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Executive Orders

EXECUTIVE ORDER KBB 06-35

Bond Allocation—East Baton Rouge
Mortgage Finance Authority

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

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2006 (hereafter “the 2006 Ceiling”);

(2) the procedure for obtaining an allocation of bonds under the 2006 Ceiling; and

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

WHEREAS, the East Baton Rouge Mortgage Finance Authority has requested an allocation from the 2006 Ceiling to be used with a program of financing mortgage loans for single family, owner-occupied residences for low and moderate income families throughout the parish of East Baton Rouge, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

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

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2006 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$30,000,000	East Baton Rouge Mortgage Finance Authority	Single Family Mortgage Revenue Bonds

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

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2006, provided that such bonds are delivered to the initial purchasers thereof on or before November 7, 2006.

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

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of

Louisiana, at the Capitol, in the city of Baton Rouge, on this 9th day of August, 2006.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0609#064

EXECUTIVE ORDER KBB 06-36

Bond Allocation—Rapides Finance Authority

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

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2006 (hereafter “the 2006 Ceiling”);

(2) the procedure for obtaining an allocation of bonds under the 2006 Ceiling; and

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

WHEREAS, the Rapides Finance Authority has requested an allocation from the 2006 Ceiling to be used to finance the acquisition, construction, and installation of solid waste disposal or recycling and sewage facilities at the solid-fuel power plant of Cleco Power, LLC, located in the parish of Rapides, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

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

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2006 Ceiling in the amount shown:

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

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

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2006, provided that such bonds are delivered to the initial purchasers thereof on or before December 6, 2006.

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

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 7th day of September, 2006.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0609#065

EXECUTIVE ORDER KBB 06-37

Bond Allocation—Louisiana Local Government
Environmental Facilities and Community
Development Authority

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

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2006 (hereafter "the 2006 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2006 Ceiling; and

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

WHEREAS, the Louisiana Local Government Environmental Facilities and Community Development Authority has requested an allocation from the 2006 Ceiling to be used to finance the acquisition and installation of new equipment for the manufacturing of cotton seed oil at a manufacturing facility located in Lake Providence, parish of East Carroll, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

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

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2006 Ceiling in the amount shown:

Bond Allocation	Name of Issuer	Name of Project
\$2,000,000	Louisiana Local Government Environmental Facilities and Community Development Authority	Hollybrook Cottonseed Processing, LLC

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

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2006, provided that such bonds are delivered to the initial purchasers thereof on or before December 6, 2006.

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

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 7th day of September, 2006.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0609#066

EXECUTIVE ORDER KBB 06-38

Bond Allocation—Sabine Parish Industrial District

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

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2006 (hereafter "the 2006 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2006 Ceiling; and

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

WHEREAS, the Sabine Parish Industrial District has requested an allocation from the 2006 Ceiling to be used to finance the acquisition, construction, and equipping of a pole manufacturing and treating facility to be located at 10020 Highway 483, Converse, parish of Sabine, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

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

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 2006 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$6,600,000	Sabine Parish Industrial District	Kisatchie Treating, LLC

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

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2006, provided that such bonds are delivered to the initial purchasers thereof on or before December 6, 2006.

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

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 7th day of September, 2006.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0609#067

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development Office of the Secretary

Regional Awards and Matching Grant Program (LAC 13:III.Chapter 17)

The Department of Economic Development, Office of the Secretary, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), adopts the following Rule of the Regional Awards and Matching Grant Program, in order to create LAC 13:III.Chapter 17. This Emergency Rule shall become effective on September 10, 2006, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final rule is promulgated in accordance with law, whichever occurs first.

The Department of Economic Development, Office of the Secretary, has found an immediate need, since no such rules exist at this time, to provide rules for the creation and regulation of the Regional Awards and Matching Grant Program in order to provide assistance to eligible non-profit economic development organizations (EDOs) in their comprehensive and strategic marketing and/or recruitment plans for towns, cities, parishes and regions as a site for new Regional Awards and Matching Grant Awards, which will help to successfully secure the location, expansion, creation or retention of businesses for Louisiana and jobs for Louisiana citizens. Without this Emergency Rule the public welfare may be harmed as the result of the failure to enhance the growth and stability of Louisiana's entrepreneurial business and/or industrial environment by making available regions to support this environment; and the state may thereby suffer the loss of business investment and economic development projects which would create or retain jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 17. Regional Awards and Matching Grant Program

§1701. General

A. Act 17 of the 2006 Louisiana Legislature, providing for the general appropriations for the state of Louisiana for fiscal year 2006-07, appropriated \$5,625,000 to the Louisiana Department of Economic Development ("LED" or "Department") for the Regional Awards and Matching Grant Program ("Program"). The following rules are for the purposes of implementation of the Program and to provide funding for projects in accordance with the goals of the Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:

§1703. Program Description

A. The program is designed to provide assistance to eligible economic development organizations in their comprehensive and strategic marketing and/or recruitment plans for towns, cities, parishes and regions as a site for new and/or expanded business development. The program has two objectives:

1. Regional Awards; and
2. Matching Grant Awards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:

§1705. Eligible Participants

A. Eligible applicants for the benefits of this program shall be nonprofit economic development organizations ("EDO") established in accordance with Louisiana law and in good standing in the state of Louisiana. The EDO must have as one of its primary objectives promoting Louisiana to national and world markets for business and industrial location and expansion. Applicants must have federal and state tax identification numbers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:

§1707. Qualifications

A. Eligible applicants may qualify for grants in the manner hereinafter provided under this program through either:

1. Regional Awards that are to be administered through an association of the EDOs acting in concert to promote regional economic development strategies for the region; or through
2. Matching Grants to an EDO or a combination of EDOs from LED for a specific project marketing industrial location and expansion.

B. Under either Regional Awards or Matching Grants, funding the awards must be for implementation of new programs through the fulfillment of deliverables in accordance with the goals and objectives as shall be hereinafter provided.

C. Eligible funding shall be consistent with the examples of eligible funding as provided by LED as an Exhibit to the Cooperative Endeavor Agreements ("CEA") for either the Regional Awards or the Matching Grant Program. Generally, the exhibits to the CEA will provide for funding of core production costs of marketing and promotional activities and may distinguish the availability of allowable recovery for administrative costs between Regional Awards and Matching Grant Program Awards as hereinafter provided.

D. Award Agreements shall be executed and performed in accordance with statutes, rules and Executive Orders as administered by the Louisiana State Division of Administration Office of Contract Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:

§1709. Regional Awards ("Tier 1")

A. Regional Awards shall total 33 percent of the total appropriation of the Louisiana Legislature to this program and shall be allocated to the eight regions of this state in accordance with the map to be provided by LED. The regions will closely approximate the regions of the state presently served by LED regional representatives. Subject to Paragraph C.7 below, each region shall receive such portion of the available amount in accordance with its percentage of population of the state as established by the most recent census of the state. The secretary of LED shall determine the association of the EDOs for each region with which the department will enter into a CEA through which deliverables reflective of the goals and objectives of this program shall be established. The EDO identified by the Regional Association and approved by LED as the fiduciary agent for the region shall be responsible for coordination within the region to provide for the delivery of certain administrative documents. The costs related to the production of these documents are to be paid for using funds provided by Louisiana Economic Development (LED).

B. Each region shall produce the following core deliverables as a minimum: A labor survey, (regional funds may also be used to pay for Synchronist use fees), an inventory of industrial/commercial buildings, an inventory of industrial/commercial building sites, an inventory of industrial parks with available building sites, a comprehensive existing business and industry report (regional overview, major employers, etc.), a comprehensive feature attraction report, a comprehensive new infrastructure report, and all available annual reports from major institutions within the region (colleges, hospitals, etc.). LED, at its sole discretion, may also require additional deliverables from any region. The balance of regional funds available shall be spent based on a written plan submitted to and approved by LED. This plan will be approved by the issuance and execution of a Cooperative Endeavor Agreement which will be drafted by LED after submission of a Regional Award application.

C. At a minimum, each regional association shall demonstrate the following to the secretary of LED:

1. that its core responsibility is to market and promote the recruitment of new and diversified businesses in accordance with a regional marketing plan;
2. that it will act in a fiduciary manner for the EDOs of the region;
3. that it has the capacity to administer the Cooperative Endeavor Agreements (CEAs) for the region;
4. that it has the capacity to act as a fiscal agent for the funds made available to the region in accordance with the CEA;
5. that it is constituted by EDOs representing a majority of the parishes and a majority of the population in the region;
6. that the terms of agreement through which the regional association operates provide for participation by the EDO of each parish of the region through rotation of duties and responsibilities in the administration of the deliverables, goals, objectives and funding of the CEA between the association and LED;

7. that it is acting to market and promote regional development in accordance with a Regional Marketing Plan that is either established by the association or is adoptive of the strategic marketing plans developed by the EDOs comprising the association; and

8. notwithstanding population percentages for each region, the minimum funding for any region is \$150,000 and the maximum amount of funding for any region is \$500,000.

D. LED and each regional association shall enter into agreements that shall include deliverables, goals and objectives for projects to be funded by the regional association for eligible EDOs in the region. In addition to deliverables, goals and objectives and such other necessary terms and conditions as may be provided by the CEA between LED and the regional association, projects shall be funded only upon providing the following:

1. a detailed budget and complete description of fund use;
2. demonstration that regional marketing initiatives are being addressed through the funding;
3. use of no more than 20 percent of the funding for eligible administrative costs;
4. data base, labor surveys, real estate information, industrial site and building surveys and selection and other empirical data obtained or used in connection with the award shall be provided to the LED for its research and data collection use;
5. the secretary of LED may vary the terms and conditions of the CEA with regional associations including deliverables, goals and objectives and exhibits in order to accomplish necessary and appropriate marketing and promotion of business and industrial development and redevelopment in those regions including parishes of the state most affected by the hurricanes of 2005; and
6. the agreement shall provide for submission of projects meeting the goals and objectives of the agreement by the regional association for advance approval by LED and for funding of the project by LED upon completion of the project and the submission by the regional association of the deliverables in accordance with the goals and objectives of the agreement.

E. Tier 1—LED Regional Funds—Eligible Uses

Tier 1—LED Regional Funds—Eligible Uses
Examples of eligible projects to be included by exhibit to the cooperative endeavor agreements between led and the regional economic development associations:
<ul style="list-style-type: none"> • Specific, time-limited research studies.
<ul style="list-style-type: none"> • Up to 20 percent of funds may be used for administrative costs (e.g. salaries, benefits etc.)
<ul style="list-style-type: none"> • Promotion through inclusion in computer databases to targeted audiences such as relocation consultants.
<ul style="list-style-type: none"> • Direct mail pieces to targeted audiences such as relocation consultants (does not include postage).
<ul style="list-style-type: none"> • Trade show exhibit fees and/or registration fees for out-of-state events that support national or international strategic marketing events. Costs may include booth design, giveaway items or other show specific costs. No individual participant registration, travel or per diem costs.
<ul style="list-style-type: none"> • Production of printed materials, such as brochures and inserts.
<ul style="list-style-type: none"> • Production of slide presentations, videotapes, DVDs and CD ROMs intended for dissemination to relocation consultants, corporate executives, or other industry or business representatives involved in expansion or relocations activities.
<ul style="list-style-type: none"> • Advertising through mass media, including newspaper, magazines, radio, television, Internet and billboards.

Tier 1—LED Regional Funds—Eligible Uses
<ul style="list-style-type: none"> Public relations expenses related to the production of an event, such as production of media kits, media training, ongoing media contact, on-site coordination of media, set-up of interview area and media room, and costs associated with special broadcast media set-up requirements.
<ul style="list-style-type: none"> Design of an Internet web site, not for ongoing Internet access or website hosting costs.
<ul style="list-style-type: none"> Familiarization tours for site location consultants. To be used for consultant related expenses only, and may include consultant travel, meals, and lodging.

F. Tier 1—LED Regional Funds—Ineligible Uses

Tier 1—LED Regional Funds—Ineligible Uses
Examples of ineligible projects to be included by exhibit to the cooperative endeavor agreements between led and the regional economic development associations. Examples of ineligible projects or expenses:
<ul style="list-style-type: none"> Salaries, benefits or administrative fees exceeding 20 percent of funds provided. Entertainment. Overhead expenses (office space, furniture, fixtures, equipment, etc.). Travel, food, beverages, and/or lodging for any persons. This includes volunteers and paid staff of economic development organizations. Equipment purchases/rentals. Beauty pageants, parades, school advertising, local promotions, sponsorships and things of a similar nature. Promotional items, unless part of an out-of-state marketing activity. Stationery, toll-free numbers, membership solicitation literature. Unreasonable and excessive agency costs that exceed 25 percent of the total cost for printed material (Agency costs are costs not billed directly from prepress, printing, illustrations or photography by vendors.). Unreasonable or excessive technical costs. Construction costs. Activities or materials that violate the law. Internet access or web site hosting costs. Organization membership directories. Trade show/expo hosting or sponsorships. Alcoholic beverages. Infrastructure such as land, roads, utilities or buildings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:

§1711. Matching Grant Awards ("Tier 2")

A. The remainder of funds available shall be for Matching Grant Awards. Any eligible EDO or a combination of eligible EDOs may apply to LED for a Matching Grant Award which shall include deliverables, goals and objectives for the marketing and promotion of business and industrial development consistent with regional and statewide strategic marketing for such development. Matching Grant applications demonstrating the use or development of new or innovative programs for the marketing and promotion of business and industrial development shall be given a preference in determining suitability for the Matching Grant.

B. The award agreement may provide such terms and conditions as are necessary to the fulfillment of the purposes of the award and shall include the following terms and conditions:

- the award may not exceed \$100,000;
- the award must be matched dollar for dollar or its equivalents by the EDO or combination of EDOs making application for the award;

3. a detailed budget and complete description of fund use;

4. data, surveys and/ or other empirical information obtained or used in connection with the award shall be provided to the LED for its research and data collection use; and

5. the secretary of LED may vary the terms and conditions of the award including deliverables, goals and objectives and exhibits in the parishes of the state most affected by the hurricanes of 2005 so as to use such grants or awards to achieve a stabilization of resources for the EDOs in the affected areas.

C. Tier 2—LED Matching Grant Funds—Eligible Uses

Tier 2—LED Matching Grant Funds—Eligible Uses
Examples of eligible projects to be included by exhibit to the cooperative endeavor agreements between led and the direct grant recipients:
<ul style="list-style-type: none"> Specific, time-limited research studies. Promotion through inclusion in computer databases to targeted audiences such as relocation consultants. Direct mail pieces to targeted audiences such as relocation consultants (does not include postage). Trade show exhibit fees and/or registration fees for out-of-state events that support national or international strategic marketing events. Costs may include booth design, giveaway items or other show specific costs. No individual participant registration, travel or per diem costs. Production of printed materials, such as brochures and inserts. Production of slide presentations, videotapes, DVDs and CD ROMs intended for dissemination to relocation consultants, corporate executives, or other industry or business representatives involved in expansion or relocations activities. Advertising through mass media, including newspaper, magazines, radio, television, Internet and billboards. Public relations expenses related to the production of an event, such as production of media kits, media training, ongoing media contact, on-site coordination of media, set-up of interview area and media room, and costs associated with special broadcast media set-up requirements. Design of an Internet web site, not for ongoing Internet access or website hosting costs. Familiarization tours for site location consultants. To be used for consultant related expenses only, and may include consultant travel, meals, and lodging.

D. Tier 2—LED Matching Grant Funds—Ineligible Uses

Tier 2—LED Matching Grant Funds—Ineligible Uses
Examples of ineligible projects to be included by exhibit to the cooperative endeavor agreements between led and the direct grant recipients. Examples of ineligible projects or expenses:
<ul style="list-style-type: none"> Salaries, benefits or administrative fees. Entertainment. Overhead expenses (office space, furniture, fixtures, equipment, etc.). Travel, food, beverages, and/or lodging for any persons. This includes volunteers and paid staff of economic development organizations. Equipment purchases/rentals. Beauty pageants, parades, school advertising, local promotions, sponsorships and things of a similar nature. Promotional items, unless part of an out-of-state marketing activity. Stationery, toll-free numbers, membership solicitation literature. Unreasonable and excessive agency costs that exceed 25 percent of the total cost for printed material (Agency costs are costs not billed directly from prepress, printing, illustrations or photography by vendors.). Unreasonable or excessive technical costs.

Tier 2—LED Matching Grant Funds—Ineligible Uses
• Construction costs.
• Activities or materials that violate the law.
• Internet access or web site hosting costs.
• Organization membership directories.
• Trade show/expo hosting or sponsorships.
• Alcoholic beverages.
• Infrastructure such as land, roads, utilities or buildings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:

Michael J. Olivier
Secretary

0609#049

DECLARATION OF EMERGENCY

**Department of Economic Development
Office of the Secretary
Office of Business Development
Louisiana Economic Development Corporation**

Workforce Development and Training Program
(LAC 13:III.303 and 311)

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), amends and supplements the following Rules of the Workforce Development and Training Program, in order to amend and supplement portions of LAC 13, Part III, Chapter 3. This Emergency Rule shall become effective on September 10, 2006, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, or until a final rule is promulgated in accordance with law, whichever occurs first.

The Department of Economic Development, the Office of the Secretary, the Office of Business Development, and the Louisiana Economic Development Corporation, have found an immediate need to amend and supplement the rules for the regulation of the Workforce Development and Training Program in order to provide in Section 303 thereof a definition of the term "Quality Jobs"; and to provide in Section 311, Paragraph B.1, that the creation of jobs meeting Louisiana standards for Quality Jobs or the training of employees holding jobs meeting Louisiana standards for Quality Jobs satisfies the criteria for Awards under this Program. Without these Emergency Rules the public welfare may be harmed as the result of the failure to enhance the growth and stability of Louisiana's entrepreneurial business and/or industrial environment by making available Awards under this Program to businesses creating such Quality Jobs and/or training employees holding such Quality Jobs; and the state may thereby suffer the loss of business investment

and economic development projects which would create or retain jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 3. Workforce Development and Training Program

§303. Definitions

* * *

Quality Jobs—employed positions which are not temporary positions meeting the Louisiana standards for Quality Jobs as provided by the "Louisiana Quality Jobs Program Act", LA. R. S. 51:2451 through 2462, as codified in the Louisiana Administrative Code, Title 13, Part I, Chapter 11, Sections 1101 through 1131, as amended.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq., 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January, 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:241 (February 2000), amended by the Development of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development, Louisiana Economic Development Corporation, LR 32:

§311. Criteria

A. - A.4.

B. Pre-Employment, Upgrade and On-the-Job Training

1. Applicants must create in this state at least 10 net new Full-Time Permanent Jobs or at least 10 net new jobs meeting Louisiana standards for Quality Jobs, unless upgrade training is involved. Upgrade training must be provided to a minimum of 10 full-time permanent employees or to a minimum of 10 employees holding jobs meeting Louisiana standards for Quality Jobs.

2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq., 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:242 (February 2000), amended by the Development of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development, Louisiana Economic Development Corporation, LR 32:

Michael J. Olivier
Secretary

0609#047

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs
(LAC 28:IV.505)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Scholarship/Grant programs (R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)).

This Emergency Rule is necessary to implement changes to the Scholarship/Grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LASFAC has determined that this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective August 16, 2006, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG0775E)

Title 28

EDUCATION

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

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

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

A.1 - 3. ...

B. Deadline for Payment for the Academic Year (College) Immediately Following High School Graduation

1. Beginning with the 2007-2008 Academic Year (College), to be determined eligible for payment of TOPS awards for the academic year (college) immediately following the academic year (high school) of high school graduation, students must submit the initial FAFSA or on-line application so that it is received no later than the July 1 immediately following the academic year (high school) of graduation.

2. Beginning with the 2007-2008 academic year (college), students will be eligible to receive the full benefits of a TOPS award as provided in §701.E beginning with the academic year (college) immediately after the student's one year anniversary of high school graduation if their initial FAFSA or on-line application is received after the July 1 immediately following the academic year (high school) of high school graduation and no later than the final deadline set forth in Subsection C, below, and the student has met the requirements for continuing eligibility.

3. Examples

a. A 2006-2007 academic year (high school) high school graduate, who enrolls in the fall semester of 2007, will be eligible to receive the full benefits of a TOPS award beginning the fall semester of 2007 if his initial FAFSA or on-line application is received on or before July 1, 2007.

b. A 2006-2007 academic year (high school) high school graduate, who enrolls during the 2007-2008 academic year, will be eligible to receive the full benefits of a TOPS award beginning the fall semester of 2008 if his initial FAFSA or on-line application is received after July 1, 2007 and no later than July 1, 2008, and if he has met the requirements for continuing eligibility.

C. Final Deadline for Full TOPS Award

1.a. Except as provided below, through the 2006-2007 academic year (college), in order to receive the full benefits of a TOPS award as provided in §701.E, the final deadline for receipt of a student's initial FAFSA or the on-line application is July 1 immediately prior to the academic year (college) he first enrolls as a first-time freshman in an eligible college or university.

b. Beginning with the 2007-2008 academic year (college), in order to receive the full benefits of a TOPS award as provided in §701.E, the final deadline for receipt of a student's initial FAFSA or on-line application is July 1 immediately prior to the academic year (college) immediately following the one year anniversary of high school graduation.

c.i. Students who graduated from high school during the 2003-2004 academic year (high school) and enrolled as a first-time freshman in an eligible college or university during the 2004-2005 academic year (college) are eligible to receive the full benefits of a TOPS award as provided in §701.E beginning:

(a) with the 2004-2005 academic year (college) if their initial FAFSA or on-line application was received no later than October 29, 2004;

(b) with the 2005-2006 academic year (college) if their initial FAFSA or on-line application was received after October 29, 2004, and no later than July 1, 2005, and, if the student enrolled as a full time student during the 2004-2005 academic year (college), the student has met the requirements for continuing eligibility.

ii. Students who graduated from high school during the 2003-2004 academic year (high school) and enrolled as a first-time freshman in an eligible college or university beginning the fall semester of 2005 are eligible to receive the full benefits of a TOPS award as provided in §701.E beginning the fall semester of 2005 if their initial FAFSA or on-line application was received no later than July 1, 2005.

iii. Students who graduated from high school during the 2003-2004 academic year (high school) and enrolled as a first-time freshman in an eligible college or university during either the 2004-2005 academic year (college) or fall semester of 2005 are eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2005, if their initial FAFSA or on-line application was received after July 1, 2005 and no later than October 31, 2005, and, if the student enrolled as a full time student during the 2004-2005 academic year (college), the student has met the requirements for continuing eligibility.

d.i. Students who graduated from high school during the 2004-2005 academic year (high school) and enrolled as a first-time freshman in an eligible college or university during the 2005-2006 academic year (college) will be eligible to receive the full benefits of a TOPS award as provided in §701.E beginning:

(a). with the 2005-2006 academic year (college) if their initial FAFSA or on-line application is received no later than October 31, 2005;

(b). with the 2006-2007 academic year (college) if their initial FAFSA or on-line application is received after October 31, 2005, and no later than July 1, 2006, and, if the student enrolled as a full time student during the 2005-2006 academic year (college), the student met the requirements for continuing eligibility.

ii. Students who graduated from high school during the 2004-2005 academic year (high school) and enrolled as a first-time freshman in an eligible college or University beginning the fall semester of 2006 are eligible to receive the full benefits of a TOPS award as provided in §701.E beginning the fall semester of 2006 if their initial FAFSA or on-line application was received no later than July 1, 2006.

iii. Students who graduated from high school during the 2004-2005 academic year (high school) and enrolled as a first-time freshman in an eligible college or University during either the 2005-2006 Academic Year (College) or fall semester of 2006 are eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2006, if their initial FAFSA or on-line application was received after July 1, 2006, and no later than October 30, 2006, and, if the student enrolled as a full time student during the 2005-2006 academic year (college), the student met the requirements for continuing eligibility.

e.i. Students who graduate from high school during the 2005-2006 academic year (high school) and enroll as a first-time freshman in an eligible college or university during the 2006-2007 academic year (college) will be eligible to receive the full benefits of a TOPS award as provided in §701.E beginning:

(a). with the 2006-2007 academic year (college) if their initial FAFSA or on-line application is received no later than October 30, 2006;

(b). with the 2007-2008 academic year (college) if their initial FAFSA or on-line application is received after October 30, 2006, and no later than July 1, 2007, and, if the student enrolled as a full time student during the 2006-2007 academic year (college), the student met the requirements for continuing eligibility.

ii. Students who graduated from high school during the 2005-2006 academic year (high school) and enrolled as a first-time freshman in an eligible college or university beginning the fall semester of 2007 are eligible to receive the full benefits of a TOPS award as provided in §701.E beginning the fall semester of 2007 if their initial FAFSA or on-line application was received no later than July 1, 2007.

iii. Students who graduate from high school during the 2005-2006 academic year (high school) and enroll as a first-time freshman in an eligible college or university during either the 2006-2007 academic year (college) or the fall semester of 2007 are eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2007, if their initial FAFSA or on-line application is received after July 1, 2007, and no later than October 29, 2007, and, if the student enrolled as a full time student during the 2006-2007 academic year (college), the student met the requirements for continuing eligibility.

