Emergency Shelter Grants Program (ESGP). Program funds are allocated to the State by the U.S. Department of Housing and Urban Development (HUD) through authorization by the Stewart B. McKinney Homeless Assistance Act, as amended. Funding available under the Emergency Shelter Grants Program is dedicated for the rehabilitation, renovation or conversion of buildings for use as emergency shelters for the homeless, and for payment of certain operating costs and social services expenses in connection with emergency shelter for the homeless. The Program also allows use of funding in homeless prevention activities as an adjunct to other eligible activities. As specified under current State ESGP policies, eligible applicants are limited to units of general local government for all parish jurisdictions and those municipal or city governmental units for jurisdictions with a minimum population of 10,000 according to recent census figures. Recipient units of local government may make all or part of grant amounts available to private nonprofit organizations for use in eligible activities.

Application packages for the State ESG Program shall be issued by mail to the chief elected official of each qualifying unit of general local government. The application package can be viewed on the Internet at the following website: <http://www.dss.state.la.us/html/rfps.html>. In order to be considered for funding, applications must be received by DSS/Office of Community Services by 4 p.m., Friday, April 4, 2003.

Nonprofit organizations in qualifying jurisdictions which are interested in developing a project proposal for inclusion in an ESGP funding application should contact their respective unit of local government to advise of their interest. To be eligible for funding participation, a private nonprofit organization as defined by ESGP regulations must be one which is exempt from taxation under Subtitle A of the Internal Revenue Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance.

The State DSS will continue use of a geographic allocation formula in the distribution of the State's ESG funding to ensure that each region of the State is allotted a specified minimum of State ESG assistance for eligible ESGP projects. Regional allocations for the State's 2003 ESG Program have been formulated based on factors for low income populations in the parishes of each region according to U.S. Census Bureau data. Within each region, grant

distribution shall be conducted through a competitive grant award process.

The following table lists the allocation factors and amounts for each region.

Region	Factor	Allocation
Region I New Orleans	.1537939	240,210
Region II Baton Rouge	.1210838	189,120
Region III Thibodaux	.0659078	102,941
Region IV Lafayette	.1537187	240,092
Region V Lake Charles	.0522069	81,542
Region VI Alexandria	.0714394	111,581
Region VII Shreveport	.1235570	192,983
Region VIII Monroe	.0950414	148,445
Region IX Northshore	.0751581	117,389
Region X Jefferson	.0880929	137,592

Regional funding amounts for which applications are not received shall be subject to statewide competitive award to applicants from other regions and/or shall be reallocated among other regions in accordance with formulations consistent with the above factors.

Grant awards shall be for a minimum of \$10,000. Applicable grant maximums are as follows:

- Individual grant awards to applicant jurisdictions of less than 49,000 population shall not exceed \$50,000.
- For a jurisdiction of over 49,000 population, the maximum grant award shall not exceed the ESGP allocation for that jurisdiction's respective region.

Grant specifications, minimum and maximum awards may be revised at DSS's discretion in consideration of individual applicant's needs, total Program funding requests, and available funding. DSS reserves the right to negotiate the final grant amounts, component projects, and local match with all applicants to ensure judicious use of Program funds.

Program applications must meet State ESGP requirements and must demonstrate the means to assure compliance if the proposal is selected for funding. If, in the determination of DSS, an application fails to meet Program purposes and standards, even if such application is the only eligible proposal submitted from a region or subregion, such application may be rejected *in toto*, or the proposed project(s) may be subject to alterations as deemed necessary by DSS to meet appropriate Program standards.

Proposals accepted for review will be rated on a comparative basis based on information provided in grant applications. Award of grant amounts between competing

applicants and/or proposed projects will be based upon the following selection criteria:

- Nature and extent of unmet need for emergency shelter, transitional housing and supportive services in the applicant's jurisdiction C40 points.
- The extent to which proposed activities will address needs for shelter and assistance and/or complete the development of a comprehensive system of services which will provide a continuum of care to assist homeless persons to achieve independent living C30 points.
- The ability of the applicant to carry out the proposed activities promptly C15 points.
- Coordination of the proposed project(s) with available community resources, so as to be able to match the needs of homeless persons with appropriate supportive services and assistance C15 points.

ESGP recipients are required to provide matching funds (including in-kind contributions) in an amount at least equal to its ESG Program funding unless a jurisdiction has been granted an exemption in accordance with Program provisions. The value of donated materials and buildings, voluntary activities and other in-kind contributions may be included with "hard cash" amounts in the calculation of matching funds. A local government grantee may comply with this requirement by providing the matching funds itself, or through provision by nonprofit recipients.

A recipient local government may at its option elect to use up to 2.439 percent of grant funding for costs directly related to administering grant assistance, or may allocate all grant amounts for eligible Program activities. Program rules do not allow the use of ESGP funds for administrative costs of nonprofit subgrantees.

Availability of ESGP funding is subject to HUD's approval of the State's FY 2003 Consolidated Annual Action Plan for Housing and Community Development Programs. No expenditure authority or funding obligations shall be implied based on the information in this notice of funds availability.

Inquiries and comments regarding the 2003 Louisiana Emergency Shelter Grants Program may be submitted in writing to the Office of Community Services, Division of Management and Finance, Box 3318, Baton Rouge, LA 70821, or telephone (225) 342-4583.

Gwendolyn P. Hamilton
Secretary

0301#036

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