2. Returning Students

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

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

3. Examples

a. A 2003-2004 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2004 or spring semester of 2005, will be eligible to receive the full benefits of a TOPS award beginning with the first semester of enrollment as a full-time student if his initial FAFSA or on-line application is received no later than July 1, 2004.

b. A 2003-2004 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2004 or spring semester of 2005, will be eligible for his full TOPS award beginning with the first semester of enrollment as a full-time student if his initial FAFSA or on-line application is received after July 1, 2004, but on or before October 29, 2004.

c. A 2003-2004 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2004 or spring semester of 2005, will be eligible for his full TOPS award beginning with the fall semester of 2005 if his initial FAFSA or on-line application is received after October 29, 2004, but on or before July 1, 2005, and if he has met the requirements for continuing eligibility.

d. A 2003-2004 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2005, will be eligible to receive the full benefits of a TOPS award if his initial FAFSA or on-line application is received no later than July 1, 2005.

e. A 2003-2004 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2005, will be eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2005 if his initial FAFSA or on-line application is received after July 1, 2005, but on or before October 31, 2005.

f. A 2003-2004 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2005, will not be eligible for a TOPS award if his initial FAFSA or on-line application is received after October 31, 2005.

g. A 2004-2005 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2005 or spring semester of 2006, will be eligible to receive the full benefits of a TOPS award beginning with the first semester of

enrollment as a full-time student if his initial FAFSA or on-line application is no received later than July 1, 2005.

h. A 2004-2005 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2005 or spring semester of 2005, will be eligible for his full TOPS award beginning with the first semester of enrollment as a full-time student if his initial FAFSA or on-line application is received after July 1, 2005, but on or before October 31, 2005.

i. A 2004-2005 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2005 or spring semester of 2006, will be eligible for his full TOPS award beginning with the fall semester of 2006 if his initial FAFSA or on-line application is received after October 31, 2005, but on or before July 1, 2006, and if he has met the requirements for continuing eligibility.

j. A 2004-2005 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2006, will be eligible to receive the full benefits of a TOPS award if his initial FAFSA or on-line application is received no later than July 1, 2006.

k. A 2004-2005 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2006, will be eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2006 if his initial FAFSA or on-line application is received after July 1, 2006, but on or before October 30, 2006.

l. A 2004-2005 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2006, will not be eligible for a TOPS award if his initial FAFSA or on-line application is received after October 30, 2006.

m. A 2005-2006 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2006 or spring semester of 2007, will be eligible to receive the full benefits of a TOPS award beginning with the first semester of enrollment as a full-time student if his initial FAFSA or on-line application is received no later than July 1, 2006.

n. A 2005-2006 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2006 or spring semester of 2007, will be eligible for his full TOPS award beginning with the first semester of enrollment as a full-time student if his initial FAFSA or on-line application is received after July 1, 2006, but on or before October 30, 2006.

o. A 2005-2006 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2006 or spring semester of 2007, will be eligible for his full TOPS award beginning with the fall semester of 2007 if his initial FAFSA or on-line application is received after October 30, 2006, but on or before July 1, 2007, and if he has met the requirements for continuing eligibility.

p. A 2005-2006 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2007, will be eligible to receive the full benefits of a TOPS award if his

initial FAFSA or on-line application is received no later than July 1, 2007.

q. A 2005-2006 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2007, will be eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2007 if his initial FAFSA or on-line application is received after July 1, 2007, but on or before October 29, 2007.

r. A 2005-2006 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2007, will not be eligible for a TOPS award if his initial FAFSA or on-line application is received after October 29, 2007.

s. A 2006-2007 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2007 or spring semester of 2008, will be eligible to receive the full benefits of a TOPS award beginning with the first semester of enrollment as a full-time student if his initial FAFSA or on-line application is received no later than July 1, 2007.

t. A 2006-2007 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2007 or spring semester of 2008, will be eligible to receive his full TOPS award beginning with the fall semester of 2008 if his initial FAFSA or on-line application is received after July 1, 2007, but on or before July 1, 2008, and if he has met the requirements for continuing eligibility.

u. A 2006-2007 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2008, will be eligible to receive the full benefits of a TOPS award if his initial FAFSA or on-line application is received no later than July 1, 2008.

v. A 2006-2007 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2008, will be eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2008 if his initial FAFSA or on-line application is received after July 1, 2008, but on or before October 29, 2008.

w. A 2006-2007 academic year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2008, will not be eligible for a TOPS award if his initial FAFSA or on-line application is received after October 29, 2008.

x. A student, who enrolls for the first time as a full time student at an accredited out-of-state college and subsequently returns to Louisiana and enrolls as a full-time student in an eligible college or university for the fall semester of 2006, will be eligible for his TOPS award beginning with the fall semester of 2007 if his initial FAFSA or the on-line application is received no later than July 1, 2007.

4. - 5. ...

D. Final Deadlines for Reduced Awards

1. If an application for an initial award under this Chapter is received after the final deadline provided in §503.C above, but not later than 60 days after that deadline, the time period of eligibility for the award shall be reduced by one semester, two quarters, or an equivalent number of

units at an eligible institution which operates on a schedule based on units other than semesters or quarters.

2. If an application for an initial award under this Chapter is received more than 60 days after the final deadline provided in §503.C above, but not later than 120 days after that deadline, the time period of eligibility for the award shall be reduced by two semesters or three quarters, or an equivalent number of units at an eligible institution which operates on a schedule based on units other than semesters or quarters.

D.3. - G. ...

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

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

George Badge Eldredge
General Counsel

0608#003

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Expedited Permit Processing Program (LAC 33:I.Chapter 18)(OS073E1)

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

Emergency Rule OS073E, which was effective on July 31, 2006, and published in the *Louisiana Register* on August 20, 2006, is hereby rescinded and is being reissued with amendments. This Emergency Rule, OS073E1, amends the original rule to further clarify the requirements of this new expedited permit processing program.

This Emergency Rule provides a program for expedited permit processing and implementation of the associated expedited permit processing fees authorized by Acts 586 and 779 of the 2006 Regular Legislative Session. These Acts allow for expedited processing of a permit at no additional cost to the department for overtime pay. This Emergency Rule will allow the department to implement a pilot program format to gather the information needed to draft a final rule. Specifically, the department will be able to evaluate the environmental and public health benefits and the social and economic costs of expedited permit processing and the associated fees. Moreover, rapid implementation of Acts 586 and 779 will allow the expedited permit processing program to begin immediately, enhancing economic growth. Many companies consider environmental permitting timelines in

determining where to locate a proposed facility. Expedited permit processing allows companies to act more quickly in response to market demands and conditions.

This Emergency Rule is effective on September 11, 2006, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning OS073E1 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures Chapter 18. Expedited Permit Processing Program §1801. Scope

A. This Chapter establishes a program to expedite the processing of permits, modifications, licenses, registrations, or variances for environmental permit applicants who may request such services. Expedited processing of a permit, modification, license, registration, or variance is an exercise of the discretion of the administrative authority and is subject to the availability of resources needed in order to process the permit, modification, license, registration, or variance.

B. Eligibility

1. An application for an initial permit or permit modification necessary for new construction as required by the Environmental Quality Act or regulation is eligible for expedited permit processing.

2. An application for permit renewal and/or reconciliation is not eligible for expedited processing pursuant to the provisions of this Chapter unless it is associated with new construction; results in new permanent jobs; includes increases in production which benefit the national, state, or local economy; or provides a direct benefit to the environment.

3. The applicant's failure to pay any outstanding fees owed to the department may be considered grounds for denial of a request for expedited permit processing.

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

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

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

§1803. Procedures

A. Requests for expedited permit processing shall be submitted using the approved form. The approved form is available on the official website for the department. Hard copies may be obtained from the Office of Environmental Services, Environmental Assistance Division, Box 4313, Baton Rouge, LA 70821-4313.

B. Within 10 working days after receipt of a request for expedited processing of any permit, modification, license, registration, or variance, the administrative authority shall issue a decision to grant or deny the expedited processing request.

C. Requests for Additional Information

1. If at any time during the review process of an application the administrative authority determines that additional information is necessary, the administrative authority shall notify the applicant and require a response from the applicant within a reasonable, specified time.

2. The applicant shall respond to the request for additional information within the time specified by the administrative authority. Such a response shall contain all information required by the administrative authority.

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

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

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

§1805. Fees

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

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

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

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

B. In the event that the administrative authority ceases processing a permit, modification, license, registration, or variance in accordance with LAC 33:I.1803.C.3 or Paragraph A.3 of this Section, a fee will be charged for every overtime hour or portion thereof that a department employee or contractor worked on expedited processing of the subject permit, modification, license, registration, or variance.

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

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

§1807. Invoicing and Failure to Pay

A. An invoice for the expedited permit processing fee shall be transmitted to the applicant after the administrative authority has made a decision to grant or deny the permit, modification, license, registration, or variance.

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

C. A permit appeal, whether by the applicant or a third party, shall not stay the requirement to pay the expedited permit processing fee.

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

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

§1809. Public Notice and Availability of Records

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

1. The notice of expedited permit processing shall be provided on the official website for the department.

2. For draft or proposed permit actions subject to public notice requirements under other regulations or program requirements, such public notice shall indicate that the draft or proposed permit was processed under the expedited permit processing provisions of this Chapter.

B. Contents of the Notice. The notice shall contain the name of the applicant/permittee, the agency interest number, the parish in which the facility is physically located, the environmental media involved, the date the request for expedited processing was received, and the date of the decision to approve or deny the request for expedited processing.

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

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

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

Mike D. McDaniel, Ph.D.
Secretary

0609#039

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary Legal Services Division

New or Revised Emissions Estimation Methods (LAC 33:III.501)(AQ240E6)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), which allows the Department of Environmental Quality to use emergency procedures to establish rules, and under the authority of R.S. 30:2011, the secretary of the department hereby declares that an emergency action is necessary to implement rules concerning the use of new or revised emissions estimation methods for annual compliance certifications required by LAC 33:III.507.H.

This is a renewal and revision of Emergency Rule AQ240E5, which was effective on April 22, 2006, and published in the *Louisiana Register* on May 20, 2006. This renewal of the Emergency Rule has been amended to reflect the substantive changes made to the proposed rule (AQ240S, published on pages 1371-1372 of the July 20, 2006, *Louisiana Register*) that will promulgate this regulation. This Emergency Rule clarifies requirements set forth in LAC 33:III.919, concerning emissions inventory, and LAC 33:III.507.H, concerning annual compliance certifications. LAC 33:III.919.C requires that emissions reported in the emissions inventory shall be calculated using the best available information.

The department realizes that the Clean Air Act (42 U.S.C. §7430) requires EPA to periodically review AP-42 factors and that such emission factors may change upwards or downwards due to receipt of improved data.

The failure to adopt this Rule on an emergency basis (i.e., without the delays for public notice and comment) would result in imminent peril to the public welfare. The air regulations require that permittees use the latest version of any AP-42 factor used to calculate emissions reported on an annual emissions inventory. For some facilities, this will result in a change in the calculation of emissions from levels that were previously in compliance with permit limits to levels that exceed those permit limits. Those facilities that have been reporting emissions in compliance with their permits may now be reporting emissions that exceed permit limits, even though their actual emissions have not changed. As a result, these facilities face potential enforcement actions, including substantial civil penalties. Some such facilities may elect to reduce or cease operations, which would have severe economic consequences for the firms involved, as well as their employees, suppliers, and customers. Adding LAC 33:III.501.C.11 allows the department to review changes in emission factors on a case-by-case basis prior to any actions taken by the department.

This Emergency Rule is effective on August 20, 2006, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning AQ240E6 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Baratavia Street, Lockport LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§501. Scope and Applicability

A. - C.10. ...

11. Emissions shall be calculated in accordance with LAC 33:III.919.C.

12. Emissions estimation methods set forth in the Compilation of Air Pollution Emission Factors (AP-42) and other department-accepted estimation methods may be promulgated or revised. As a result of new or revised AP-42 emission factors for sources or source categories and/or department-accepted estimation methods, changes in calculated emissions may occur. Changes in reported emission levels as required by LAC 33:III.919.B.2.a due solely to revised AP-42 emission factors or department-accepted estimation methods do not constitute violations of the air permit; however, the department may evaluate changes in emissions on a case-by-case basis, including but not limited to, assessing compliance with other applicable Louisiana air quality regulations.

13. If the emission factors for any source or source category used in preparing the Annual Emission Statement required by LAC 33:III.918 and 919 differ from the emission factors used in the current air permit such that resulting "calculated" emissions reflect a change as defined in LAC 33:III.919.B.2.a, notification of the use of updated emission factors shall be included in the Title V Annual Certification, as specified in the affected permit. The notification shall include the old and new emission factor reference source and the date, volume, and edition (if applicable); the raw data for the reporting year used for that source category calculation; and applicable emission point and permit numbers that are impacted by such change. The notification shall include any other explanation, as well as the facility's intended time frame to reconcile the emission limits in the applicable permit. The department reserves the right to reopen a permit pursuant to LAC 33:III.529.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445

(November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division LR 31:2436 (October 2005), LR 32:

Mike D. McDaniel, Ph.D.
Secretary

0608#002

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 Procedures 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 August 25, 2006, 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 amend this Rule to comply with Act No. 309 of 2005 which mandates trainers to obtain worker's compensation insurance policies from the Louisiana Horsemen's Benevolent and Protective Association, or a waiver thereof.

**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 by the Louisiana Horsemen's Benevolent and Protective Association, or a waiver thereof, 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. ...

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 29:1820 (September 2003), LR 32:

Charles A. Gardiner III
Executive Director

0609#026

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Board of Medical Examiners**

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

Editor's Note: This Emergency Rule is being repromulgated correct a typographical error. This Rule was originally printed in the August 20, 2006 edition of the *Louisiana Register* on pages 1402-1403. The effective date of this Emergency Rule is July 21, 2006.

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), the Louisiana Medical Practice Act, R.S. 37:1270(B), 1275(B), and the Louisiana Health Emergency Powers Act, R.S. 29:769(E), as amended by Act No. 207 of the 2006 Regular Session of the Louisiana Legislature, the Louisiana State Board of Medical Examiners has determined that emergency action is necessary to facilitate the issuance of emergency temporary permits so that physicians and allied health care practitioners from other states may provide our citizens with emergency medical services during and following a public health emergency, as declared by the Governor of this state. This emergency rule creates the process for issuing emergency temporary permits to physicians and allied health care providers who hold a current and unrestricted license or other authority to practice their profession in another state, and who are in good standing in such jurisdictions. Emergency action is necessary to adequately prepare for the 2006 hurricane season, which commenced on June 1, 2006. Immediate implementation of this rule is in the public's best interest in the event that a public health emergency is declared by the Governor prior to the final promulgation of the rule in accordance with the provisions of the Administrative Procedure Act, R.S. 49:951 et seq. This rule, which was adopted by the Board and became effective as of July 21, 2006, shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning this emergency rule you may contact Robert L. Marier, M.D., Executive Director at (504) 568-6820. This Emergency Rule, along with appropriate contact and processing information for applications, is available on the internet at www.lsbme.louisiana.gov (Emergency Temporary Licensure), and may be obtained from the Board office from 8:30 AM until 4:30 PM Monday through Friday, 630 Camp Street, New Orleans, LA 70130. Copies of this Emergency Rule may also be requested by telephone (504) 568-6820.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 3. Physicians

Subchapter H. Restricted Licensure, Permits

§412. Emergency Temporary Permits

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

Allied Health Care Practitioner—an individual, other than a physician, authorized by the board to practice in this state as an athletic trainer pursuant to R.S. 37:3301 through 3312; as a clinical exercise physiologist pursuant to R.S. 37:3421 through 3433; as a clinical laboratory scientist pursuant to R.S. 37:1311 through 1329; as a midwife pursuant to R.S. 37:3240 through 3257; as an occupational therapist or occupational therapy assistant pursuant to R.S. 37:3001 through 3014; as a perfusionist pursuant to R.S. 37:1331 through 37:1343; as a physician assistant pursuant to R.S. 37:1360.21 through 1360.38; as a podiatrist pursuant to R.S. 37:611 through 628; as a polysomnographic technologist or polysomnographic technician pursuant to R.S. 37:2861 through 2870; as a private radiological technologist pursuant to R.S. 37:1292; or as a respiratory therapist or respiratory therapy assistant pursuant to R.S. 37:3351 through 3361.

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

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

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

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

1. holds a current, unrestricted license in good standing issued by the licensing authority of another state to practice the profession for which the permit is sought; and
2. presents or causes to be presented to the board in advance of providing medical services:
 - a. indisputable personal identification;
 - b. a copy of his or her professional license or other information deemed satisfactory by the board on which to verify out-of-state licensure;
 - c. a completed application and/or such information as may be required by the board; and
 - d. as to an allied health care practitioner required by the laws of this state to practice under physician supervision, designation of a physician who will serve in such capacity.

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

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

E. A physician or allied health care practitioner shall visibly display a permit issued under this Section, or such other identifying information as the board may specify, in

plain view on his or her person at all times while exercising the privileges of such permit.

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

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

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

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

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

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

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

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

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

Robert L. Marier, M.D.
Executive Director

0609#073

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Pharmacy

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

The Louisiana Board of Pharmacy is exercising the emergency provisions of the Administrative Procedure Act, specifically at LRS 49:953.B, to repeal LAC 46:LIII.513 and to amend various portions of LAC 46:LIII.705. The Emergency Rule is necessary to allow the Board of Pharmacy to amend the Rule by removing the requirement

that pharmacy interns earn their practical experience hours under a certified pharmacist preceptor as opposed to a pharmacist who is not a certified preceptor.

The board created its Certified Pharmacist Preceptor Program in 2004, in partnership with the two colleges of pharmacy in the state. The educational partners developed the curriculum for board approval, following which they sponsored a number of training seminars around the state for pharmacists interested in mentoring pharmacy interns. The board implemented a progressive transition plan that called for all pharmacy interns to be under the supervision of certified pharmacist preceptors no later than January 2007. However, there are an insufficient number of certified pharmacist preceptors available for the number of pharmacy interns in both colleges of pharmacy. Further, since one of the colleges of pharmacy has withdrawn from the program, the board finds it necessary to terminate the program and repeal the requirement for certification of pharmacist preceptors.

A delay in promulgating the Rule will result in pharmacy interns unable to earn their required number of hours of practical experience due to the shortage of certified pharmacist preceptors. In turn, that will prevent the timely licensure of pharmacy interns, which will only aggravate the existing shortage of pharmacists in this state. Thus, the board has determined that this Emergency Rule is necessary to prevent imminent peril to the public health, safety, and welfare. The declaration of emergency is effective September 1, 2006, and shall remain in effect for the maximum time period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever shall first occur.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 5. Pharmacists

§513. Certified Pharmacist Preceptor Program

Repealed.

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

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

Chapter 7. Pharmacy Interns

§705. Practical Experience

A. - B. ...

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

C. - C.1. ...

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

b. ...

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

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

3.a. - 5....

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2086 (October 2003), effective January 1, 2004, amended LR 32:636 (April 2006), amended LR 32:

Malcolm J. Broussard
Executive Director

0609#013

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

Disproportionate Share Hospital Payment Methodologies Non-Rural Community Hospitals (LAC 50:V.301, 303 and 308)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:V.308 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 promulgated a Rule to adopt the provisions governing the disproportionate share payment methodologies for hospitals in May of 1999 (*Louisiana Register*, Volume 25, Number 5). The May 20, 1999 Rule was later amended to change the criteria used to define rural hospitals and to clarify the policy governing final payments and adjustments (*Louisiana Register*, Volume 29, Number 1). The department adopted an Emergency Rule to repeal and replace all provisions governing disproportionate share hospital payments in compliance with Act 491, Act 1024 and Senate Concurrent Resolution 94 of the 2001 Regular Session and Senate Concurrent Resolution 27 of the 2002 Regular Session (*Louisiana Register*, Volume 29, Number 6).

The June 20, 2003 Emergency Rule has been subsequently amended to revise: 1) the qualifying criteria and the payment methodology for disproportionate share payments to small rural hospitals (*Louisiana Register*, Volume 29, Number 9); 2) designated provisions of the disproportionate share payment methodologies as directed by Act 182 of the 2005 Regular Session (*Louisiana Register*, Volume 31, Number 7); and 3) the definition of a rural hospital as directed by Act 323 of the 2005 Regular Session (*Louisiana Register*, Volume 31, Number 9). The June 2003 Emergency Rule was further amended to: 1) change the provisions governing disproportionate share payments to other uninsured

hospitals; 2) establish provisions governing payments to private community hospitals for services rendered to displaced, uninsured citizens from mandatory evacuation parishes affected by Hurricanes Katrina and Rita; and 3) change the provisions governing disproportionate share payments to high uninsured hospitals and establish provisions governing payments to public community hospitals (*Louisiana Register*, Volume 32, Number 7). As a result of the allocation of additional funds by the Legislature during the 2006 Regular Session, the Department now proposes to amend the July 20, 2005 Emergency Rule governing the provisions for disproportionate share payments to non-rural community hospitals for state fiscal year 2007 only. This action is being taken to avoid imminent threat to the public health and welfare and to make certain that hospitals stay open by compensating them for their uncompensated care. It is estimated that the implementation of this proposed Rule will increase revenues by approximately \$120,000,000 for state fiscal year 2006-07.

Effective September 15, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend the provisions governing disproportionate share hospital payments to non-rural community hospitals as a result of the allocation of additional funds.

TITLE 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Disproportionate Share Hospital Payment Methodologies

§301. General Provisions

A. - B.6. ...

C. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must:

1. certify that excluded from net uncompensated cost are any costs for the care of persons eligible for Medicaid at the time of registration;
2. maintain a log documenting the provision of uninsured care as directed by the Department;
3. adjust uninsured charges to reflect retroactive Medicaid eligibility determination; and
4. submit an attestation that patients whose care is included in the hospital's net uncompensated costs are not Medicaid eligible at the time of registration.

D. A hospital receiving DSH payments shall furnish emergency and non-emergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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

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

§303. Disproportionate Share Hospital Qualifications

A.1. - 4.b.ii. ...

5. effective November 3, 1997, be a small rural hospital as defined in §311.A.1.a-h; or

6. effective June 28, 2006, be a public community hospital as defined in §305.A.; or

7. effective June 28, 2006, be a private community hospital as defined in §307.A.; or

8. Effective September 15, 2006, be a non-rural community hospital as defined in §308.A.; and

9. effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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

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

§308. Non-Rural Community Hospitals – SFY 2007

A. Definitions

Non-Rural Community Hospital—a non-state hospital that is not eligible for disproportionate share payments under any other qualification category. These hospitals may be either publicly or privately owned. In addition, psychiatric, rehabilitation and long term hospitals may qualify for this category.

B. DSH payments to a public, non-rural community hospital shall be calculated as follows.

1. Each qualifying public, non-rural community hospital shall certify to the Department of Health and Hospitals its uncompensated care costs. The basis of the certification shall be 100 percent of the hospital's allowable costs for these services, as determined by the most recently filed Medicare/Medicaid cost report. The certification shall be submitted in a form satisfactory to the department no later than October 1st of each fiscal year. The department will claim the federal share for these certified public expenditures. The Department's subsequent reimbursement to the hospital may be more or less than the federal share so claimed. Qualifying public, non-rural community hospitals that fail to make such certifications by October 1st may not receive Title XIX claim payments or any disproportionate share payments until the Department receives the required certifications.

C. DSH payments to private, non-rural community hospitals located in Orleans, Jefferson, Calcasieu and Cameron Parishes shall be calculated as follows:

1. If the hospital's qualifying uninsured cost is less than 3.5 percent of total hospital cost, the payment shall be 30 percent of qualifying uninsured costs.

2. If the hospital's qualifying uninsured cost is equal to or greater than 3.5 percent of the total hospital cost but less than 6.5 percent of total hospital cost, the payment shall be 50 percent of qualifying uninsured cost.

3. If the hospital's qualifying uninsured cost is equal to or greater than 6.5 percent of total hospital cost but less than or equal to 8 percent of total hospital cost, the payment shall be 80 percent of qualifying uninsured cost.

4. If the hospital's qualifying uninsured cost is greater than 8 percent of total hospital cost, the payment shall be 90 percent of qualifying uninsured cost for the portion in excess of 8 percent of total hospital cost and 80 percent of qualifying uninsured cost for the portion equal to 8 percent of total hospital cost.

D. DSH payments to private, non-rural community hospitals located in all other parishes shall be calculated as follows:

1. If the hospital's qualifying uninsured cost is less than 3.5 percent of total hospital cost, no payment shall be made.

2. If the hospital's qualifying uninsured cost is equal to or greater than 3.5 percent of total hospital cost but less than 6.5 percent of total hospital cost, the payment shall be 50 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 3.5 percent of total hospital cost.

3. If the hospital's qualifying uninsured cost is equal to or greater than 6.5 percent of total hospital cost but less than or equal to 8 percent of total hospital cost, the payment shall be 80 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 3.5 percent of total hospital cost.

4. If the hospital's qualifying uninsured cost is greater than 8 percent of total hospital cost, the payment shall be 90 percent of qualifying uninsured cost for the portion in excess of 8 percent of total hospital cost and 80 percent of an amount equal to 4.5 percent of total hospital cost.

E. The department shall determine each qualifying hospital's uninsured percentage on a hospital-wide basis utilizing charges for dates of service from January 1, 2006 through June 30, 2006.

F. Hospitals shall submit supporting patient specific data in a format specified by the department. The deadline for submission of data used to determine qualification and the initial payment is October 31, 2006. The second payment to hospitals will be based on patient specific data for dates of service from July 1, 2006 through December 31, 2006. The deadline for submission of data used to calculate final payment is by March 31, 2007. Qualification for both payments is determined from the patient specific data for dates of services from January 1, 2006 through June 30, 2006.

1. Submitted hospital charge data must agree with the hospital's monthly revenue and usage reports which reconcile to the monthly and annual financial statements. The submitted data shall be subject to verification by the Department before DSH payments are made.

G. In the event that the total payments calculated for all recipient hospitals are anticipated to exceed the total amount appropriated, the Department shall reduce payments on a pro rata basis in order to achieve a total cost that is not in excess of the amounts appropriated for this purpose. The \$120,000,000 appropriation for the non-rural community hospital pool shall be effective only for state fiscal year 2007 and distributions from the pool shall be considered nonrecurring.

H. DSH payments shall be made as bi-annual lump sum payments.

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

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

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this public notice. The deadline for receipt of all written comments is October 15,

2006 by 4:30 p.m. A copy of this public notice is available for review by interested parties at parish Medicaid offices.

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

0609#055

DECLARATION OF EMERGENCY

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

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 48:I.51188 as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule governing licensing requirements for community homes for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 13, Number 4). The April 20, 1987 Rule was amended by Emergency Rule to adopt provisions governing emergency preparedness requirements for community homes, also known as intermediate care facilities for the mentally retarded (ICFs/MR) (*Louisiana Register*, Volume 31, Number 11). This Emergency Rule is being promulgated to continue the provisions of the October 18, 2005 Emergency Rule. This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of community homes that have been evacuated as a result of declared disasters or other emergencies.

Effective October 15, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing emergency preparedness requirements for community homes.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 51. Licensing Requirements for Community Homes

§51188. Emergency Preparedness

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. plan provisions that were not followed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

0609#056

DECLARATION OF EMERGENCY

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

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby adopts LAC 48:I.63188 as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule governing licensing requirements for group homes for inclusion in the Louisiana Administrative Code (*Louisiana Register*, Volume 13, Number 4). The April 20, 1987 Rule was amended by Emergency Rule to adopt provisions governing emergency preparedness requirements for group homes, also known as intermediate care facilities for the mentally retarded (ICFs/MR) (*Louisiana Register*, Volume 31, Number 11). This Emergency Rule is being promulgated to continue the provisions of the October 18, 2005 Emergency Rule. This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of group homes that have been evacuated as a result of declared disasters or other emergencies.

Effective October 15, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing emergency preparedness requirements for group homes.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 63. Licensing Requirements for Group Homes

§63188. Emergency Preparedness

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0609#057

DECLARATION OF EMERGENCY

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

**Intermediate Care Facilities for the Mentally Retarded
Reimbursement of Medical Supplies
(LAC 50:VII.32901-32903)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 50:VII.32901-32903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for intermediate care facilities for the mentally retarded (ICFs/MR) that included the Inventory for Client and Agency Planning (ICAP) instruments (*Louisiana Register*, Volume 31, Number 9). The bureau now proposes to amend the provisions of the September 20, 2005 Rule governing the reimbursement methodology for ICFs/MR to include reimbursement of certain medical supply costs for Medicaid recipients who are medically fragile.

This action is being taken to protect the health and welfare of Medicaid recipients by encouraging the continued participation of ICF/MR providers in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures to ICFs/MR by approximately \$435,852 for state fiscal year 2006-2007.

Effective September 20, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions contained in the September 20, 2005 Rule governing the reimbursement methodology for intermediate care facilities for the mentally retarded.

**Title 50
PUBLIC HEALTH/MEDICAL ASSISTANCE
Part VII. Long Term Care
Subpart 3. Intermediate Care Facilities for the Mentally Retarded
Chapter 329. Reimbursement Methodology
Subchapter A. Reimbursement Components
§32901. Cost Reports
A. - C.1 ...**

2. For providers receiving pervasive plus supplements and other client specific adjustments to the rate in accordance with §32903.I., the facility wide direct care floor is established at 94 percent of the per diem direct care payment, the pervasive plus supplement, and other client specific adjustments to the rate. The direct care floor will be applied to the cost reporting year in which the facility receives a pervasive plus supplement and/or a client specific rate adjustment. In no case, however, shall a facility receiving a pervasive plus supplement and/or client specific rate adjustment have total facility payments reduced to less than 104 percent of the total facility cost as a result of imposition of the direct care floor.

3 - 4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1592 (July 2005), repromulgated LR 31:2252 (September 2005), amended LR 32:

§32903. Rate Determination

A. - H.2. ...

1. Other Client Specific Adjustments to the Rate. A facility may request a client specific rate supplement for reimbursement of the costs for enteral nutrition, ostomy, tracheotomy medical supplies or a vagus nerve stimulator.

1. The provider must submit sufficient medical supportive documentation to the DHH ICAP Review Committee to establish medical need for enteral nutrition, ostomy or tracheotomy medical supplies.

a. The amount of reimbursement determined by the ICAP Review Committee shall be based on the average daily cost for the provision of the medical supplies.

b. The provider must submit annual documentation to support the need for the adjustment to the rate.

2. The provider must submit sufficient medical supportive documentation to the Unisys Prior Authorization Unit to establish medical necessity for a vagus nerve stimulator.

a. The amount of reimbursement shall be the established fee on the Medicaid Fee Schedule for medical equipment and supplies.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1592 (July 2005), repromulgated LR 31:2253 (September 2005), amended LR 32:

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

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

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

0609#054

DECLARATION OF EMERGENCY

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

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby amends LAC 48:I.7927 as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule governing licensing requirements for residential homes for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 13, Number 4). The April 20, 1987 Rule was amended by Emergency Rule to adopt provisions governing emergency preparedness requirements for residential homes, also known as intermediate care facilities for the mentally retarded (ICFs/MR) (*Louisiana Register*, Volume 31, Number 11). This Emergency Rule is being promulgated to continue the provisions of the October 18, 2005 Emergency Rule. This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who reside in residential homes that have been evacuated as a result of declared disasters or other emergencies.

Effective October 15, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services adopts the following amendments governing emergency preparedness requirements for residential homes.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 79. Licensing Requirements for Residential Homes

§7927. Core Requirements

A. - G.6. ...

H. Emergency Preparedness

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. plan provisions that were not followed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

0609#058

DECLARATION OF EMERGENCY

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

Medical Transportation Program
Emergency Ambulance Services
Reimbursement Rate 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 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, Bureau of Health Services Financing provides reimbursement for emergency ambulance transportation services. Reimbursement for these services is the base rate established by the Bureau minus the amount which any third party coverage would pay. During the 2001 and 2002 Regular Sessions of the Louisiana Legislature additional funds were allocated and the Bureau subsequently increased the reimbursement rate for certain designated procedure codes for emergency ambulance transportation services (*Louisiana Register*, Volume 27, Number 11; Volume 28, Number 12).

As a result of the allocation of additional funds by the Legislature during the 2006 Regular Session, the Bureau has determined that it is necessary to increase the base rate and ground mileage reimbursement rate for emergency ambulance transportation services.

This action is being taken to promote the health and welfare of recipients and to maintain access to emergency ambulance transportation services by encouraging the continued participation of these providers in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures for emergency ambulance transportation services by approximately \$1,527,758 for the state fiscal year 2006-2007.

Emergency Rule

Effective for dates of service on or after September 1, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the base rate for emergency ambulance transportation services by 5 percent and ground mileage reimbursement rate for emergency ambulance transportation services by 17 percent of the rates in effect on August 31, 2006.

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to all inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

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

0608#010

DECLARATION OF EMERGENCY

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

Medical Transportation Program
Non-Emergency Medical Transportation Services
Reimbursement Rate 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 Administrative Procedure Act, R.S. 49:953(B)(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the Final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage and reimbursement for non-emergency medical transportation services. Reimbursement for these services is the base rate established by the Bureau minus the amount which any third party coverage would pay. During the 2003 Regular Session of the Louisiana Legislature additional funds were allocated and the Bureau subsequently increased the reimbursement rates for certain designated procedures (*Louisiana Register*, Volume 30, Number 1).

As a result of the allocation of additional funds by the Legislature during the 2006 Regular Session, the Bureau has determined that it is necessary to increase the reimbursement rates for non-emergency, non-ambulance medical transportation services.

This action is being taken to promote the health and welfare of recipients and to maintain access to non-emergency medical transportation services by encouraging the continued participation of these providers in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures for non-emergency medical transportation services by approximately \$441,934 for the state fiscal year 2006-2007.

Emergency Rule

Effective for dates of service on or after September 1, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement rate for non-emergency, non-ambulance medical transportation services by 5 percent of the rates in effect on August 31, 2006. Non-emergency medical transportation provided by friends and family is not included in this reimbursement rate increase.

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

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

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

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

0608#011

DECLARATION OF EMERGENCY

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

Mental Health Rehabilitation Program
(LAC 50:XV.Chapters 1-7)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.Chapters 1-7 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 promulgated a Rule to adopt the revised provisions governing the administration of the Mental Health Rehabilitation (MHR) Program (*Louisiana Register*, Volume 31, Number 5). The bureau subsequently promulgated an Emergency Rule to delay the implementation of the provisions contained in the May 20, 2005 Rule and rescinded the language prohibiting the provision of certain mental health rehabilitation services to children and adolescents in the custody of the Office of Community Services or the Office of Youth Services (*Louisiana Register*, Volume 31, Number 6). The May 20, 2005 Rule was further amended to adopt revised medical necessity criteria for mental health rehabilitation services and to clarify Medicaid policy governing provision of services in off-site locations and staffing requirements (*Louisiana Register*, Volume 31, Number 8). This Emergency Rule is being promulgated to continue provisions contained in the June 1, 2005 and August 1, 2005 Emergency Rules. This action is being taken to promote the health and well being of Medicaid recipients who are receiving mental health rehabilitation services by assuring continuity of services during the transition period to the restructured Mental Health Rehabilitation Program.

Effective September 26, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions contained in the May 20, 2005 Rule to adopt revised medical necessity criteria for mental health rehabilitation services, to clarify Medicaid policy governing provision of services in off-site locations and staffing requirements and rescinds the language prohibiting the provision of certain mental health

rehabilitation services to children and adolescents in the custody of the Office of Community Services or the Office of Youth Services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Mental Health Rehabilitation

Chapter 1. General Provisions

§101. Introduction

A. - C. ...

D. Mental health rehabilitation services shall be covered and reimbursed for any eligible Medicaid recipient who meets the medical necessity criteria for services. The department will not reimburse claims determined through the prior authorization or monitoring process to be a duplicated service.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1082 (May 2005), amended LR 32:

§103. Definitions and Acronyms

Off-Site Service Delivery Location—locations of service that are publicly available for, and commonly used by, members of the community other than the MHR provider and site or locations that are directly related to the recipient's usual environment, or those sites or locations that are utilized in a non-routine manner. This can also include a location used solely for the provision of allowable off-site service delivery by a certified MHR provider.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1082 (May 2005), amended LR 32:

§105. Prior Authorization

A. Every mental health rehabilitation service shall be prior authorized by the bureau or its designee. Services provided without prior authorization will not be considered for reimbursement. There shall be no exceptions to the prior authorization requirement.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1083 (May 2005), amended LR 32:

Chapter 3. Covered Services and Staffing Requirements

Subchapter A. Service Delivery

§301. Introduction

A. - B. ...

C. Children's Services. There shall be family and/or legal guardian involvement throughout the planning and delivery of MHR services for children and adolescents. The agency or individual who has the decision making authority for children and adolescents in state custody must request and approve the provision of MHR services to the recipient. The case manager or person legally authorized to consent to medical care must be involved throughout the planning and delivery of all MHR services and such involvement must be documented in the recipient's record maintained by the MHR agency.

1. The child or adolescent shall be served within the context of the family and not as an isolated unit. Services shall be appropriate for:

- a. age;
- b. development;
- c. education; and
- d. culture.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1083 (May 2005), amended LR 32:

Subchapter B. Mandatory Services

§311. Assessment

A. - B.1. ...

2. A licensed mental health professional (LMHP) shall:

- a. have a face-to-face contact with the recipient for the purpose of completing the assessment;
- b. score the LOCUS/CALOCUS if he/she has been approved to be a clinical evaluator by Office of Mental Health (OMH); and
- c. sign and date the assessment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1083 (May 2005), amended LR 32:

§317. Community Support

A. Community support services is the provision of mental health rehabilitation services and supports necessary to assist the recipient in achieving and maintaining rehabilitative, resiliency and recovery goals. The service is designed to meet the educational, vocational, residential, mental health treatment, financial, social and other treatment support needs of the recipient. Community support is the foundation of the recovery-oriented Individualized Service Recovery Plan (ISRP) and is essential to all MHR recipients. Its goal is to increase and maintain competence in normal life activities and to gain the skills necessary to allow recipients to remain in or return to naturally occurring supports. This service includes the following specific goals:

1. achieving the restoration, reinforcement, and enhancement of skills and/or knowledge necessary for the recipient to achieve maximum reduction of his/her psychiatric symptoms;
2. minimizing the effect of mental illness;
3. maximizing the recipient's strengths with regard to the mental illness;
4. increasing the level of the recipient's age-appropriate behavior;
5. increasing the recipient's independent functioning to an appropriate level;
6. enhancing social skills;
7. increasing adaptive behaviors in family, peer relations, school and community settings;
8. maximizing linkage and engagement with other community services, including natural supports and resources;
9. applying decision-making methods in a variety of skill building applications; and

10. training caregivers to address the needs identified in the ISRP using preventive, developmental and therapeutic interventions designed for direct individual activities.

B. - B.3. ...

C. Service Exclusions. This service may not be combined on an ISRP with Parent/Family Intervention (Intensive). Community support is an individualized service and is not billable if delivered in a group setting or with more than one recipient per staff per contact.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:

§319. Group Counseling

A. Group counseling is a treatment modality using face-to-face verbal interaction between two to eight recipients. It is a professional therapeutic intervention utilizing psychotherapy theory and techniques. The service is directed to the goals on the approved ISRP.

B.1. - 2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31: 1084 (May 2005), amended LR 32:

§321. Individual Intervention/Supportive Counseling

A. Individual intervention and supportive counseling are verbal interactions between the counselor therapist and the recipient receiving services that are brief, face-to-face, and structured. Individual intervention (child) and supportive counseling (adult) are services provided to eliminate the psychosocial barriers that impede the skills necessary to function in the community.

A.1. - B.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:

§323. Parent/Family Intervention (Counseling)

A. - C.4. ...

D. Service Exclusion. This service may not be combined on a service agreement with Parent/Family Intervention (Intensive).

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:

§325. Psychosocial Skills Training—Group (Youth)

A. Psychosocial Skills Training—Group (Youth) is a therapeutic, rehabilitative, skill building service for children and adolescents to increase and maintain competence in normal life activities and to gain skills necessary to allow them to remain in or return to their community. It is an organized service based on models incorporating psychosocial interventions.

B. - B.2. ...

C. Service Exclusions. This service may not be combined on a service agreement with the following services:

1. Parent/Family Intervention (Intensive); or
2. Psychosocial Skills Training-Group (Adult).

D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:

Subchapter C. Optional Services

§335. Parent/Family Intervention (Intensive)

A. Parent/Family Intervention (Intensive) is a structured service involving the recipient and one or more of his/her family members. It is an intensive family preservation intervention intended to stabilize the living arrangement, promote reunification, or prevent utilization of out of home therapeutic placement (i.e., psychiatric hospitalization, therapeutic foster care) for the recipient. These services focus on the family and are delivered to children and adolescents primarily in their homes. This service is comprehensive and inclusive of certain other rehabilitative services as noted in the "Services Exclusions" sections of those services.

B. - B.3. ...

C. Service Exclusions. This service may not be combined on a service agreement with the following services:

1. Community Support;
2. Psychosocial Skills Training-Group (Adult);
3. Psychosocial Skills Training-Group (Youth);
4. Individual Intervention/Supportive Counseling:
 - a. an exception may be considered for a recipient with unique needs;
5. Group Counseling; or
6. Parent/Family Intervention (Counseling).

D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:

§337. Psychosocial Skills Training-Group (Adult)

A. Psychosocial Skills Training-Group (Adult) is a therapeutic, rehabilitative, skill building service for individuals to increase and maintain competence in normal life activities and gain the skills necessary to allow them to remain in or return to their community. It is designed to increase the recipient's independent functioning in his/her living environment through the integration of recovery and rehabilitation principles into the daily activities of the recipient. It is an organized program based on a psychosocial rehabilitation philosophy to assist persons with significant psychiatric disabilities, to increase their functioning to live successfully in the natural environments of their choice.

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:

Chapter 5. Medical Necessity Criteria

§501. General Provisions

A. When a recipient requests MHR services, an initial screening must be completed to determine whether the recipient potentially meets the medical necessity criteria for

MHR services. If it determined that the recipient potentially meets the criteria for services, an initial assessment shall be completed and fully documented in the recipient's record no later than 30 days after the request for services. Information in an assessment shall be based on current circumstances (within 30 days) and face-to-face interviews with the recipient. If the recipient is a minor, the information shall be obtained from a parent, legal guardian or other person legally authorized to consent to medical care.

B. If it is determined at the initial screening or assessment that a recipient does not meet the medical necessity criteria for services, the provider shall refer the recipient to his/her primary care physician, the nearest community mental health clinic, or other appropriate services with copies of all available medical and social information.

C. In order to qualify for MHR services, a recipient must meet the medical necessity criteria for services outlined in §503 or §505. These medical necessity criteria shall be utilized for authorization and reauthorization requests received on or after August 1, 2005.

D. Initially all recipients must meet the medical necessity criteria for diagnosis, disability, duration and level of care. MHR providers shall rate recipients on the CALOCUS/LOCUS at 30-day intervals, and these scores and supporting documentation must be submitted to the bureau or its designee upon request. Ongoing services must be requested every 90 days based on progress towards goals, individual needs, and level of care requirements which are consistent with the medical necessity criteria.

E. For authorization and reauthorization requests received on or after August 1, 2005, lengths of stay in the MHR Program beyond 270 days (nine months) shall be independently reviewed by the bureau or its designee for reconsideration of appropriateness, efficacy, and medical necessity for continuation of MHR services.

F. The bureau or its designee reserves the right to require a second opinion evaluation by a licensed mental health professional that is not associated with the MHR provider that is seeking authorization or reauthorization of services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1086 (May 2005), amended LR 32:

§503. Adult Criteria for Services

A. In order to qualify for MHR services, Medicaid recipients age 18 or older must meet all the following criteria.

1. Diagnosis. The recipient must currently have or, at any time during the past year, had a diagnosable mental behavioral or emotional disorder of sufficient duration to meet the diagnostic criteria specified within the *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR)* or the *International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM)* or subsequent revisions of these documents. The diagnostic criteria specified under DSM-IV-TR "V" codes for substance use disorders and developmental disorders are excluded unless these disorders co-occur with another diagnosable serious mental illness.

2. Disability. In order to meet the criteria for disability, the recipient must exhibit emotional, cognitive or

behavioral functioning which is so impaired, as a result of mental illness, as to substantially interfere with role, occupational and social functioning as indicated by a score within levels four or five on the LOCUS that can be verified by the bureau or its designee.

3. Duration. The recipient must have a documented history of severe psychiatric disability which is expected to persist for at least a year and requires intensive mental health services, as indicated by one of the following:

- a. psychiatric hospitalizations of at least six months duration in the last five years (cumulative total); or
- b. two or more hospitalizations for mental disorders in the last 12-month period; or
- c. structured residential care, other than hospitalization, for a duration of at least six months in the last five years; or
- d. documentation indicating a previous history of severe psychiatric disability of at least six months duration in the past year.

NOTE: Recipients who are age 18 and up to 21 and who have been determined not to meet the adult medical necessity criteria for MHR services, initial or continued care, shall be reassessed by the bureau or its designee using the children/adolescent medical necessity criteria for services.

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

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

§505. Child/Adolescent Criteria for Services

A. In order to qualify for MHR services, Medicaid recipients age 17 or younger must meet all of the following criteria.

1. Diagnosis. The recipient must currently have or, at any time during the past year, had a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet the diagnostic criteria specified within the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR) or the *International Classification of Diseases*, Ninth Revision, Clinical Modification (ICD-9-CM), or subsequent revisions of these documents. The diagnostic criteria specified under DSM-IV-TR "V" codes for substance use disorders and developmental disorders are excluded unless these disorders co-occur with another diagnosable serious mental illness.

2. Disability. In order to meet the criteria for disability, the recipient must exhibit emotional, cognitive or behavioral functioning which is so impaired, as a result of mental illness, as to substantially interfere with role, educational, and social functioning as indicated by a score within levels four or five on the CALOCUS that can be verified by the bureau or its designee.

NOTE: Youth returning to community living from structured residential settings or group homes under the authority of the Office of Community Services or the Office of Youth Services may be considered to meet the disability criteria for admission with a level three on the LOCUS or CALOCUS.

3. Duration. The recipient must have a documented history of severe psychiatric disability that is expected to persist for at least a year and requires intensive mental health services, as indicated by at least one of the following:

- a. past psychiatric hospitalization(s);
- b. past supported residential care for emotional/behavioral disorder;
- c. past structured day program treatment for emotional/behavioral disorder; or

d. documentation indicating that an impairment or pattern of inappropriate behaviors has persisted for at least three months and is expected to persist for at least six months.

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

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

§507. Exclusionary Criteria

A. Mental health rehabilitation services are not considered to be appropriate for recipients whose diagnosis is mental retardation, developmental disability or substance abuse unless they have a co-occurring diagnosis of severe mental illness or emotional/behavioral disorder as specified within DSM-IV-TR or ICD-9-CM, or its subsequent revisions of these documents.

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

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

§509. Discharge Criteria

A. Discharge planning must be initiated and documented for all recipients at time of admission to MHR services. For those recipients who are receiving MHR services as of July 31, 2005, discharge planning must be initiated and documented prior to the end of the then current 90 day service plan. Discharge from mental health rehabilitation services for current and new recipients shall be initiated if at least one of the following situations occurs:

1. the recipient's treatment plan/ISRP goals and objectives have been substantially met;
2. the recipient meets criteria for higher level of treatment, care, or services;
3. the recipient, family, guardian, and/or custodian are not engaging in treatment or not following program rules despite attempts to address barriers to treatment;
4. consent for treatment has been withdrawn;
5. supportive systems that allow the recipient to be maintained in a less restrictive treatment environment have been arranged; or
6. the recipient receives three successive scores within level three or less on the CALOCUS/LOCUS. If this situation occurs, the provider shall implement a written discharge plan which includes a plan for the arrangement of services required to transition the recipient to a lower level of care within the community.

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

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

Chapter 7. Provider Participation Requirements

Subchapter A. Certification and Enrollment

§701. Provider Enrollment Moratorium

- A. ...
- B. Exception. MHR providers may be allowed to enroll and obtain a new Medicaid provider number for existing satellite offices. In order to obtain a provider number for a satellite office, the MHR provider must have disclosed the satellite office to DHH before August 20, 2004. The MHR provider must provide clear and convincing proof, in the

discretion of the department, that any listed satellite office or off-site location was operational prior to the moratorium.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:668 (March 2005), amended LR 32:

§703. Application

A. To be certified or recertified as a mental health rehabilitation provider requires that the provisions of this Subpart 1, the provider manual, and the appropriate statutes are met. A prospective provider who elects to provide MHR services shall apply to the Bureau of Health Service Financing or its designee for certification. The prospective provider shall create and maintain documents to substantiate that the provider meets all prerequisites in order to qualify as a Medicaid provider of MHR services.

B.1 - 10. ...

11. proof of an adult day care license issued by the Department of Social Services or its successor when psychosocial skills training for adults is offered by the MHR provider. All licenses and certificates shall be in the name of the MHR provider and shall contain the provider's correct name and address;

B.12. - 14. ...

C. The MHR provider shall have a separate Medicaid provider number for each location where it routinely conducts business and provides scheduled services. This does not include those sites or locations that meet the definition of an off-site service delivery location. Satellite offices or off-site locations must have been operational before August 20, 2004 or they will not be allowed to provide MHR services after August 1, 2005.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1086 (May 2005), amended LR 32:

§705. Application and Site Reviews

A. A prospective MHR provider shall undergo one or more reviews by BHSF or its designee before certification:

1. an application review;
2. a first site review; and if necessary
3. a second site review.

B. BHSF or its designee will conduct a review of all application documents for compliance with MHR requirements. If the documentation is approved, the applicant will be notified and an appointment will be scheduled for a first site review of the prospective MHR provider's physical location. If the first site review is successful, the certification request will be approved and forwarded to Provider Enrollment for further processing.

C. If the application documentation furnished by the prospective MHR provider is not acceptable, a meeting will be scheduled to discuss the deficiencies. The applicant has 30 days to correct the documentation deficiencies and to request a site visit at their physical location.

1. If the prospective MHR provider requests a site visit in a timely manner, a site review of their physical location will be scheduled. At the onsite review, BHSF or its designee will review the corrected documents and make an assessment of the physical location. If the prospective provider has corrected the application document deficiencies

and the physical location is deemed acceptable and sufficient to operate as a mental health rehabilitation provider, BHSF or its designee will approve the certification request and forward the necessary paperwork to provider enrollment for further processing.

C.2. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:802 (April 2004), amended LR 31:1087 (May 2005), LR 32:

Subchapter C. Provider Responsibilities

§731. General Provisions

A. - A.1. ...

B. The MHR provider shall immediately report any suspected or known violations of any state or federal criminal law to the bureau.

C. Each MHR provider shall maintain written procedures and implement all required policies and procedures immediately upon acceptance of recipients for services.

D. The MHR provider shall develop a policy and procedure for hospitalization that is in conformity with the single point of entry (SPOE) policy and procedure.

E. The MHR provider shall request an expedited prior authorization review for any recipient whose discharge from a 24-hour care facility is dependent on follow-up mental health services.

F. The MHR provider shall develop a quality improvement procedure (QIP) plan as outlined in the current MHR provider manual. It should address all aspects of the MHR provider operation.

G. If, as a result of a monitoring review, a written notice of deficiencies is given to the MHR provider, the provider shall submit a written corrective action plan to the bureau within 10 days of receipt of the notice from the department. If the MHR provider fails to submit a corrective action plan within 10 days from the receipt of the notice, sanctions may be imposed against the MHR provider.

H. The MHR provider must establish regular business office hours for all enrolled office locations. Business office locations must be fully operational at least eight hours a day, five days a week between the hours of 7 a.m. and 7 p.m. This requirement does not apply to off-site service delivery locations. Each office shall contain office equipment and furnishings requisite to providing MHR services including, but not limited to, computers, facsimile machines, telephones and lockable file cabinets. Offices shall be located in a separate building from the residence of the MHR provider's owner.

1. An office location is fully operational when the provider:

- a. has met all the requirements for and becomes certified to offer mental health rehabilitation services;
- b. has at least five active recipients at the time of any monitoring review, other than the initial application review;
- c. is capable of accepting referrals at any time during regular business hours;
- d. retains adequate staff to assess, process and manage the needs of current recipients;
- e. has the required designated staff on site (at each location) during business hours; and

f. is immediately available to its recipients and BHSF by telecommunications 24 hours per day.

2. MHR services may be delivered in off site service delivery locations that are:

a. publicly available for and commonly used by members of the community other than the provider (e.g., libraries, community centers, YMCA, church meeting rooms, etc.);

b. directly related to the recipient's usual environment (e.g., home, place of work, school); or

c. utilized in a non-routine manner (e.g., hospital emergency rooms or any other location in which a crisis intervention service is provided during the course of the crisis).

NOTE: Services may not be provided in the home(s) of the MHR provider's owner, employees or agents. Group counseling and psychosocial skills training (adult and youth) services may not be provided in a recipient's home or place of residence. Services may not be provided in the professional practitioner's private office.

3. Every location where services are provided shall be established with the intent to promote growth and development, client confidentiality, and safety.

4. The MHR provider accepts full responsibility to ensure that its office locations meet all applicable federal, state and local licensing requirements. The transferring of licenses and certifications to new locations is strictly prohibited. It is also the responsibility of the MHR provider to immediately notify the bureau of any office relocation or change of address and to obtain a new certification and license (if applicable).

I. As part of the service planning process, when it is determined that MHR discharge criteria has been met, the MHR provider shall refer the recipient to his/her primary care physician or to the appropriate medically necessary services, and document the referral.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1088 (May 2005), amended LR 32:

§735. Orientation and Training

A. Orientation and training shall be provided to all employees, volunteers, interns and student workers. This orientation should be comprised of no less than five face-to-face hours and may be considered as part of the overall requirement of 16 hours orientation.

1. - 5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1089 (May 2005), amended LR 32:

§737. Staffing Qualifications

A. MHR services shall be provided by individuals who meet the following education and experience requirements.

1. Licensed Mental Health Professional (LMHP). A LMHP is a person who has a graduate degree in a mental health-related field from an accredited institution and is licensed to practice in the state of Louisiana by the applicable professional board of examiners. All college degrees must be from a nationally accredited institution of higher education as defined in Section 102(b) of the Higher Education Act of 1965 as amended. In order to qualify as a

mental health-related field, an academic program must have curriculum content in which at least 70 percent of the required courses for the major field of study are based upon the core mental health disciplines. The following professionals are considered to be LMHPs.

a. Psychiatrist. Each MHR provider shall implement and maintain a contract with a psychiatrist(s) to provide consultation and/or services on site as medically necessary. The psychiatrist must be a licensed medical doctor (M.D. or D.O.) who is board-certified or board-eligible, authorized to practice psychiatry in Louisiana, and enrolled to participate in the Louisiana Medicaid Program. A board eligible psychiatrist may provide psychiatric services to MHR recipients if he/she meets all of the following requirements.

i. The physician must hold an unrestricted license to practice medicine in Louisiana and unrestricted Drug Enforcement Administration (DEA) and state and federal controlled substance licenses. If licenses are held in more than one state or jurisdiction, all licenses held by the physician must be documented in the employment record and also be unrestricted.

ii. The physician must have satisfactorily completed a specialized psychiatric residency training program accredited by the Accreditation Council for Graduate Medical Education (ACGME), as evidenced by a copy of the certificate of training or a letter of verification of training from the training director which includes the exact dates of training and verification that all ACGME requirements have been satisfactorily met. If training was completed in child and adolescent psychiatry, the training director of the child and adolescent psychiatry program must document the child and adolescent psychiatry training.

NOTE: All documents must be maintained and readily retrieved for review by the bureau or its designee.

b. Psychologist—an individual who is licensed as a practicing psychologist under the provisions of R.S. 37:2351–2367;

c. Registered Nurse—a nurse who is licensed as a registered nurse or an advanced practice registered nurse in the state of Louisiana by the Board of Nursing. An advanced practice registered nurse, who is a clinical nurse specialist in psychiatry, must operate under an OMH approved collaborative practice agreement with an OMH approved board-certified psychiatrist. A registered nurse must:

i. be a graduate of an accredited program in psychiatric nursing and have two years of post-master's supervised experience in the delivery of mental health services; or

ii. have a master's degree in nursing or a master's degree in a mental health-related field and two years of supervised post master's experience in the delivery of mental health services; and

NOTE: Supervised experience is experience in mental health services delivery acquired while working under the formal supervision of a LMHP.

iii. six continuing education units (CEUs) regarding the use of psychotropic medications, including atypicals, prior to provision of direct service to MHR recipients.

NOTE: Every registered nurse providing MHR services shall have documented evidence of five CEUs annually that are specifically related to behavioral health and medication management issues.

d. Social Worker—an individual who has a master's degree in social work from an accredited school of social work and is a licensed clinical social worker under the provisions of R.S. 37:2701-2723.

e. Licensed Professional Counselor—an individual who has a master's degree in a mental health related field, is licensed under the provisions of R.S. 37:1101-1115 and has two years post-masters experience in mental health.

2. Mental Health Professional (MHP). The MHP is an individual who has a master's degree in a mental health-related field, with a minimum of 15 hours of graduate-level course work and/or practicum in applied intervention strategies/methods designed to address behavioral, emotional and mental disorders as a part of, or in addition to, the master's degree.

NOTE: The MHP must be an employee of the MHR provider and work under the supervision of a LMHP.

3. Mental Health Specialist (MHS). The MHS is an individual who meets one or more of the following criteria:

a. a bachelor's degree in a mental health related field; or

b. a bachelor's degree, enrolled in college and pursuing a graduate degree in a mental health-related field, and have completed at least two courses in that identified field; or

c. a high school diploma or a GED, and at least four years experience providing direct services in a mental health, physical health, social services, education or corrections setting.

NOTE: The MHS must be an employee of the MHR provider and work under the supervision of a LMHP.

4. Nurse. A registered nurse who is licensed by the Louisiana Board of Nursing or a licensed practical nurse who is licensed by the Louisiana Board of Practical Nurse Examiners may provide designated components of medication management services if he/she meets the following requirements.

a. A registered nurse must have:

i. a bachelor's degree in nursing and one year of supervised experience as a psychiatric nurse which must have occurred no more than five years from the date of employment or contract with the MHR provider; or

ii. an associate degree in nursing and two years of supervised experience as a psychiatric nurse which must have occurred no more than five years from the date of employment or contract with the MHR provider; and

NOTE: Supervised experience is experience in mental health services delivery acquired while working under the formal supervision of a LMHP.

iii. six CEUs regarding the use of psychotropic medications, including atypicals, prior to provision of direct service to MHR recipients.

b. A licensed practical nurse may perform medication administration if he/she has:

i. one year of experience as a psychiatric nurse which must have occurred no more than five years from the date of employment/contract with the MHR provider; and

ii. six CEUs regarding the use of psychotropic medications, including atypicals, prior to provision of direct service to any recipient.

NOTE: Every registered nurse and licensed practical nurse providing MHR services shall have documented evidence of five CEUs annually that are specifically related to behavioral health and medication management issues.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1089 (May 2005), amended LR 32:

Subchapter D. Records

§757. Personnel Records

A. A complete personnel records creation and retention policy shall be developed, implemented and maintained by the MHR provider. The MHR provider shall maintain documentation and verification of all relevant information necessary to assess qualifications for all staff, volunteers and consultants. All required licenses as well as professional, educational and work experience must be verified and documented in the employee's or agent's personnel record prior to the individual providing billable Medicaid services. The MHR provider's personnel records shall include the following documentation.

1. Employment Verification. Verification of previous employment shall be obtained and maintained in accordance with the criteria specified in the MHR Provider Manual.

2. Educational Verification. Educational documents, including diplomas, degrees and certified transcripts shall be maintained in the records. Résumés and documentation of qualifications for the psychiatrist and LMHPs, including verification of current licensure and malpractice insurance, must also be maintained in the records.

3. Criminal Background Checks. There shall be documentation verifying that a criminal background check was conducted on all employees prior to employment. If the MHR provider offers services to children and adolescents, it shall have background checks performed as required by R.S. 15:587.1 and R.S. 15:587.3. The MHR provider shall not hire an individual with a record as a sex offender or permit these individuals to work for the provider.

4. Drug Testing. All prospective employees who apply to work shall be subject to a drug test for illegal drug use. The drug test shall be administered after the date of the employment interview and before an offer of employment is made. If a prospective employee tests positive for illegal drug use, the MHR provider shall not hire the individual. The MHR provider shall have a drug testing policy that provides for the random drug testing of employees and a written plan to handle employees who test positive for illegal drug use, whether the usage occurs at work or during off duty hours. This documentation shall be readily retrievable upon request by the bureau or its designee.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1090 (May 2005), amended LR 32:

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

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

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

0609#060

DECLARATION OF EMERGENCY

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

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby amends LAC 48:I.9729 as authorized by R.S. 36:254 and R.S. 40:2009.1-2116.4. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt minimum licensing standards for nursing homes (*Louisiana Register*, Volume 24, Number 1). The January 20, 1998 Rule was amended by Emergency Rule to revise the provisions governing emergency preparedness requirements for nursing facilities (*Louisiana Register*, Volume 31, Number 11). The bureau amended the provisions of the October 18, 2005 Emergency Rule. (*Louisiana Register*, Volume 32, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 1, 2006 Emergency Rule.

This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of nursing facilities that may be evacuated as a result of declared disasters or other emergencies.

Effective September 30, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions governing emergency preparedness requirements for nursing facilities.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 97. Nursing Homes

Subchapter B. Organization and General Services

§9729. Emergency Preparedness

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

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

1. Upon request by the department, a nursing facility shall forward information and documentation regarding emergency preparedness, evacuation and operational status to the Bureau of Health Services Financing, Health Standards Section. Such information and documentation shall, at a minimum, include:

- a. a copy of the nursing facility's emergency preparedness plan;
- b. updates, amendments, modifications or changes to the nursing facility's emergency preparedness plan;
- c. the number of operational beds; and
- d. census information.

2. If the department determines, upon review of the nursing facility's emergency preparedness plan, that the plan is not viable or does not promote the health, safety and welfare of nursing home residents, the nursing facility shall be required to amend its emergency preparedness plan.

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

1. the procedures and criteria for a determination by the nursing facility to evacuate the facility or shelter in place;

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

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

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

4. a plan for coordinating transportation services required for evacuating residents to another location, including proof of transportation or a contract with a transportation company, verified by a written transportation agreement or contract;

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

6. staffing patterns for evacuation, including contact information for such staff;

7. a procedure or method whereby each nursing home resident has a manner of identification attached to his person or clothing;

8. a procedure or method whereby each nursing home resident has the following minimum information included with him/her during all phases of the evacuation:

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

9. procedures for ensuring that licensed nursing staff accompany residents on buses or other transportation during evacuation; and

10. procedures for ensuring that an adequate supply of water, food, medication and supplies accompanies residents on buses or other transportation during evacuation.

C. The nursing facility's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The nursing facility's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the nursing facility's performance during the planned drill. Any revisions, modifications, amendments or changes to the plan shall be submitted to the Health Standards Section within 30 days.

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

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

F. Evacuation, Temporary Relocation or Temporary Cessation

1. In the event that a nursing facility evacuates, temporarily relocates or temporarily ceases operation at its licensed location and sustains damages due to wind, sustains flooding or sustains power outages longer than 48 hours, the nursing facility shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Health Standards Section, and the nursing facility has received a letter of approval from the department for reopening the facility.

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

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

2. If a nursing facility evacuates, temporarily relocates or temporarily ceases operation at its licensed location and does not sustain damages due to wind, does not sustain flooding or does not sustain power outages longer than 48 hours, the nursing facility may be reopened without the necessity of the required surveys. Prior to reopening, such nursing facility must notify the Health Standards Section that the facility is reopening, and must receive written authority from the Health Standards Section to reopen.

G. Authority to Reopen and Execution of Emergency Preparedness Plan

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

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;

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

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

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

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

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

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

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

H. Notification

1. In the event that a nursing facility evacuates, temporarily relocates or temporarily ceases operations at its licensed location, the nursing facility must immediately give notice to the Health Standards Section, by facsimile, telephone or email, of the following:

a. the date and time of the evacuation;

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

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

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

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

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

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

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

0609#059

EMERGENCY RULE

Department of Insurance Office of the Commissioner

Rule 22—Alternative Procedures for the Resolution of Disputed Residential Insurance Claims Arising from Hurricane Damage (LAC 37:XI.Chapter 41)

The Department of Insurance (department) hereby states that the following circumstances continue to constitute an immediate danger to the public health, safety, or welfare: The 2005 hurricane season was particularly destructive for Louisiana. Hurricane Katrina caused catastrophic damage in southeast and central Louisiana; particularly hard were Plaquemines, St. Bernard and Orleans Parishes. Katrina caused widespread major damage to homes, loss of personal belongings and corresponding temporary loss of employment.

On September 24, 2005, Hurricane Rita hit the Cameron Parish area of Louisiana's southwest coast causing extensive and wide spread damage. The Governor of Louisiana declared a state of emergency (Proclamation No. 48 KKB 2005 and Proclamation No. 53 KKB 2005) due to the effects of Hurricanes Katrina and Rita, respectively. The President of the United States declared designated parishes of Louisiana a federal disaster area by issuing FEMA-1603-DR and FEMA-1607-DR for Katrina and Rita, respectively.

The total cost of property losses resulting from the combination of storms has been estimated to be in the tens of billions of dollars. The initial issuance of this Emergency Rule, in January 2006 (*Louisiana Register*, January 2006, Volume 32, page 60) complied with Code Title XIX—Alternative Dispute Resolution, particularly Chapter 1, The Louisiana Mediation Act, R.S. 9:4101 et seq., and implemented a non-adversarial alternative dispute resolution procedure. The facilitated claim resolution conference was prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damage to residential property caused by these two hurricanes.

Since the program's inception more than 7,800 Louisiana homeowners have requested to have their property claim mediated, with an overall settlement rate in excess of 75 percent. Despite this success, now almost 12 months after the hurricanes it is estimated that many thousands of residential property claims remain unresolved and repairs to damaged property has not been completed. Many of these claims remain unresolved as a result of disputes regarding costs of labor and materials needed to effectuate repairs. Due to the unprecedented extent of damage, in many instances materials and labor necessary to effectuate repairs have not been readily available and there have been disparities between the estimates of insurers and repair contractors.

Insureds with unresolved claims and un-repaired residences continue to be exposed to emotional, physical and economic hardship and remain at risk. Insureds are at risk of receiving sub-quality work, or being faced with a substantial disparity between repair estimates and customary costs in the area. This condition erodes the ability of insureds to realize the benefit of their insurance coverage. This Rule establishes a procedure to determine a construction pricing guideline to be used in mediation proceedings to determine

reasonable payments for repair and replacement costs arising from damage caused by hurricanes Katrina and Rita.

Due to decisive action by the Louisiana Legislature this past session, the apparent one year prescriptive period for claims of these types (R.S. 22:691) is being extended to two years. Continuation of the program at this time will provide homeowners the opportunity and a forum to resolve their claims without having to file suit.

Based upon the forgoing, the department has determined that an emergency continues to exist and continuation of the claims mediation program and the availability of guidelines for construction pricing are essential to the resolution of insurance claims and the effectuation of repairs of damage covered by insurance policies.

Summary of the Rule: this Emergency Rule: establishes a special mediation program for personal lines residential insurance claims resulting from Hurricanes Katrina and Rita. The rule creates procedures for notice of the right to mediation, request for mediation, assignment of mediators, payment for mediation, conduct of mediation, and guidelines for the quality repair of residential property damage.

The person to be contacted regarding the Emergency Rule is Barry E. Ward, Senior Attorney, Division of Legal Services, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9412; 225-219-4750.

Title 37

INSURANCE

Part XI. Rules

Chapter 41. Rule 22—Alternative Procedures for the Resolution of Disputed Residential Insurance Claims Arising from Hurricane Damage: Specific Reasons for Finding an Immediate Danger to the Public Health, Safety or Welfare

§4101. Authority

A. This Emergency Rule is promulgated by the Commissioner of Insurance pursuant to authority granted under the Louisiana Insurance Code, Title 22; R.S. 22:1 et seq.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4103. Purpose and Scope

A. This Emergency Rule in compliance with the Louisiana Mediation Act, R.S. 9:4101 et seq., sets forth a non-adversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damages to residential property caused by Hurricanes Katrina and Rita.

B. This Emergency Rule also addresses guidelines for the quality repair of residential property damaged by Hurricanes Katrina and Rita at reasonable and fair prices.

C. Before resorting to these procedures, insureds and insurers are encouraged to resolve claims as quickly and fairly as possible.

D. The procedure established by this Emergency Rule is available to all first party claimants who have personal lines claims resulting from damage to residential property occurring in the state of Louisiana. This rule does not apply to commercial insurance, private passenger motor vehicle

insurance or to liability coverage contained in property insurance policies.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4105. Definitions

A. The following definitions apply to the terms of this rule as used herein.

Administrator—the department or its designee (American Arbitration Association) and the term is used interchangeably with regard to the department's duties under this rule.

Claim—any matter on which there is a dispute or for which the insurer has denied payment pursuant to claims arising from Hurricanes Katrina and Rita only. Unless the parties agree to mediate a claim involving a lesser amount, a "claim" involves the insured requesting \$500 or more to settle the dispute, or the difference between the positions of the parties is \$500 or more. "Claim" does not include a dispute with respect to which the insurer has reported allegations of fraud, based on an investigation by the insurer's special investigative unit, to the department's Division of Insurance Fraud.

Department—the Department of Insurance or its designee. Reporting to the department shall be directed to: Department of Insurance, Mediation Section, P.O. Box 94214, Baton Rouge, LA, 70804-9214; or by facsimile to (225) 342-1632.

Mediator—an individual approved by the administrator to mediate disputes pursuant to this rule. In order to be approved, mediators must appear on the "approved register" of mediators maintained by the Alternative Dispute Resolution (ADR) section of the Louisiana State Bar Association pursuant to R.S. 9:4105, or provide sufficient evidence of having completed the mandatory qualifications set forth in R.S. 9:4106.

Party or Parties—the insured and his or her insurer, including Citizens Property Insurance Corporation, when applicable.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4107. Notification of Right to Mediate

A. Insurers shall notify each of their insureds in this state, who has claimed damage to their residential property as a result of either Hurricane Katrina or Hurricane Rita, of their right to mediate the claim settlement. This requirement applies to all claims including any and all instances where checks have been issued by the insurer to the homeowner.

B. The insurer shall mail a notice of the right to mediate disputed claims to the insured within five days of the time the policyholder or the administrator notifies an insurer of a dispute regarding the policyholder's claim. The following shall apply.

1. If the insurer has not been notified of a disputed claim prior to the time an insurer notifies the insured that a claim has been denied in whole or in part, the insurer shall mail a notice of the right to mediate disputed claims to the insured in the same mailing as a notice of denial.

2. The insurer is not required to send a notice of the right to mediate disputed claims if a claim is denied because

the amount of the claim is less than the policyholder's deductible.

3. The mailing that contains the notice of the right to mediate may include the department's consumer brochure on mediation.

4. Notification shall be in writing and shall be legible, conspicuous, and printed in at least 12-point type.

5. The first paragraph of the notice shall contain the following statement: "J. Robert Wooley, Commissioner of Insurance for the State of Louisiana, has adopted an Emergency Rule to facilitate fair and timely handling of residential property insurance claims arising out of Hurricanes Katrina and Rita that recently devastated so many homes in Louisiana. The Emergency Rule gives you the right to attend a mediation conference with your insurer in order to settle any dispute you have with your insurer about your claim. You can start the mediation process by calling the mediation administrator, the American Arbitration Association (AAA), at 1-800-426-8792. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference."

C. The notice shall also:

1. include detailed instructions on how the insured is to request mediation, including name, address, and phone and fax numbers for requesting mediation through the administrator;

2. include the insurer's address and phone number for requesting additional information; and

3. state that the administrator will select the mediator.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4109. Request for Mediation

A. An insured may request mediation by contacting the insurer or by writing to the American Arbitration Association, Mediation Section, 1100 Poydras Street, Suite 2725, New Orleans, LA 70163; by calling the administrator at 1-800-426-8792; or by faxing a request to the administrator at (504) 561-8041.

B. If an insured requests mediation prior to receipt of the notice of the right to mediation or if the date of the notice cannot be established, the insurer shall be notified by the administrator of the existence of the dispute prior to the administrator processing the insured's request for mediation.

C. If an insurer receives a request for mediation, the insurer shall fax the request to the mediation administrator within three business days of receipt of the request. Should the department receive any requests, it will forward those requests to the administrator within three business days following the receipt. The administrator shall notify the insurer within 48 hours of receipt of requests filed with the department. The insured should provide the following information if known:

1. name, address, and daytime telephone number of the insured and location of the property if different from the address given;

2. the claim and policy number for the insured;

3. a brief description of the nature of the dispute;

4. the name of the insurer and the name, address, and phone number of the contact person for scheduling mediation;

5. information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4111. Mediation Costs

A. All mediation costs shall be borne by the insurer shall be \$350 regardless of where the property is located.

B. Within five days of receipt of the request for mediation from the insured or receipt of notice of the request from the department or immediately after receipt of notice from the administrator pursuant to §4109 that mediation has been requested, whichever occurs first, the insurer shall pay a non-refundable administrative fee, not to exceed \$100 as determined by the department, to the administrator to defer the expenses of the administrator and the department.

1. The insurer shall pay \$250 to the administrator for the mediator's fee not later than five days prior to the date scheduled for the mediation conference.

2. If the mediation is cancelled for any reason more than 72 hours prior to the scheduled mediation time and date, the insurer shall pay \$75 to the administrator for the mediator's fee instead of \$250.

3. No part of the fee for the mediator shall be refunded to the insurer if the conference is cancelled within 72 hours of the scheduled time.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4113. Scheduling of Mediation

A. The administrator will select a mediator and schedule the mediation conference. The administrator will attempt to facilitate reduced travel and expense to the parties and the mediator when selecting a mediator and scheduling the mediation conference. The administrator shall confer with the mediator and all parties prior to scheduling a mediation conference. The administrator shall notify each party in writing of the date, time and place of the mediation conference at least 10 days prior to the date of the conference and concurrently send a copy of the notice to the department.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4115. Conduct of the Mediation Conference

A. R.S. 9:4101.C.(4) provides *mediation* is a procedure in which a mediator facilitates communication between the parties concerning the matters in dispute and explores possible solutions to promote reconciliation, understanding, and settlement. As such, it is not necessary to involve a private attorney and participation by private attorneys is discouraged by the department. However:

1. if the insured elects to have an attorney participate in the conference, the insured shall provide the name of the attorney to the administrator at least six days before the date of the conference;

2. parties and their representatives must conduct themselves in the cooperative spirit of the intent of the law and this rule;

3. parties and their representatives must refrain from turning the conference into an adversarial process;

4. both parties must negotiate in good faith. A decision by an insurer to stand by a coverage determination shall not be considered a failure to negotiate in good faith. A party will be determined to have not negotiated in good faith if the party or a person participating on the party's behalf, continuously disrupts, becomes unduly argumentative or adversarial, or otherwise inhibits the negotiations as determined by the mediator;

5. the mediator shall terminate the conference if the mediator determines that either party is not negotiating in good faith, either party is unable or unwilling to participate meaningfully in the process, or upon mutual agreement of the parties;

6. the party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.

B. Upon request of the insured or the mediator, an attorney will be available to help insureds prepare for the mediation conferences. A representative of the department will be present at and participate in the conference if requested at least five days prior to the scheduled mediation by a party or the mediator to offer guidance and assistance to the parties. The department will attempt to have a representative at the conference if the request is received less than five days prior to the scheduled mediation. Representatives of the department that participate in the conference will not be there to represent the insured. They shall not assume an advocacy role but shall be available to provide legal and technical insurance information.

C. The representative of the insurer attending the conference must bring a copy of the policy and the entire claims file to the conference.

1. The representative of the insurer attending the conference must know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy.

2. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full amount of the claim or lacks the ability to disburse the settlement amount at the conclusion of the conference.

D. The mediator will be in charge of the conference and will establish and describe the procedures to be followed. Per R.S. 9:4107, mediators shall conduct the conference in accordance with the standards of professional conduct for mediation adopted by the American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.

1. Each party will be given an opportunity to present their side of the controversy. In so doing, parties may utilize any relevant documents and may bring any individuals with knowledge of the issues, such as adjusters, appraisers, or contractors, to address the mediator.

2. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement.

3. All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation. The provisions of R.S. 9:4112 apply.

E. A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the administrator if the grounds are known prior to the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

F. If the insured fails to appear, without good cause as determined by the administrator, the insured may have the conference rescheduled only upon the insured's payment of the mediation fees for the rescheduled conference. If the insurer fails to appear at the conference, without good cause as determined by the administrator, the insurer shall pay the insured's actual expenses incurred in attending the conference and shall pay the mediator's fee whether or not good cause exists.

1. Failure of a party to arrive at the mediation conference within 30 minutes of the conference's starting time shall be considered a failure to appear.

2. Good cause shall consist of severe illness, injury, or other emergency which could not be controlled by the insured or the insurer and, with respect to an insurer, could not reasonably be remedied prior to the conference by providing a replacement representative or otherwise.

3. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the insurer shall be subject to penalty, including suspension, revocation, or fine for violating R.S. 22:1214(14)(b), (c), (f), et seq.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4117. Guidelines for the Quality Repair of Residential Property at a Reasonable and Fair Price

A. The provisions of insurance policies and applicable statutes require claims payments made by insurers to be sufficient to effectuate required repairs at the property site. Further, misrepresentation by any person regarding the cost of repairs is prohibited.

B. Based upon information provided by the construction industry, the insurance industry and nationally recognized sources, companies such as Simsol, Inc. and Xactware, Inc., compile construction pricing guidelines used in adjusting property losses. These guidelines reflect data from both the construction and insurance industries and the ranges take into consideration price differentials between geographic areas of the state. The parties shall use the current construction pricing guidelines compiled by these or similar reputable sources as the starting point in the dispute resolution process.

C. The guidelines referred to herein do not apply to any portion of repairs necessary to fulfill the insurer's contractual obligation to restore the insured residence to pre-hurricane condition where, as of the effective date of this rule, there is an executed repair contract to effectuate such repairs for an agreed price and the insurer has tendered full payment for the repair contract amount for those repairs.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4119. Post Mediation

A. Within five days of the conclusion of the conference the mediator shall file with the administrator a mediator's status report on Form DOI-HM-1 which is entitled *Disposition of Property Insurance Mediation Conference*, indicating whether or not the parties reached a settlement. Form DOI-HM-1 will be available from the administrator and is hereby incorporated in this rule by reference.

1. Mediation is non-binding unless all the parties specifically agree otherwise in writing.

2. If the parties reached a settlement, the mediator shall include a copy of the settlement agreement with the status report.

3. However, if a settlement is reached, the insured shall have three business days within which he or she may rescind any settlement agreement provided that the insured has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the conference.

B. If a settlement agreement is reached and is not rescinded, it shall act as a release of all specific claims that were presented in the conference. Any additional claims under the policy shall be presented a separate claim.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4121. Non-Participation in Mediation Program

A. If the insured decides not to participate in this claim resolution process or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insured's insurance policy, by litigation, or by any other dispute resolution procedure available under Louisiana law.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4123. Departmental Authority to Designate

A. The department is authorized to designate an entity or person as its administrator to carry out any of the department's duties under this rule.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4125. Severability

A. If a court holds any section or portion of a section of this Emergency Rule or the applicability thereof to any person or circumstance invalid, the remainder of the Emergency Rule shall not be affected thereby.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4127. Applicable Provisions

A. The applicable provisions of Title 49, Louisiana Administrative Procedure Act, shall govern issues relating to mediation that are not addressed in this rule. The provisions of this Emergency Rule shall govern in the event of any conflict with the provisions of Title 49, Louisiana Administrative Procedure Act.

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

James J. Donelon
Commissioner

0609#012

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Rule 23—Suspension of Right to Cancel or Nonrenew Residential, Commercial Residential or Commercial Property Insurance Due to Hurricane Katrina or Hurricane Rita (LAC 37:XI.Chapter 43)

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., and specifically R.S. 49:953.(B), the Department of Insurance gives notice that it has promulgated a second extension of Emergency Rule 23 to regulate all insurance matters between insureds and insurers affected by Hurricane Katrina or its aftermath, or Hurricane Rita or its aftermath.

The second extension of Emergency Rule 23 is issued pursuant to and in furtherance of the plenary authority of the Commissioner of Insurance for the state of Louisiana, including, but not limited to, the following: Proclamation No. 48 KBB 2005 issued on August 26, 2005 by Governor Kathleen Babineaux Blanco declaring a State of Emergency relative to Hurricane Katrina; Proclamation No. 53 KBB 2005 issued on September 20, 2005 by Governor Kathleen Babineaux Blanco declaring a State of Emergency relative to Hurricane Rita; Executive Order No. KBB 2005-70 issued October 24, 2005 by Governor Kathleen Babineaux Blanco transferring authority over any and all insurance matters to Commissioner of Insurance J. Robert Wooley; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:636; R.S. 22:636.2; R.S. 22:636.4; R.S. 22:636.6; R.S. 22:1214.(12) and (14); R.S. 22:1471; and R.S. 49:950 et seq.

On August 26, 2005, Governor Kathleen Babineaux Blanco declared the existence of a State of Emergency with the state of Louisiana caused by Hurricane Katrina. This State of Emergency has extended from Friday, August 26, 2005 through at least January 23, 2006 as per Proclamation No. 75 KBB 2005. Subsequently, on September 20, 2005, Governor Kathleen Babineaux Blanco declared the existence of a State of Emergency within the state of Louisiana caused by Hurricane Rita. This State of Emergency has extended from Tuesday, September 20, 2005 through at least January 23, 2006 as per Proclamation No. 74 KBB 2005.

Thousands of Louisiana citizens have suffered damage due to Hurricane Katrina and/or Hurricane Rita. The residential property and commercial property of many Louisiana citizens was severely damaged or destroyed. Insurers have been working diligently to adjust and pay claims. However, due to a shortage of building materials, contractors and construction workers many policyholders who have received, or will soon receive, claim payments from insurers will find that they are unable to repair or reconstruct their residential, commercial residential or

commercial property within normal time frames. In many places it could be months or years before residential, commercial residential or commercial property located in Louisiana and damaged by Hurricane Katrina and/or Hurricane Rita can be repaired or reconstructed.

This inordinate time period to repair or reconstruct residential, commercial residential or commercial property continues to affect the ability of Louisiana insureds to maintain or obtain personal residential, commercial residential or commercial property insurance. Hurricane Katrina and Hurricane Rita have created a mass disruption to the normalcy previously enjoyed by Louisianans to maintain or obtain personal residential, commercial residential or commercial property insurance for residential property or commercial property and has created an immediate threat to the public health, safety, and welfare of Louisiana citizens.

Additionally, sufficient time is still needed for the Louisiana Citizens Property Insurance Corporation to prepare and place on the open market insurance products that, in the opinion of the commissioner, will provide adequate residential property, commercial residential property and commercial property insurance to Louisiana citizens subsequent to Hurricane Katrina and Hurricane Rita.

The commissioner will be hindered in the proper performance of his duties and responsibilities under the Louisiana Insurance Code, as well as his duties and responsibilities regarding the referenced States of Emergency, without the adoption of this second extension of Emergency Rule 23 which relates to the cancellation and nonrenewal of all personal residential, commercial residential or commercial property insurance subject to the Louisiana Insurance Code.

In light of the foregoing the second extension of Emergency Rule 23 is adopted and shall apply to all insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner, regarding any and all types of homeowners insurance and/or residential property insurance, commercial insurance, fire and extended coverage insurance, credit property and casualty insurance, property and casualty insurance, all surplus lines insurance, and any and all other insurance related entities doing business in Louisiana and/or regulated by the commissioner.

The second extension of Emergency Rule 23 is applicable statewide to any insured who had a personal residential, commercial residential or commercial property insurance policy covering a dwelling, residential property or commercial property located in Louisiana if said policy of insurance was in effect as of 12:01 a.m. on August 26, 2005 with regard to a claim filed as a result of any damage caused by Hurricane Katrina or its aftermath, or if said policy of insurance was in effect as of 12:01 a.m. on September 20, 2005 with regard to a claim filed as a result of any damage caused by Hurricane Rita or its aftermath.

The second extension of Emergency Rule 23 was adopted and became effective on August 25, 2006. A copy of the second extension of Emergency Rule 23 may be obtained from the Department of Insurance by contacting Warren Byrd, Executive Counsel, in writing c/o the Louisiana Department of Insurance, 1702 N. Third Street, Baton

Rouge, LA 70802, or by telephone at (225) 219-7841, or by electronic mail at wbyrd@ldi.state.la.us.

Accordingly, the commissioner hereby adopts the second extension of Emergency Rule 23

Title 37
INSURANCE
Part XI. Rules

Chapter 43. Rule 23—Suspension of Right to Cancel or Nonrenew Residential, Commercial Residential or Commercial Property Insurance Due to Hurricane Katrina or Hurricane Rita

§4301. Benefits, Entitlements and Protections

A. The benefits, entitlements and protections of Emergency Rule 23 shall be applicable to insureds who, as of 12:01 a.m. on August 26, 2005 had a personal residential, commercial residential or commercial property insurance policy for a dwelling, residential property or commercial property located in Louisiana and who filed a claim as a result of any damage caused by Hurricane Katrina or its aftermath. The benefits, entitlements and protections of Emergency Rule 23 shall also be applicable to insureds who, as of 12:01 a.m. on September 20, 2005 had a personal residential, commercial residential or commercial property insurance policy for a dwelling, residential property or commercial property located in Louisiana and who filed a claim as a result of any damage caused by Hurricane Rita or its aftermath.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4303. Application

A. Emergency Rule 23 shall apply to any and all types of personal residential, commercial residential or commercial property insurance covering a dwelling, residential property or commercial property located in Louisiana that sustained damage as a result of Hurricane Katrina or its aftermath, or Hurricane Rita or its aftermath, including, but not limited to, any and all types of homeowners insurance and/or residential property insurance, commercial insurance, fire and extended coverage insurance, credit property and casualty insurance, property and casualty insurance, and any and all other insurance regulated by the commissioner that falls within the intent and purpose of Emergency Rule 23.

B. Any statutory or regulatory provision, or any policy provision contained in any and all policies of insurance set forth in §4303.A above, shall be suspended and shall be unenforceable to the extent that said statutory or regulatory provision, or policy provision, authorizes an insurer to cancel or nonrenew said policy of insurance. The right to cancel or nonrenew said policy of insurance shall be limited to the specific exceptions set forth in Section 4307.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4305. Cancellation or Nonrenewal Suspended

A. The right of any insurer, surplus lines insurer or any other entity regulated by the commissioner to cancel or nonrenew any personal residential, commercial residential or

commercial property insurance policy covering a dwelling, residential property or commercial property located in Louisiana that sustained damaged as a result of Hurricane Katrina or its aftermath, or Hurricane Rita or its aftermath, is suspended and shall be prohibited until 60 days after the substantial completion of the repair and/or reconstruction of the dwelling, residential property or commercial property, except for the specific exceptions set forth in §4307, or until Emergency Rule 23 is terminated by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4307. Limited Exceptions for Cancellation or Nonrenewal

A. An insurer or surplus lines insurer or any other entity regulated by the commissioner shall only have the right to cancel or nonrenew an insured for the following limited exceptions:

1. non-payment of the premium after providing the insured with the notice of cancellation in accordance with the applicable statutory time period mandated by the Louisiana Insurance Code for that type of insurance;

2. fraud or material misrepresentation related to the Hurricane Katrina or Hurricane Rita claim, but only after the insurer has provided the insured with a 60-day written notice of cancellation setting forth the specifics with regard to the alleged fraud or material misrepresentation;

3. the insured causes an unreasonable delay in the repair or reconstruction of the dwelling, residential property or commercial property, but only after the insurer has provided the insured with a 60-day written notice of cancellation setting forth the specifics with regard to the insureds unreasonable delay with regard to the repair or reconstruction;

4. the insured has been paid the full policy limits and the insured has evidenced the intent to not repair or reconstruct the dwelling, residential property or commercial property;

5. the insured has not been paid the full policy limits but the insured has evidenced the clear intent to not repair or reconstruct the dwelling, residential property or commercial property;

6. the insured violates a material provision of the policy, including, but not limited to, performing illegal activity or failing, without just cause, to make reasonable efforts to protect the insured dwelling, residential property or commercial property that results in an increased risk to the material detriment of the insurer.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4309. New Policies

A. New policies of insurance issued after January 1, 2006, covering a dwelling, residential property or commercial property located in Louisiana shall not be affected by Emergency Rule 23.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4311. Written Request for Cancellation or Non-Renewal by Insured

A. Nothing contained in Emergency Rule 23 shall prevent or prohibit an insured from voluntarily cancelling or nonrenewing the insured's policy of insurance covering a dwelling, residential property or commercial property located in Louisiana.

B. Nothing contained in Emergency Rule 23 shall prevent or prohibit an insured from voluntarily entering into an agreement with an insurer to modify the coverage, limits, terms, endorsements, exclusions or deductibles with regard to the insured's policy of insurance covering a dwelling, residential property or commercial property located in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4313. Insured's Obligation

A. The insured is obligated to exercise good faith with regard to undertaking the repairs or reconstruction of the dwelling or residential property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4315. Insurer's Obligation

A. The insurer or surplus lines insurer or any other entity regulated by the commissioner is obligated to provide the insured with sufficient time to effectuate the repairs or reconstruction to the dwelling or residential property and to recognize the inordinate conditions that exist in the state of Louisiana with regard to the ability of the insured to engage a contractor, engage construction workers, obtain materials and otherwise undertake to accomplish the necessary repairs or reconstruction of the dwelling, residential property or commercial property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4317. Commissioner's Jurisdiction over Modifications to Renewal Provisions

A. An insurer may submit to the commissioner, for his approval, a written Modified Renewal Plan that would allow for significant or substantive modifications to an underlying policy of insurance set forth in §4303.A that is subject to Emergency Rule 23.

B. The Modified Renewal Plan submitted by the insurer shall, at a minimum, provide the following information to the commissioner.

1. The reasons why the insurer believes that compliance with Emergency Rule 23 would cause a hardship or create an undue or unreasonable burden on the insurer's ability to operate in Louisiana.

2. A detailed explanation as to how the proposed modifications to the underlying policy would continue to provide appropriate insurance protection to the insured.

3. The anticipated amount of the financial hardship that may be imposed upon the insurer if the insurer were required to comply with Emergency Rule 23.

4. An unequivocal statement to the commissioner as to whether or not the insurer will continue to provide said insurance coverage in Louisiana over the next 24 month period.

C. If the commissioner determines that it would be in the best interests of the insureds of Louisiana to permit the modifications requested by the insurer, the commissioner may approve the insurer's Modified Renewal Plan.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4319. Exemption from Compliance

A. Notwithstanding any other provision contained herein, the commissioner may exempt any insurer from compliance with Emergency Rule 23 upon the written request by the insurer if the commissioner determines that compliance with Emergency Rule 23 may be reasonably expected to result in said insurer being subject to undue hardship, impairment, or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4321. Purpose and Intent

A. The provisions of Emergency Rule 23 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of Louisiana who desire to maintain or obtain personal residential, commercial residential or commercial property insurance for a dwelling, residential property or commercial property located in Louisiana.

B. The additional purpose and intent of Emergency Rule 23 is to provide sufficient time for the Louisiana Citizens Property Insurance Corporation to prepare and place on the open market insurance products that, in the opinion of the commissioner, will provide adequate residential property, commercial residential property and commercial property insurance to Louisiana citizens subsequent to Hurricane Katrina and Hurricane Rita.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4323. Rule Amendment

A. The commissioner reserves the right to amend, modify, alter or rescind all or any portions of Emergency Rule 23.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4325. Severability Clause

A. If any section or provision of Emergency Rule 23 that is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of

Emergency Rule 23, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4327. Effective Date

A. Emergency Rule 23 shall become effective on December 30, 2005.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4329. Termination Date

A. Emergency Rule 23 shall terminate on the earlier of either:

1. sixty days after the substantial completion the repair or reconstruction of the dwelling, residential property or commercial property covered by a policy of insurance that is the subject of Emergency Rule 23; or

2. December 31, 2006.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766: R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

James J. Donelon
Commissioner

0609#007

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Mandatory Electronic Disbursement of CCAP/STEP Funds
(LAC 67:III.5107, 5109, and 5729)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III §§5107, 5109, and 5729 in the Child Care Assistance Program (CCAP) and the Strategies to Empower People (STEP) Program. This Rule shall remain in effect for a period of 120 days.

As a result of delays and problems with the distribution of CCAP child care payments and STEP supportive services payments during and after Hurricanes Katrina and Rita, and the possibility of further delays in the distribution of such payments during the 2006 hurricane season, the agency has chosen to disburse these payments electronically through direct deposit and stored value cards. This electronic disbursement process will be mandatory for all CCAP providers and STEP participants effective September 1, 2006. Electronic disbursement will allow the agency to provide effective and efficient disbursement of CCAP and STEP payments while eliminating the need to print and mail checks.

Authority for this action is ACF Guidance, ACYF-IM-CC-05-03, Flexibility in Spending CCDF Funds in Response to Federal or State Declared Emergency Situations. Failure to proceed with this action could result in imminent peril to the public in that Class A and E providers will be unable to receive their payments creating financial hardship and the possible closure of child care facilities thereby increasing the chance that the children will be left alone or in substandard care facilities.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance Program

Subchapter A. Administration, Conditions of Eligibility, and Funding

§5107. Child Care Providers

A. ...

B. A licensed Class A center or licensed Class A Head Start center must be active in the Child Care Assistance Program (CCAP) Provider Directory, complete and sign a Class A provider agreement, and provide complete and accurate documentation and information required for Direct Deposit before payments can be made to that facility.

C. - D.1.d ...

E. A public or non-public school program must be certified, must complete and sign a school program provider agreement and Form W-9, must be regulated by the Board of Elementary and Secondary Education (BESE) if a public school or *Brumfield vs. Dodd* approved if a non-public school, and provide complete and accurate documentation and information required for Direct Deposit before payments can be made to that provider.

F. - F.7. ...

G.1. A provider shall be denied or terminated as an eligible CCAP provider if:

a. - g ...

h. a Class A or School Child Care Provider fails to submit complete and accurate documentation and information required for Direct Deposit.

G.2. - I.2. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484, 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:

§5109. Payment

A. - E. ...

F. Electronic disbursement of child care payments shall be mandatory for all types of CCAP providers. Electronic disbursement of child care payments includes direct deposit to the CCAP provider's bank account (checking or savings) or payments to a stored value card account for the CCAP provider. It is mandatory for Class A and School Child Care providers to utilize direct deposit to receive their CCAP

payments. The fees associated with the use of a stored value card are subject to the conditions of that financial institution.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), repromulgated LR 30:2078 (September 2004), amended LR 31:2265 (September 2005), LR 32:

**Subpart 16. Strategies to Empower People (STEP)
Program**

**Chapter 57. Strategies to Empower People (STEP)
Program**

Subchapter C. STEP Program Process

§5729. Support Services

A. - B.5. ...

C. Electronic disbursement of support services payments shall be mandatory for all payment types.

1. Electronic disbursement of support services payments other than child care payments includes direct deposit to the STEP participant's bank account (checking or savings) or payments to a stored value card account for the STEP participant.

2. Electronic disbursement of child care payments includes direct deposit to the CCAP provider's bank account (checking or savings) or payments to a stored value card account for the CCAP provider.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004), amended LR 32:

Ann Silverberg Williamson
Secretary

0609#015

DECLARATION OF EMERGENCY

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

TANF Initiatives—Alternative to
Abortion and Freedom Schools
(LAC 67:III.5549, 5569 and 5583)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt LAC 67:III, Subpart 15, Chapter 55, §5569, Alternatives to Abortion Services Program and §5583, Children's Defense Fund Freedom Schools as new TANF Initiatives and to amend §5549, OCS Child Welfare Programs. This Emergency Rule effective September 29, 2006, will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule effective June 1, 2006, since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. (The final Rule will be published in the November 2006 issue.)

As a result of Act 1 of the 2004 Legislative Session, the agency repealed several TANF Initiatives including Alternatives to Abortion effective September 2004, as funding for the program was no longer available. Pursuant to Act 16 of the 2005 Regular Session of the Louisiana Legislature, the agency is adopting the Children's Defense Fund Freedom Schools and re-establishing Alternatives to Abortion Services Program as funds have once again been appropriated for this initiative. The agency is also amending §5549, OCS Child Welfare Programs to remove reference to Maintenance of Effort funds as monies for this program will now consist of federal funds only.

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

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

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

Chapter 55. TANF Initiatives

§5549. OCS Child Welfare Programs

Effective April 12, 2002

A. OFS shall enter into a Memorandum of Understanding with the Office of Community Services (OCS), the state child welfare agency, for collaboration in identifying and serving children in needy families who are at risk of abuse or neglect. The methods of collaboration include:

A.1. - B. ...

C. Financial eligibility is limited to needy families which include a minor child living with a custodial parent or an adult caretaker relative. A needy family is a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), or Supplemental Security Income (SSI).

D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:2374 (November 2002), amended LR 31:486 (February 2005), LR 32:

§5569. Alternatives to Abortion Services Program

A. Effective June 1, 2006, the Office of Family Support shall enter into contracts with public agencies, non-profit organizations, or for-profit organizations to provide intervention services including crisis intervention, counseling, mentoring, support services, and pre-natal care information, in addition to information and referrals regarding healthy childbirth, adoption, and parenting to help ensure healthy and full-term pregnancies as an alternative to abortion.

B. These services meet the TANF goals to provide assistance to needy families so children may be cared for in their own homes or in the homes of relatives and to encourage the formation and maintenance of two-parent families by providing pregnancy and parenting support to

low-income women, their male partners, and families who are experiencing an unplanned pregnancy.

C. Eligibility for services is limited to pregnant women, their male partners, and/or pregnant minors whose family's income is at or below 200 percent of the federal poverty level.

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

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

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

§5583. Children's Defense Fund Freedom Schools

A. Effective June 1, 2006, the agency shall enter into contracts to create supportive, nurturing, literature-rich environments for children ages 5 to 18 years of age by focusing on literacy, cultural heritage, parental involvement, servant-leadership, and social action. The Freedom Schools program connects the needs of children and their families with the resources of the community.

B. These services meet the TANF goal to prevent and reduce out-of-wedlock pregnancies.

C. Eligibility for services is not limited to needy families.

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

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

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

Ann Silverberg Williamson
Secretary

0609#033

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

TANF Initiatives—Domestic Violence Services (LAC 67:III.5509)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt LAC 67:III, Subpart 15, Chapter 55, §5509, Domestic Violence Services, as a new TANF Initiative. This Emergency Rule, effective September 1, 2006, will remain in effect for a period of 120 days.

As a result of Act 1 of the 2004 Regular Legislative Session, the agency repealed several TANF Initiatives including Domestic Violence Services effective September 2004, as funding for the program was no longer available. Pursuant to Act 17 of the 2006 Regular Session of the Louisiana Legislature, the agency is re-establishing this program as funds have once again been appropriated for this initiative.

The authorization for emergency action in this matter is contained in Act 17 of the 2006 Regular Session of the Louisiana Legislature. A Notice of Intent regarding the adoption of this initiative was published in the August 2006 issue of the *Louisiana Register*.

Title 67 SOCIAL SERVICES

Part III. Office of Family Support

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

Chapter 55. TANF Initiatives

§5509. Domestic Violence Services

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to provide for services pertaining to domestic violence including rural outreach, services to children in shelters, and training of law enforcement and DSS personnel.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is not limited to needy families. Eligibility for services is limited to children and/or their parents or caretaker relatives who are victims of domestic violence.

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

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

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

Ann Silverberg Williamson
Secretary

0609#016

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2006-2007 Fur Trapping Season

In accordance with the provisions of R.S. 56:259(A) which authorizes the Wildlife and Fisheries Commission to set the open season for the taking of non-game quadrupeds and allows the Commission to extend, curtail or prohibit trapping in any area of the state each year and in accordance with emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) of the Administrative Procedure Act, which allows the Wildlife and Fisheries Commission to use emergency provisions to set seasons, the Wildlife and Fisheries Commission does hereby set the 2006-2007 trapping season including the Coastwide Nutria Control Program, statewide from November 20, 2006 through March 31, 2007 including all Department Wildlife Management Areas except Acadiana Conservation Corridor, Floy Ward McElroy, Elbow Slough and Sandy Hollow where the trapping season will remain closed.

The coastwide nutria control program objective is to provide economic incentive, by payment of \$5 per nutria tail to participants, to encourage the harvest of up to 400,000 nutria annually from coastal Louisiana. For the purpose of this program, coastal Louisiana is bounded on the north by Interstate 10 from the Louisiana-Texas line to Baton Rouge, Interstate 12 from Baton Rouge to Slidell, and Interstate 10 to the Louisiana-Mississippi line. Any provision of LAC 76:V.123 in conflict herewith is hereby superseded for the duration of this Declaration of Emergency.

The Wildlife and Fisheries Commission does hereby also authorize the Secretary of the Department of Wildlife and Fisheries to extend or shorten the adopted season.

Terry D. Denmon
Chairman

0609#043

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2006-2007 Waterfowl Seasons

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

The hunting season for ducks, coots and geese during the 2006-2007 hunting season shall be as follows:

Ducks And Coots: 60 days

West Zone: November 11 – December 3
December 16 - January 21

East Zone: November 18 – December 3
December 16 - January 28

Youth Waterfowl Weekend - November 4-5 in West Zone,
November 11-12 in East Zone.

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

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

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

Geese: 72 Days

Light Geese (Snow, Blue And Ross's) and White-Fronted Geese

West Zone: November 11 - December 3
December 16 - February 2

East Zone: November 4 - December 1
December 16 - January 28

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

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

Daily Limit on white-fronted geese: 2

Possession Limit on white-fronted geese: 4

Canada Geese: Closed in the Area Described Below
January 13 - January 28

Daily Limit on Canada geese: 1

Possession limit on Canada geese: 2

The Canada Goose Season will be open statewide except for a portion of southwest Louisiana. The closed area is described as follows: Beginning at the Texas State Line, proceeding east along

Hwy. 82 to the Calcasieu Ship Channel, then north along the Calcasieu Ship Channel to its junction with the Intracoastal Canal, then east along the Intracoastal Canal to its juncture with LA Hwy. 82, then south along LA Hwy. 82 to its juncture with Parish Road 3147, then south and east along Parish Road 3147 to Freshwater Bayou Canal, then south to the Gulf of Mexico, then west along the shoreline of the Gulf of Mexico to the Texas State Line, then north to the point of beginning at LA Hwy. 82. Open waters of Lake Arthur and the Mermentau River from the Hwy. 14 bridge southward will also be closed to Canada goose hunting.

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

Conservation Order For Light Geese (Snow, Blue And Ross's)

West Zone: December 4 - December 15

February 3 - March 11

East Zone: December 4 - December 15

January 29 - March 11

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

Rails: November 11 - January 3

King And Clapper: Daily Bag Limit 15 In The Aggregate,
Possession 30.

Sora And Virginia: Daily Bag And Possession 25 In The
Aggregate.

Gallinules: November 11 - January 3

Daily bag limit 15, Possession limit 30

Snipe: November 4 - December 5

December 16 - February 28

Daily bag limit 8, Possession limit 16

Shooting Hours: One-half hour before sunrise to sunset,
except at the Spanish Lake Recreation Area in Iberia
Parish where shooting hours, including the Conservation
Order, end at 2 p.m.

Extended Falconry Seasons for Ducks, Rails and Gallinules:

Statewide: November 4 - February 2

Sixteen days of the total season lengths for rails, gallinules
and extended falconry seasons were used during the
September teal season.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 200,000 sportsmen, selection of season dates, bag limits and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective November 1, 2006 and extend through one-half hour after sunset on March 12, 2007.

Janice A. Lansing
Undersecretary

0609#042

Rules

RULE

Department of Economic Development Office of the Secretary

Angel Investor Tax Credit Program (LAC 13:I.Chapter 33)

The Department of Economic Development, Office of the Secretary, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and in accordance with R.S. 47:6020 through 6020.4 and 36:104, hereby amends the following Sections of the regulations for the Angel Investor Tax Credit Program.

The Department of Economic Development, Office of the Secretary, has found a need to amend the rules regarding the regulation of the Angel Investor Tax Credit Program pursuant to R.S. 47:6020 through 6020.4, and the State needs to provide for the growth and stability of Louisiana's entrepreneurial business environment by making available ready sources of capital necessary to support this environment. This program is intended to provide economic benefits to Louisiana-based investors who will make new investments or increase their existing investment in Louisiana-based economic development projects that will create and/or retain jobs for Louisiana citizens; and to enhance the entrepreneurial business environment and raise ready sources of capital for this environment through encouraging third parties to invest in early stage wealth-creating businesses expanding the economy of the state, enlarging the quality of jobs available in Louisiana. Without these rules, the State of Louisiana may suffer the loss of business investment and economic development projects creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 33. Angel Investor Tax Credit

§3301. General

A. The intent of the Angel Investor Tax Credit Program Act of 2005 (Act 400 of 2005; La. 47:6020 through 6020.4, the provisions of which shall hereinafter be referred to as "Act 400") is to enhance the entrepreneurial business environment and raise ready sources of capital for this environment through encouraging third parties to invest in early stage wealth-creating businesses expanding the economy of the state, enlarging the quality jobs available in Louisiana to retain the presence of young people in Louisiana. These provisions are to be read in pari materiae with Act 400. For the purposes of this Rule, the "secretary" shall be either the Secretary of Economic Development or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006); LR 32:1594 (September 2006).

§3303. Accredited Investor

A. An *Accredited Investor* shall be defined as:

1. an Angel Pool (which may be a Limited Liability Corporation or Limited Liability Partnership, as provided below) as determined by the Secretary, all of whose participants shall be Accredited Investors;
2. a person who has individual net worth, or joint net worth with the person's spouse, that exceeds \$1 million at the time of the purchase;
3. a person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year;
4. persons, including Corporations, Partnerships, Limited Liability Partnerships and Limited Liability Corporations composed of persons meeting the qualifications of Paragraphs A.2 and 3 above, provided that the person's share of the tax credits of the entrepreneurial business shall not exceed that person's share of the profits of the entrepreneurial business or a person's share of the tax credits as a partner or a member of a Limited Liability Corporation or Partnership shall not exceed that person's share of the profits of the LLC.

B. Angel Pools may receive certification from the secretary upon showing;

1. the proposed pool of investors is organized solely for the purposes of making angel investments;
2. participants in the pool are given the opportunity to screen applicants for pool investments and to participate in deal reviews as well as post investment review of company performance;
3. participants are given the opportunity to opt in or out of proposed angel investments and are not participating solely upon the determinations of an investment or fund manager;
4. such other factors of operation of the pool as may distinguish it from the operation of a venture fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006); LR 32:1594 (September 2006).

§3305. Louisiana Entrepreneurial Business

A. A Louisiana Entrepreneurial Business shall be defined as those businesses approved by the Secretary under Act 400 and that meet the following requirements:

1. A business shall provide the Secretary with a business plan that includes all appropriate long and short term forecasts and contingencies of business operations, including research and development, profit, loss and cash flow projections and details of expenditure of angel investor funding in accordance with Act 400 and shall also include the following:

a. the principal business operations of the business are located in Louisiana including Louisiana as the primary place of employment for the employees of the business;

b. demonstrating a plan or progression through which more than fifty percent of its sales will be from outside of Louisiana;

c. that the business is to operate as a person defined as an "employer" within the meaning of La. R.S. 51:2453(1)(b)(i) through (v), (c), and (d), and in Section 1105.A.1 through A.5 of the Quality Jobs Rules.

2. The secretary shall also find that the business is not a business primarily engaged in the business of retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, or financial services including venture capital funds.

3. Such other findings by the Secretary as shall be consistent with Act 400, provided that under no circumstances shall the secretary's certification of the applicant as a Louisiana Entrepreneurial Business be considered or implied to be an endorsement of the business or any investment in that business and the applicant shall so advise all investors of this fact.

B. Approval of the secretary shall be obtained upon application by letter that submits the above business plan together with the Louisiana taxpayer identification number of the business and all other information regarding those items necessary to qualify the investment in the business for the angel tax credit as provided for by Act 400 addressed to the Secretary of Economic Development, Post Office Box 94185, Baton Rouge, LA 70802-9185. Upon receipt, the Secretary shall make such requests for other information necessary to a determination that the business should or should not be certified as a Louisiana Entrepreneurial Business. The secretary's certification of the business shall include the Louisiana taxpayer identification number of the business. This certification shall be in effect for one year from the date of the secretary's letter. The certification may be extended for additional one year periods upon application to the secretary showing that the business continues to be an entrepreneurial business within the meaning of the act and these rules, and the application includes the use of proceeds previously raised, number of employees, amount of payroll, annual revenue, and such other information as shall be requested by the Secretary or his representative. In order to continue to be certified, the business shall be in compliance with all reporting and other provisions of Act 400 and these rules with respect to the administration of the credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006); LR 32:1594 (September 2006).

§3307. The Angel Investor Tax Credit

A. The following rules shall be applicable to investments by Accredited Investors in Louisiana Entrepreneurial Businesses.

1. By January 31 of each year, Louisiana Entrepreneurial Businesses certified by the Secretary shall, by affidavit of its Chief Financial Officer, provide the secretary with the list of those Accredited Investors, the Louisiana taxpayer identification number of the Accredited Investors and the amount of their investment in accordance with the statute and these Rules, who have invested in the business provided that the business shall report up to and no more than \$2,000,000 total for the calendar year 2005 that shall have been invested by Accredited Investors in the

manner prescribed by Act 400 in order to obtain a tax credit for the Accredited Investors of no more than \$1,000,000 total for the tax year ending the previous December 31.

2. All tax credit amounts reported to the Secretary shall be fully credited to the Accredited Investor unless the total of all such investments shall exceed \$10,000,000 and the total of such credits shall exceed \$5,000,000 in which case the Secretary shall prorate the total amount of investment and tax credits earned and advise each Accredited Investor of the amount of his credit for the tax year ending December 31, no later than February 28 of the following year.

3. The secretary shall provide the Accredited Investor with all other necessary and appropriate certificates as provided by statute and as shall assist the Department of Revenue in its determination of applicability of the credit. No credit certificates shall be issued until after a determination has been made as to whether or not there is a necessity for prorating of the credits as provided above. When issued, the certificates shall include the Louisiana taxpayer identification number of the Accredited Investor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:229 (February 2006); LR 32:1595 (September 2006).

Michael J. Olivier
Secretary

0609#048

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Clean Air Mercury Rule Incorporation by Reference (LAC 33:III.3003)(AQ257ft)

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 Air regulations, LAC 33:III.3003 (Log #AQ257ft).

This rule is identical to federal regulations found in 70 FR 28606-28700 (May 18, 2005), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rulemaking incorporates by reference the federal Clean Air Mercury Rule (CAMR) and provides for participation in the EPA-administered cap-and-trade program for annual mercury emissions. The federal rule seeks to reduce mercury emissions from coal-fired electrical generating units (EGUs). The federal EGU mercury cap-and-trade program for coal-fired EGUs was promulgated on May 18, 2005, and is closely based upon the highly successful Acid Rain Program. States have until November 2006 to submit to EPA their corresponding EGU emissions control

plan based upon Section 111 of the Clean Air Act Amendments of 1990.

Mercury is a metal that exists naturally in the environment around the world. It has been demonstrated that mercury can be transported globally in the atmosphere. This mercury transport occurs from both natural and man-made sources. Emissions from coal-fired EGUs in the United States have been determined to be a significant source of mercury. Although there are numerous sources of mercury exposure in homes, industries, and nature, some of the most significant exposure risks occur when the mercury in the atmosphere eventually settles to the ground and finds its way into lakes, rivers, and streams. This mercury in the bottom sediments of some rivers and lakes undergoes methylation, a process carried out by bacteria in certain conditions. Methyl mercury then gets into the food chain and results in mercury exposure to persons who eat fish. There are numerous fish consumption advisories in Louisiana. Human exposure to mercury can affect the nervous system and the function of several internal organs, such as the brain and the kidneys. Young children, especially the unborn, developing fetus, are particularly susceptible to the effects of mercury.

The federal rule establishes mercury limits from new and existing coal-fired EGUs and creates a market based cap-and-trade program that will reduce EGU emissions of mercury in two separate phases, in the years 2010 and 2018. Each state receives a mercury budget for each year. Louisiana's budget is 0.601 tons of mercury for years 2010-2017 and 0.237 tons of mercury thereafter. Each state can adopt any methodology to allocate their mercury allowances. The department will adopt the federal model rule for mercury allowance allocations that are based upon baseline heat input. It also will adopt the new source set-aside of five percent of the allowances in Phase 1, and three percent in Phase 2. New coal-fired EGUs will have to meet stringent new source performance standards in addition to being subjected to the caps. While individual states do have the authority to develop an alternative rule different from the federal cap-and-trade program, the department has concluded that alternatives to the EPA program which produce earlier and deeper reductions of mercury may not be technologically feasible and that rules which require all coal-fired EGUs to install mercury controls may not be cost effective, possibly subjecting the electricity rate payer to higher than necessary rates without a corresponding decrease in state-wide mercury deposition levels. The basis and rationale for this rule are to mirror the federal regulations for CAMR.

The substantive changes to AQ257ft are identical to federal corrections and amendments to the Clean Air Mercury Rule (CAMR) found in 70 FR 51266-51269 (August 30, 2005) and 71 FR 33388-33402 (June 9, 2006), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the substantive changes; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

These amendments correct portions of the promulgated CAMR. EPA addressed technical corrections in 70 FR 51266-51269 and subsequently addressed amendments in 71 FR 33388-33402. The amendments include a change in the definition of coal to exclude petroleum coke. The other amendments are non-controversial.

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

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference

§3003. Incorporation by Reference of 40 Code of Federal Regulations (CFR) Part 60

A. Except for 40 CFR Part 60, Subpart AAA, and as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2005, are hereby incorporated by reference as they apply to the state of Louisiana. Also incorporated by reference are revisions to 40 CFR Part 60, Subparts A, B, Da, and HHHH as promulgated as the Clean Air Mercury Rule on May 18, 2005, in the *Federal Register*, 70 FR 28606-28700, as corrected in the *Federal Register*, 70 FR 51266-51269, August 30, 2005, and as amended in the *Federal Register*, 71 FR 33388-33402, June 9, 2006; and Subpart EEEE, "Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006," and Subpart FFFF, "Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004," promulgated on December 16, 2005, in the *Federal Register*, 70 FR 74870-74924.

B. - 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), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006), LR 32:1596 (September 2006).

Herman Robinson, CPM
Executive Counsel

0609#017

RULE

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

Incorporation by Reference of the
CAIR SO₂ Trading Program
(LAC 33:III.506)(AQ260ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted the Air regulations, LAC 33:III.506 (Log #AQ260ft).

This Rule is identical to federal regulations found in 40 CFR Part 96, Subparts AAA, BBB, CCC, FFF, GGG, and HHH (July 1, 2005), and 70 FR 25162-25405 (May 12, 2005) and 71 FR 25328-25469 (April 28, 2006), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule incorporates by reference the federal regulations concerning the Clean Air Interstate Rule (CAIR) SO₂ Trading Program. This action is necessary in order for Louisiana to adopt the general and specific provisions for the CAIR SO₂ Trading Program, under Section 110 of the Clean Air Act, as a means of mitigating interstate transport of fine particulate and sulfur dioxide. By adopting 40 CFR Part 96, Subparts AAA-HHH, the state is authorizing EPA to assist the state in implementing the CAIR SO₂ Trading Program.

On March 10, 2005, EPA announced the Clean Air Interstate Rule (CAIR), a rule that will achieve reduction in air pollution by regulating sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions from 23 states and the District of Columbia. These pollutants contribute to levels of fine particles (PM_{2.5}) in areas above the air quality standard in downwind states. In addition, NO_x emissions in 25 eastern states and the District of Columbia contribute to levels of ozone in areas above the air quality standard for 8-hour ozone in other downwind states. In developing the CAIR SO₂ regulations and the cap-and-trade program, the Environmental Protection Agency relied on the successful Acid Rain Program/cap-and-trade program. The resulting CAIR SO₂ cap-and-trade program and the Acid Rain Program use a common SO₂ allowance system. EPA has promulgated changes to the Acid Rain Program that provide for this common structure. These revisions enable the CAIR SO₂ cap-and-trade program to accept Acid Rain SO₂ allocations for trading, selling, and/or determining compliance with the CAIR SO₂ program. The basis and rationale for this rule are to mirror the federal regulations.

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

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§506. Clean Air Interstate Rule Requirements

A. Reserved.

B. Reserved.

C. Annual Sulfur Dioxide. Except as specified in this Section, the Federal SO₂ Model Rule, published in the *Code of Federal Regulations* at 40 CFR Part 96, July 1, 2005, and as revised at 70 FR 25162-25405, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, is hereby incorporated by reference, except for Subpart III—CAIR SO₂ Opt-in Units and all references to opt-in units.

D. Copies of documents incorporated by reference in this Section may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.gpoaccess.gov/cfr/index.html; from the Department of Environmental Quality, Office of Environmental Services, Air Permits Division; or from a public library.

E. Modifications or Exceptions. A copy of each report or notice or of any other documentation required by the referenced regulations (i.e., 40 CFR Part 96) to be provided to "the Administrator" shall be provided to the Office of Environmental Services, Air Permits Division, by the person required to make submission to "the Administrator."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:1597 (September 2006).

Herman Robinson, CPM
Executive Counsel

0609#019

RULE

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

Incorporation by Reference of the Acid Rain Program
(LAC 33:III.505)(AQ259ft)

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 Air regulations, LAC 33:III.505 (Log #AQ259ft).

This Rule is identical to federal regulations found in 40 CFR Part 72 (July 1, 2005), and 70 FR 25162-25405 (May 12, 2005) and 71 FR 25328-25469 (April 28, 2006), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule replaces the existing Acid Rain Program regulations with an incorporation by reference of the recently revised federal regulations concerning the Acid Rain Program. This action is necessary in order for Louisiana to adopt the general and specific provisions for the CAIR SO₂ Trading Program, under Section 110 of the Clean Air Act, as a means of mitigating interstate transport of fine particulate and sulfur dioxide. By adopting the Acid Rain Program, 40 CFR Part 72, in its entirety, the state is authorizing EPA to assist the state in implementing the CAIR SO₂ Trading Program.

On March 10, 2005, EPA announced the Clean Air Interstate Rule (CAIR), a rule that will achieve reduction in air pollution by regulating sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions from 23 states and the District of Columbia. These pollutants contribute to levels of fine particles (PM_{2.5}) in areas above the air quality standard in downwind states. In addition, NO_x emissions in 25 eastern states and the District of Columbia contribute to levels of ozone in areas above the air quality standard for 8-hour ozone in other downwind states. In developing the CAIR SO₂ regulations and the cap-and-trade program, the Environmental Protection Agency relied on the successful Acid Rain Program/cap-and-trade program. The resulting CAIR SO₂ cap-and-trade program and the Acid Rain Program use a common SO₂ allowance system. EPA has promulgated changes to the Acid Rain Program that provide for this common structure. These revisions enable the CAIR SO₂ cap-and-trade program to accept Acid Rain SO₂ allocations for trading, selling, and/or determining compliance with the CAIR SO₂ program. The recent changes to the Acid Rain Program at the federal level due to CAIR will require the state to modify its Acid Rain rule at LAC 33:III.505. The incorporation of the federal Acid Rain Rule will ensure continuity between the Acid Rain Program and the implementation of the CAIR SO₂ Program. The basis and rationale for this Rule are to mirror the federal regulations.

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

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§505. Acid Rain Program Permitting Requirements

A. The Acid Rain Program regulations, published in the *Code of Federal Regulations* at 40 CFR Part 72, July 1, 2005, and as revised at 70 FR 25162-25405, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.

B. Copies of documents incorporated by reference in this Section may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.gpoaccess.gov/cfr/index.html; from the Department of Environmental Quality, Office of Environmental Services, Air Permits Division; or from a public library.

C. Modifications or Exceptions. A copy of each report or notice or of any other documentation required by the referenced regulations (i.e., 40 CFR Part 72) to be provided to "the Administrator" shall be provided to the Office of Environmental Services, Air Permits Division, by the person required to make submission to "the Administrator."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 21:678 (July 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2446 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2429, 2436 (October 2005), LR 32:1598 (September 2006).

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0609#018

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Major Stationary Source/Major Modification Emission
Thresholds for Baton Rouge Ozone Nonattainment Area
(LAC 33:III.111, 504, 509, 607, 709, and 711)(AQ253)

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 Air regulations, LAC 33:III.111, 504, 509, 607, 709, and 711 (Log #AQ253).

The department promulgated an emergency rule on June 15, 2005, to address rule revisions needed for transition from the 1-hour ozone National Ambient Air Quality Standard (NAAQS) to the 8-hour ozone NAAQS. The 1-hour ozone standard was revoked by the EPA in the federal 8-hour ozone implementation rule. The revocation of the 1-hour ozone standard was effective June 15, 2005. Under the 1-hour ozone standard the five-parish Baton Rouge ozone nonattainment area was classified as severe. Under the 8-hour ozone standard the Baton Rouge area is classified as marginal with an attainment date of June 15, 2007. To continue efforts toward attainment of the 8-hour ozone standard in the Baton Rouge area, this Rule promulgates the revisions in LAC 33:III.Chapters 5 and 6 to the major stationary source threshold values, the major modification significant net increase values, and the minimum offset ratios for the Baton Rouge nonattainment area at values more in line with those listed for a classification of serious than for the marginal classification. These revisions include changing references to the ozone standard from the 1-hour standard to the 8-hour standard; amending text to reflect the NSR requirements applying to large sources in nonattainment areas for the 8-hour standard; including nitrogen oxides as a precursor for ozone; including the current fine particle (PM_{2.5}) NAAQS; and amending Tables

1 and 1a in LAC 33:III.711 to reflect the 8-hour ozone standard. Without this action the Baton Rouge nonattainment area, which is classified as marginal under the 8-hour ozone standard, would revert to marginal levels in Table 1 of LAC 33:III.504. This rule will promulgate in LAC 33:III.504.M, the thresholds set forth in Emergency Rule AQ253E that were effective as of June 15, 2005. The rule revisions will constitute a revision to the Louisiana State Implementation Plan (SIP) for air quality. The basis and rationale for this rule are to continue efforts toward attainment of the ozone standard and cleaner air in the five-parish Baton Rouge area.

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

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 1. General Provisions

§111. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

* * *

Ozone Exceedance—a daily maximum 8-hour average ozone measurement that is greater than the value of the standard.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006), LR 32:1599 (September 2006).

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review Procedures

A. ...

1. For an area that is designated nonattainment for the ozone national ambient air quality standard (NAAQS), VOC and NO_x are the regulated pollutants under this Section. VOC and NO_x emissions shall not be aggregated for purposes of determining major stationary source status and significant net emissions increases.

2. Except as specified in Subsection M of this Section, the potential to emit of a stationary source shall be compared to the major stationary source threshold values listed in Subsection L, Table 1 of this Section to determine whether the source is major.

3. Except as specified in Subsection M of this Section, the emissions increase that would result from a proposed modification, without regard to project decreases, shall be compared to the trigger values listed in Subsection L, Table 1 of this Section to determine whether a calculation of the

net emissions increase over the contemporaneous period must be performed.

a. - d. ...

4. Except as specified in Subsection M of this Section, the net emissions increase shall be compared to the significant net emissions increase values listed in Subsection L, Table 1 of this Section to determine whether a nonattainment new source review must be performed.

5. - 7. ...

8. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after December 20, 2001 and prior to June 23, 2003, and for which the nonattainment new source review (NNSR) permit was issued in accordance with Subsection D of this Section on or before June 14, 2005, the provisions of this Section governing serious ozone nonattainment areas applied to VOC and NO_x increases. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after June 23, 2003, and for which the NNSR permit was issued in accordance with Subsection D of this Section on or before June 14, 2005, the provisions of this Section governing severe ozone nonattainment areas applied to VOC and NO_x increases.

B. - D.4. ...

5. Except as specified in Subsection M of this Section, emission offsets shall provide net air quality benefit, in accordance with offset ratios listed in Subsection L, Table 1 of this Section, in the area where the NAAQS for that pollutant is violated.

D.6. - F. ...

1. All emission reductions claimed as offset credit shall be from decreases of the same pollutant or pollutant class (e.g., VOC) for which the offset is required. Interpollutant trading, for example using a NO_x credit to offset a VOC emission increase, is not allowed. Except as specified in Subsection M of this Section, offsets shall be required at the ratio specified in Subsection L, Table 1 of this Section.

2. - 7.c. ...

8. Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours below baseline levels may be generally credited if such reductions are surplus, permanent, quantifiable, and federally enforceable, and if:

a. the shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this Subparagraph, the administrative authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emissions unit (However, in no event may credit be given for shutdowns that occurred before August 7, 1977.);

b. the shutdown or curtailment occurred on or after the date the permit application or application for emission reduction credits (ERCs) was filed; or

c. the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit.

F.9. - K. Visibility Impairment. ...

L. Table 1—Major Stationary Source/Major Modification Emission Thresholds

Table 1 Major Stationary Source/Major Modification Emission Thresholds			
Pollutant	Major Stationary Source Threshold Values (tons/year)	Major Modification Significant Net Increase (tons/year)	Offset Ratio Minimum
Ozone		Trigger Values	
VOC/NO _x			
Marginal	100	40(40) ²	1.10 to 1
Moderate	100	40(40) ²	1.15 to 1
Serious	50	25 ³ (5) ⁴	1.20 to 1 w/LAER or 1.40 to 1 internal w/o LAER
Severe	25	25 ³ (5) ⁴	1.30 to 1 w/LAER or 1.50 to 1 internal w/o LAER
Extreme	10	Any increase	1.50 to 1
CO			
Moderate	100	100	>1.00 to 1
Serious	50	50	>1.00 to 1
SO ₂	100	40	>1.00 to 1
PM ₁₀ ¹			
Moderate	100	15	>1.00 to 1
Serious	70	15	>1.00 to 1
Lead	100	0.6	>1.00 to 1

¹The requirements of LAC 33:III.504 applicable to major stationary sources and major modifications of PM₁₀ shall also apply to major stationary sources and major modifications of PM₁₀ precursors, except where the administrator determines that such sources do not contribute significantly to PM₁₀ levels that exceed the PM₁₀ NAAQS in the area.

²Consideration of the net emissions increase will be triggered for any project that would increase emissions by 40 tons or more per year, without regard to any project decreases.

³For serious and severe ozone nonattainment areas, the increase in emissions of VOC or NO_x resulting from any physical change or change in the method of operation of a stationary source shall be considered significant for purposes of determining the applicability of permit requirements, if the net emissions increase from the source equals or exceeds 25 tons per year of VOC or NO_x.

⁴Consideration of the net emissions increase will be triggered for any project that would increase VOC or NO_x emissions by five tons or more per year, without regard to any project decreases, or for any project that would result in a 25 ton or more per year cumulative increase in emissions of VOC within the contemporaneous period or of NO_x for a period of five years after the effective date of the rescission of the NO_x waiver, and within the contemporaneous period thereafter.

- VOC= volatile organic compounds
- NO_x = oxides of nitrogen
- CO = carbon monoxide
- SO₂ = sulfur dioxide
- PM₁₀= particulate matter of less than 10 microns in diameter

M. Notwithstanding the major stationary source and major modification significant net increase threshold values and minimum offset ratios established by Subsection L, Table 1 of this Section, the provisions of this Subsection shall apply to sources located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge as long as each parish's nonattainment designation

with respect to the 8-hour national ambient air quality standard (NAAQS) for ozone is "marginal" or "moderate."

1. For an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x, consideration of the net emissions increase will be triggered for any project that would:

- a. increase emissions of VOC or NO_x by 25 tons per year or more, without regard to any project decreases;
- b. increase emissions of the highly reactive VOC (HRVOC) listed below by 10 tons per year or more, without regard to any project decreases:
 - i. 1,3-butadiene;
 - ii. butenes (all isomers);
 - iii. ethylene;
 - iv. propylene.

2. The following sources shall provide offsets for any net emissions increase:

- a. a new stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x;
- b. an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x with a significant net emissions increase of VOC, including HRVOC, or NO_x of 25 tons per year or more.

3. The minimum offset ratio for an offset required by Paragraph M.2 of this Section shall be 1.2 to 1.

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 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006).

§509. Prevention of Significant Deterioration

A. - A.5. ...

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

Major Modification—

- a. ...
- b. Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for volatile organic compounds (VOCs) or nitrogen oxides (NO_x) shall be considered significant for ozone.

c. - d. ...

Major Stationary Source—

- a. - c. ...
- d. a major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone;

e. - Table A. ...

Regulated NSR Pollutant—

- a. any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the

administrative authority (e.g., volatile organic compounds and nitrogen oxides are precursors for ozone);

b. - d. ...

* * *

Significant—

a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions
	15 tpy of PM ₁₀ emissions
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics ¹	0.0000035 tpy
Municipal waste combustor metals ²	15 tpy
Municipal waste combustor acid gases ³	40 tpy
Municipal solid waste landfills emissions ⁴	50 tpy

¹Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

²Measured as particulate matter.

³Measured as sulfur dioxide and hydrogen chloride.

⁴Measured as nonmethane organic compounds.

b. - c. ...

* * *

C. - I.5. ...

a. the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide	575 µg/m ³	8-hour average
Nitrogen dioxide	14 µg/m ³	annual average
Particulate matter	10 µg/m ³ of PM ₁₀	24-hour average
Sulfur dioxide	13 µg/m ³	24-hour average
Ozone	No <i>de minimis</i> air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would require the performance of an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 µg/m ³	3-month average
Fluorides	0.25 µg/m ³	24-hour average
Total reduced sulfur	10 µg/m ³	1-hour average
Hydrogen sulfide	0.2 µg/m ³	1-hour average
Reduced sulfur compounds	10 µg/m ³	1-hour average

I.5.b. - AA.15.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006).

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking

§607. Determination of Creditable Emission Reductions

A. - C. ...

1. If the design value for the nonattainment area is above the national ambient air quality standard (NAAQS) for ozone, the department shall compare the current total point-source emissions inventory for the modeled parishes to the base case inventory, except that, beginning with the 2005 emissions inventory, this comparison shall be made to the base line inventory.

2. - 4.a. ...

i. if the design value for the nonattainment area is above the NAAQS for ozone and the current total point-source inventory for the modeled parishes exceeds the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions, adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section, or emissions attributed to the stationary point source(s) in question in the base case or base line inventory, as appropriate; or

ii. if the design value for the nonattainment area is not above the NAAQS for ozone or the current total point-source inventory for the modeled parishes does not exceed the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section; and

C.4.b. - D. ...

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 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1601 (September 2006).

Chapter 7. Ambient Air Quality
§709. Measurement of Concentrations—PM₁₀, PM_{2.5}, Sulfur Dioxide, Carbon Monoxide, Atmospheric Oxidants, Nitrogen Oxides, and Lead

A. PM₁₀, PM_{2.5}, sulfur dioxide, carbon monoxide, atmospheric oxidants, nitrogen oxides, and lead shall be measured by the methods listed in LAC 33:III.711.C, Table 2 or by such other equivalent methods approved by the

department. The publications or their replacements listed in LAC 33:III.711.C, Table 2 are incorporated as part of these regulations by reference.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1601 (September 2006).

§711. Tables 1, 1a, 2—Air Quality

A. Table 1. Primary Ambient Air Quality Standards

Table 1. Primary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
PM ₁₀	50 µg/m ³	(Annual arithmetic mean)
	150 µg/m ³	(Maximum 24-hour concentration not to be exceeded more than once per year)
PM _{2.5}	15.0 µg/m ³	(Annual arithmetic mean)
	65 µg/m ³	24-hour
Sulfur Dioxide (SO ₂)	80 µg/m ³	or 0.03 ppm (Annual arithmetic mean)
	365 µg/m ³	or 0.14 ppm (Maximum 24-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m ³	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m ³	or 35 ppm (Maximum 1-hour concentration not to be exceeded more than once per year)
Ozone	0.08 ppm daily maximum 8-hour average	The standard is met at an ambient air monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix I.
Nitrogen Dioxide (NO ₂)	100 µg/m ³	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m ³	(Maximum arithmetic mean averaged over a calendar quarter)

1. - 2. ...

B. Table 1a. Secondary Ambient Air Quality Standards

Table 1a. Secondary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
PM ₁₀	50 µg/m ³	(Annual arithmetic mean)
	150 µg/m ³	(Maximum 24-hour concentration not to be exceeded more than once per year)

Table 1a. Secondary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
PM _{2.5}	15.0 µg/m ³	(Annual arithmetic mean)
	65 µg/m ³	24-hour
Sulfur Dioxide (SO ₂)	1,300 µg/m ³	(Maximum 3-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m ³	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m ³	or 35 ppm (Maximum 1-hour concentration not to be exceeded more than once per year)
Ozone	0.08 ppm daily maximum 8-hour average	The standard is met at an ambient air monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix I.
Nitrogen Dioxide (NO ₂)	100 µg/m ³	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m ³	(Maximum arithmetic mean averaged over a calendar quarter)

1. - 2. ...

C. Table 2. Ambient Air—Methods of Contaminant Measurement

Table 2. Ambient Air—Methods of Contaminant Measurement		
Air Contaminant	Sampling Interval	Analytical Method
PM ₁₀	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix J.
PM _{2.5}	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix L.
Sulfur Dioxide	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix A.
	Continuous	Any method complying with reference or equivalent methods in Title 40, Code of Federal Regulations, Part 53, Subpart B.
Total Oxidants	Continuous	Any method complying with reference or equivalent methods in Title 40, Code of Federal Regulations, Part 50, Appendix D, and Part 53, Subpart B.
Carbon Monoxide	Continuous	Any method complying with reference or equivalent methods in Title 40, Code of Federal Regulations, Part 50, Appendix C, and Part 53, Subpart B.
Nitrogen Dioxide	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix F.

Table 2. Ambient Air—Methods of Contaminant Measurement		
Air Contaminant	Sampling Interval	Analytical Method
Lead	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix G.
Total Suspended	24 hours	Any method complying with Particulate (TSP) reference method in Title 40, Code of Federal Regulations, Part 50, Appendix B.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1602 (September 2006).

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0609#021

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Oil and Gas Construction Activities Storm Water Waiver (LAC 33:IX.2511)(WQ069ft)

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 Water Quality regulations, LAC 33:IX.2511 (Log #WQ069ft).

This Rule is identical to federal regulations found in 71 FR 33628-33640 (June 12, 2006), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This Rule implements the June 12, 2006, revision to 40 CFR 122 (71 FR 33628-33640), which modifies the National Pollutant Discharge Elimination System (NPDES) regulations to provide that certain storm water discharges from field activities or operations, including construction, associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities are exempt from NPDES permit requirements. The Department of Environmental Quality, Office of Environmental Services, became the NPDES permit issuing authority for the State of Louisiana on August 27, 1996. This rule is necessary in order to comply with federal regulations that require the LPDES program to be consistent with the EPA NPDES program. The basis and rationale for this rule are to mirror the federal regulations. This Rule promulgates Emergency Rule WQ069E published in the July 20, 2006 *Louisiana Register*.

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

Title 33 ENVIRONMENTAL QUALITY Part IX. Water Quality

Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program Chapter 25. Permit Application and Special LPDES Program Requirements

§2511. Storm Water Discharges

A. - A.1.e.iv. ...

2. The state administrative authority may not require a permit for discharges of storm water runoff from the following:

a. mining operations composed entirely of flows that are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and that are not contaminated by contact with, or that have not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations, except in accordance with Subparagraph C.1.d of this Section; and

b. all field activities or operations associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities, except in accordance with Subparagraph C.1.c of this Section. Discharges of sediment from construction activities associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities are not subject to the provisions of Clause C.1.c.iii of this Section.

[Note to Subparagraph A.2.b: The department encourages operators of oil and gas field activities or operations to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollutants, including sediment, in storm water both during and after construction activities to help ensure protection of surface water quality during storm events. Appropriate controls would be those suitable to the site conditions and consistent with generally accepted engineering design criteria and manufacturer specifications. Selection of BMPs could also be affected by seasonal or climate conditions.]

A.3. - E.7.c. ...

8. Any storm water discharge associated with small construction activities identified in Subparagraph B.15.a of this Section requires permit authorization by March 10, 2003, unless designated for coverage before then.

E.9. - G.4.d, certification. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:957 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2273 (October 2000), LR 26:2552

(November 2000), repromulgated LR 27:40 (January 2001), amended LR 28:467 (March 2002), LR 29:701 (May 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:1321 (June 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2510 (October 2005), LR 32:1603 (September 2006).

Herman Robinson, CPM
Executive Counsel

0609#020

RULE

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

Home and Community-Based Services Waivers
Supports Waiver
(LAC 50:XXI.Chapters 53-61)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XXI Chapters 53-61 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 5. Supports Waiver

Chapter 53. General Provisions

§5301. Purpose

A. The mission of this waiver is to create options and provide meaningful opportunities that enhance the lives of men and women with developmental disabilities through vocational and community inclusion. The Supports Waiver is designed to:

1. promote independence for individuals with a developmental disability who are age 18 or older while ensuring health and safety through a system of recipient safeguards;

2. provide an alternative to institutionalization and costly comprehensive services through the provision of an array of services and supports that promote community inclusion and independence by enhancing and not replacing existing informal networks; and

3. increase high school to community transition resources by offering supports and services to those 18 years and older.

B. Allocation of Waiver Opportunities. Waiver opportunities (slots) shall be allocated in the following manner.

1. Reserved capacity will be for those persons currently receiving state general funded vocational and habilitative services through the Office for Citizens with Developmental Disabilities.

2. The next reserved capacity will be for those persons currently waiting for state general funded vocational and habilitative services through the Office for Citizens with Developmental Disabilities.

3. All other waiver opportunities shall be offered on a first come, first served basis to individuals who meet the recipient qualifications for this waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1604 (September 2006).

Chapter 55. Target Population

§5501. Recipient Qualifications

A. In order to qualify for the Supports Waiver, an individual must be 18 years of age or older and meet the definition for a developmental disability as defined in R.S. 28:451.2. Developmental disability means either:

1. a severe chronic disability of a person that:

- is attributable to an intellectual or physical impairment or combination of intellectual and physical impairments;
- is manifested before the person reaches age 22;
- is likely to continue indefinitely;
- results in substantial functional limitations in three or more of the following areas of major life activity:

- self-care;
- receptive and expressive language;
- learning;
- mobility;
- self-direction;
- capacity for independent living; or
- economic self-sufficiency;

f. is not attributable solely to mental illness;

f. reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated;

2. a substantial developmental delay or specific congenital or acquired condition in a person from birth through age 9 which, without services and support, has a high probability of resulting in those criteria in Subparagraphs A.1.a-f above later in life that may be considered to be a developmental disability.

B. The individual must:

1. meet the requirements for an intermediate care facility for the mentally retarded level of care, which requires active treatment of mental retardation or a developmental disability under the supervision of a qualified mental retardation or developmental disability professional;

2. meet the financial eligibility requirements for the Medicaid program as a member of the group of individuals who would be eligible for Medicaid if they:

- were in a medical institution;
 - need home and community-based services in order to remain in the community; and
 - have a special income level equal to 300 percent of the Supplemental Security Income (SSI) federal benefit rate;
3. be a resident of Louisiana;
4. be a citizen of the United States or a qualified alien; and
5. meet the health and safety assurances.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1604 (September 2006).

Chapter 57. Covered Services

§5701. Supported Employment Services

A. Supported employment services consists of intensive, ongoing supports and services necessary for a recipient to achieve the desired outcome of employment in a community setting in the State of Louisiana where a majority of the persons employed are without disabilities. Recipients utilizing these services may need long-term supports for the life of their employment due the nature of their disability, and natural supports would not meet this need.

B. Supported employment services provide supports in the following areas:

1. individual job, group employment, or self-employment;
2. job assessment, discovery and development; and
3. initial job support and job retention, including assistance in personal care with activities of daily living in the supported employment setting and follow-along.

C. When supported employment services are provided at a work site where a majority of the persons employed are without disabilities, payment is only made for the adaptations, supervision and training required by recipients receiving the service as a result of their disabilities. It does not include payment for the supervisory activities rendered as a normal part of the business setting.

D. Transportation is included in supported employment services, but whenever possible, family, neighbors, friends, coworkers or community resources that can provide needed transportation without charge should be utilized.

E. These services are also available to those recipients who are self-employed. Funds for self-employment may not be used to defray any expenses associated with setting up or operating a business.

F. Supported employment services may be furnished by a coworker or other job-site personnel under the following circumstances:

1. the services furnished are not part of the normal duties of the coworker or other job-site personnel; and
2. these individuals meet the pertinent qualifications for the providers of service.

G. Service Limitations

1. Services for job assessment, discovery and development in individual jobs and self-employment shall not exceed 120 units of service in a Comprehensive Plan of Care year.

2. Services for job assessment, discovery and development in group employment shall not exceed 20 units of service in a Comprehensive Plan of Care year.

3. Services for initial job support, job retention and follow-along shall not exceed 240 units of service in a Comprehensive Plan of Care year.

H. Restrictions. Recipients receiving supported employment services may also receive prevocational or day habilitation services. However, these services cannot be provided in the same service day.

I. Choice of this service and staff ratio needed to support the recipient must be documented on the Comprehensive Plan of Care.

J. There must be documentation in the recipient's file that these services are not available from programs funded

under Section 110 of the Rehabilitation Act of 1973 or sections 602 (16) or (17) of the Individuals with Disabilities Education Act [230 U.S.C. 1401 (16 and 71)] and those covered under the State Plan.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1605 (September 2006).

§5703. Day Habilitation

A. Day habilitation is services that assist the recipient to gain desired community living experience, including the acquisition, retention or improvement in self-help, socialization and adaptive skills, and/or to provide the recipient an opportunity to contribute to his or her community. These services focus on enabling the recipient to attain or maintain his/her maximum functional level and shall be coordinated with any physical, occupational, or speech therapies identified in the individualized Comprehensive Plan of Care. Day habilitation services may serve to reinforce skills or lessons taught in other settings.

B. Day habilitation services are provided on a regularly scheduled basis for one or more days per week, five or more hours per day in a setting separate from the recipient's private residence. Activities and environments are designed to foster the acquisition of skills, appropriate behavior, greater independence, and personal choice.

C. Day habilitation provides services in the following areas:

1. volunteer activities;
2. community inclusion; and
3. facility-based activities.

D. Day habilitation includes assistance in personal care with activities of daily living in the day habilitation setting.

E. All transportation costs are included in the reimbursement for day habilitation services. The recipient must be present to receive this service. If a recipient needs transportation, the provider must physically provide, arrange for, or pay for appropriate transport to and from a central location that is convenient for the recipient and agreed upon by the Team. The recipient's transportation needs and this central location shall be documented in the Comprehensive Plan of Care.

F. Service Limitations. Services shall not exceed 240 units of service in a Comprehensive Plan of Care.

G. Restrictions. Recipients receiving day habilitation services may also receive prevocational or supported employment services, but these services cannot be provided in the same service day.

H. Choice of this service and staff ratio needed to support the recipient must be documented on the Comprehensive Plan of Care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1605 (September 2006).

§5705. Prevocational Services

A. Prevocational services prepare a recipient for paid or unpaid employment in the community and include teaching concepts such as compliance, attendance, task completion, problem solving and safety that are associated with performing compensated work. Services are aimed at a

generalized result, not job task oriented, and are directed to habilitative, rather than explicit employment objectives.

B. Prevocational services are provided in a supervised facility-based setting where more than 25 percent of the persons employed are individuals with a developmental disability. These services are operated through a provider agency that is licensed by the appropriate state licensing agency. Services are furnished five or more hours per day on a regularly scheduled basis for one or more days per week.

C. Prevocational services are provided to persons not expected to join the general work force within one year of service initiation. If compensated, pay must be in accordance with United States Department of Labor's Fair Labor Standards Act.

D. Prevocational services can include assistance in personal care with activities of daily living in the facility-based setting. Choice of this service and staff ratio needed to support the recipient must be documented on the Comprehensive Plan of Care.

E. All transportation costs are included in the reimbursement for prevocational services. The recipient must be present to receive this service. If a recipient needs transportation, the provider must physically provide, arrange, or pay for appropriate transport to and from a central location that is convenient for the recipient and agreed upon by the Team. The recipient's transportation needs and this central location shall be documented in the Comprehensive Plan of Care.

F. Service Limitations. Services shall not exceed 240 units of service in a Comprehensive Plan of Care.

G. Restrictions. Recipients receiving prevocational services may also receive day habilitation or supported employment services, but these services cannot be provided in the same service day.

H. There must be documentation in the recipient's file that this service is not available from programs funded under Section 110 of the Rehabilitation Act of 1973 or Sections 602 (16) or (17) of the Individuals with Disabilities Education Act [230 U.S.C. 1401 (16 and 71)] and those covered under the State Plan.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1605 (September 2006).

§5707. Respite

A. Respite care is a service provided on a short-term basis to a recipient who is unable to care for himself/herself because of the absence or need for relief of those unpaid persons normally providing care for the recipient.

B. Respite may be provided in:

1. the recipient's home or private place of residence;
2. the private residence of a respite care provider; or
3. a licensed respite care facility determined appropriate by the recipient or responsible party.

C. Service Limitations. Services shall not exceed 428 units of service in a Comprehensive Plan of Care year.

D. Choice and need for this service must be documented on the Comprehensive Plan of Care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1606 (September 2006).

§5709. Habilitation

A. Habilitation offers services designed to assist recipients in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in home and community settings.

B. Habilitation is provided in the home or community, includes necessary transportation and is based on need with a specified number of hours weekly as outlined in the approved Comprehensive Plan of Care.

C. Habilitation services include, but are not limited to:

1. acquisition of skills needed to do household tasks such as laundry, dishwashing and housekeeping, grocery shopping in the community; and
2. travel training to community sites other than supported employment, day habilitation, or prevocational sites where life activities take place.

D. Service Limitations. Services shall not exceed 285 units of service in a Comprehensive Plan of Care year.

E. Choice and need for this service must be documented on the Comprehensive Plan of Care.

F. Recipients receiving habilitation may use this service in conjunction with other Support Waiver services, as long as other services are not provided during the same period in a day.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1606 (September 2006).

§5711. Individual Goods and Services

A. Individual goods and services allow the recipient access to goods and services necessary to ensure health and safety, which are essential to his/her independence in the community and are not otherwise covered in Medicaid State Plan services.

NOTE: Goods and services must be clearly linked to an assessed recipient's need established in the Comprehensive Plan of Care. Experimental or prohibited treatments are excluded.

B. Adult incontinence care products are available to all recipients through the Supports Waiver.

NOTE: These services must be prior authorized, be in accordance with the Comprehensive Plan of Care, and not otherwise available through any other funding source or community resource.

C. The following services are available for recipients who are age 21 or older:

1. eyeglasses and routine eye examinations not otherwise covered;
2. dental care not related to dentures and not otherwise covered; and
3. hearing aids and other durable medical equipment not otherwise covered.

NOTE: Recipients who are age 18 through 21 may receive these services as outlined on their Comprehensive Plan of Care through the Early Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1606 (September 2006).

§5713. Personal Emergency Response System

A. A personal emergency response system (PERS) is an electronic device connected to the recipient's phone which enables a recipient to secure help in the community. The system is programmed to signal a response center staffed by trained professionals once a "help" button is activated.

B. This service must be prior authorized and be in accordance with the Comprehensive Plan of Care.

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

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

Chapter 59. Provider Participation

§5901. General Provisions

A. In order to participate in the Medicaid Program as a provider of Supports Waiver services, a provider must meet all qualifications outlined in LAC 50.XXI, Subpart 1, Chapter 1 and all applicable amendments.

B. If transportation is provided as part of a service, the provider must have \$1,000,000 liability insurance coverage on any vehicles used in transporting a recipient.

C. In addition to meeting the requirements cited in this 5901.A. and B., providers must meet the following requirements for the provision of designated services.

1. Day Habilitation and Prevocational Services. The provider must possess a current, valid license as an Adult Day Care Center in order to provide these services.

2. Supported Employment Services. The provider must possess a valid certificate of compliance as a Community Rehabilitation Provider (CRP) from Louisiana Rehabilitation Services.

3. Respite and Habilitation Services. The provider must possess a current, valid license as a Personal Care Attendant agency or a Respite Care Center in order to provide these services.

4. Individual Goods and Services. The provider must comply with the applicable state and local laws governing licensure and/or certification for the service being performed.

5. Personal Emergency Response System. The provider must be enrolled to participate in the Medicaid Program as a provider of personal emergency response systems.

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

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

Chapter 61. Reimbursement Methodology

A. The reimbursement for all services will be paid on a per claim basis, based on established rates determined through consultation with stakeholders, review of current rates and costs for similar services and available funding. The reimbursement rate covers both service provision and administration.

B. Supported Employment Services. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the recipient. A standard unit of service in job assessment, discovery and development is six hours or more per day. A standard unit of service in initial job support, job retention and follow-along is one hour or more per day.

C. Day Habilitation. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the recipient. A standard unit of service is one day, consisting of five or more hours, excluding time spent in transportation.

D. Prevocational Services. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the recipient. A standard unit of service is one day, consisting of five or more hours, excluding time spent in transportation.

E. Respite. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the recipient. One-quarter hour (15 minutes) is the standard unit of service.

F. Habilitation. Reimbursement shall be a prospective flat rate for each approved unit of service provided to the recipient. One-quarter hour (15 minutes) is the standard unit of service.

G. Individual Goods and Services. Reimbursement will be paid at cost, based on the recipient's need, but shall not exceed \$500 in a Comprehensive Plan of Care year.

H. Personal Emergency Response System (PERS). Reimbursement for the maintenance of the PERS is paid through a monthly rate. Installation of the device is paid through a one time fixed cost.

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

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

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

0609#062

RULE

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

Targeted Case Management
Individuals with Developmental Disabilities
(LAC 50:XV.10101, 10501, 10505, and 11701)

The Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities has amended LAC 50:XV.10101, 10501, 10505, and 11701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R. S. 49:950 et seq.

**Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 7. Targeted Case Management**

Chapter 101. General Provisions

§10101. Program Description

A. - D.2. ...

E. Recipients who are being transitioned from a developmental center into the New Opportunities Waiver (NOW) may receive their case management services through

the Office for Citizens with Developmental Disabilities (OCDD).

F. - G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1036 (May 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1607 (September 2006).

Chapter 105. Provider Participation

§10501. Participation Requirements

A. - D.7. ...

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

D.9. - D.12. ...

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

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

§10505. Staff Education and Experience

A. - D.2. ...

E. Case Manager Trainee

1. The case management agency must obtain prior approval from the bureau before a case management trainee can be hired. The maximum allowable caseload for a case manager trainee is 20 recipients. The case management trainee position may be utilized to provide services to the following target populations:

- a. Infants and Toddlers;
- b. HIV;
- c. New Opportunities Waiver;
- d. Elderly and Disabled Adult Waiver;
- e. Targeted EPSDT;
- f. Children's Choice Waiver; and
- g. Supports Waiver.

2. - 2.e. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1038 (May 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1608 (September 2006).

Chapter 117. Individuals with Developmental Disabilities

§11701. Introduction

A. The targeted population for case management services shall consist of individuals with developmental disabilities who are participants in the NOW or Supports Waiver Programs.

B. - C. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1043 (May 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 32:1608 (September 2006).

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.

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

0609#063

RULE

Department of Natural Resources Office of Mineral Resources

Dry Hole Credit Program (LAC 43:V.Chapter 4)

Under the authority of R.S. 30:150 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the Department of Natural Resources, Office of Mineral Resources has adopted LAC 43:V.401 et seq.

The purpose of this regulation is to detail the procedure to be utilized to administer the Dry Hole Credit Program allowed for by R.S. 30:150 et seq., as enacted by Act 298 of the 2005 Regular Session of the Legislature.

Title 43

NATURAL RESOURCES

Part V. Office of Mineral Resources

Chapter 4. Dry Hole Credit Program

§401. Definitions

A. Unless the context requires otherwise, the terms set forth hereinafter shall have the following respective meanings, to-wit:

Coastal Zone—that portion of the land and water bottoms of the state of Louisiana, including the Gulf of Mexico, set forth and defined as the coastal zone in R.S. 49:214.24.

Dry Hole—a completed well which is not productive of oil or gas in any sand and classified as a Status 29 well by the Office of Conservation.

Dry Hole Credit—the lesser of the value of 5 billion cubic feet of natural gas production (or the natural gas equivalent of condensate production) multiplied by the spot market price per cubic foot of natural gas at the Henry Hub (or any other gas gathering and marketing facility recognized by OMR from which spot market sales of gas occur, if Henry Hub is not available for comparison pricing), valued at the time application is made for certification as a royalty relief receiving well, or 50 percent of the dry hole well cost of the dry hole credit well which serves as the basis for the dry hole credit sought. The value of dry hole credit may be further modified if the dry hole credit well was drilled as a unit well in a unit which did not contain the entirety of the state mineral lease on which it was drilled or

contains lands and leases in addition to that on which the dry hole credit well was drilled.

Dry Hole Credit Well—any new well drilled for purposes of developing and producing oil or gas mineral resources which:

- a. is spudded after July, 1, 2005, but completed before June 30, 2009 for the purpose of certification; and
- b. is drilled on a state mineral lease located within the coastal zone of Louisiana; and
- c. is drilled to a depth greater than 19,999 feet SSTVD; and
- d. is logged by suitable geophysical methods; and
- e. is verified by OMR as a dry hole by being classified as a Status 29 well by the Office of Conservation; and
- f. is not "commercially productive" by being completely plugged and abandoned according to rules promulgated by the Office of Conservation as evidenced by a copy of the well abandonment certificate duly signed by the appropriate authority in the Office of Conservation; and
- g. has had copies of any and all well information derived from drilling same, including geophysical and geological, surrendered to OMR to be held as a public record; and
- h. has been certified by the Office of Mineral Resources as a dry hole credit well.

Dry Hole Well Cost—a detailed, itemized list of actual costs (not AFE or estimated costs) of drilling the dry hole credit well from well site preparation (including such things as preparing board road, anchoring pads, dredging, permitting and similar preparatory work, but not including legal fees, lease related costs, hearing costs, title searches and similar types of cost), equipment and materials actually utilized in drilling the dry hole credit well, to plugging and abandoning the well according to rules promulgated by the Office of Conservation. All actual costs claimed shall conform generally to costs recognized and accepted as costs attributable to drilling a well only by the Council of Petroleum Accountants Societies (COPAS).

OMR—the Office of Mineral Resources, an office of the Department of Natural Resources and the statutorily designated staff of the Louisiana State Mineral Board.

Pre-Qualifying Well—any permitted, but undrilled, well for which pre-qualifying certification is sought and which meets the following criteria, to-wit:

- a. application is made by completely and accurately filling out the pre-qualifying form provided by OMR; and
- b. the proposed well is permitted to be drilled on a state mineral lease located in the coastal zone of Louisiana; and
- c. the proposed well is permitted to spud subsequent to certification by OMR of the dry hole credit well which applicant seeks to use as the basis for the dry hole credit offset; and
- d. applicant is the proper party granted authority to utilize the dry hole credit derived from the dry hole credit well, or his successor or assignee; and
- e. the proposed well has been permitted by the Office of Conservation to be drilled to a depth reasonably calculated to produce hydrocarbons from sands below 19,999 feet SSTVD; and

- f. the proposed well is permitted to spud after July 1, 2005 and completed before June 30, 2009; and

- g. applicant has obtained from the Office of Coastal Restoration and Management a letter setting forth the minimum mitigation to be required from the applicant if the well is drilled and completed as a hydrocarbon producer, which mitigation shall amount to not less than 125 percent of the wetlands impact of the pre-qualifying well if it becomes a royalty relief receiving well together with applicants agreement to fulfill said mitigation obligation; and

- h. is certified as a pre-qualifying well by OMR.

Royalty Relief Receiving Well—any new well drilled for purposes of developing and producing oil or gas mineral resources which:

- a. is spudded after July 1, 2005, but completed before June 30, 2009 for the purpose of certification; and
- b. is drilled after certification of the dry hole credit well sought to be utilized for the dry hole credit; and
- c. is drilled by the person or entity which has earned the dry hole credit for the dry hole credit well sought to be utilized, or his successor or assignee; and
- d. is drilled on a state mineral lease located within the coastal zone of Louisiana; and
- e. is drilled and completed as an oil or gas well, as so designated by the Office of Conservation, capable of producing from hydrocarbon bearing sands below 19,999 feet SSTVD; and
- f. has been previously certified as a pre-qualifying well by OMR; and

- g. does not utilize or attempt to utilize any other state tax credit (other than an income tax credit) or royalty modification of any kind to modify royalty paid to the state on production therefrom; and

- h. has, from being qualified as a pre-qualifying well, a letter from the Office of Coastal Restoration and Management setting forth the mitigation required from the applicant, which shall amount to not less than 125 percent of the wetlands impact of the royalty relief receiving well, together with the agreement by the applicant to perform said mitigation; and

- i. has been certified as a royalty relief receiving well by OMR.

SMB—the Louisiana State Mineral Board created by Act 93 of the 1936 Regular Session of the Louisiana Legislature.

True Vertical Depth—the actual vertical depth sub sea (below mean sea level) and referred to as SSTVD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1608 (September 2006).

§403. Application for Status as a Dry Hole Credit Well

A. Only one person or entity shall be able to earn a dry hole credit for each dry hole credit well. The person or entity drilling a dry hole, having the right to apply (whether as the sole working interest party or by agreement between all working interest parties) and desiring to qualify said dry hole as a dry hole credit well, shall apply for status as a dry hole credit well by completely and accurately filling out the

provided form and sending same to OMR at 617 North Third Street, LaSalle Building, Eighth Floor, P.O. Box 2827, Baton Rouge, LA 70821-2827, accompanied by the following, to-wit:

1. the 1 inch and 5 inch electrical survey; and
2. any side wall cores, logs or well surveys run on the well; and
3. a copy of that part of the daily drilling report showing the spud date and location and the last part showing drilling cessation, including pulling the drill stem out with the date thereof; and
4. a well survey verifying SSTVD and any deviation from vertical taken by the drill pipe; and
5. a copy of the well history report filed with the commissioner of conservation; and
6. a copy of the well abandonment certificate signed by the appropriate authority from the Office of Conservation showing that the well has been plugged and abandoned in conformity with the rules and regulations promulgated by the Office of Conservation; and
7. copies of any other data or information derived from the drilling of the dry hole which may reflect upon its status; and
8. a statement of dry hole cost (which shall be subject to audit by, and at the sole discretion of, the staff of OMR); and
9. written proof (which may include the AFE of the dry hole well showing the applicant to be the sole working interest party or, if more than one working interest owner, a written, notarized agreement, signed by all working interest owners as shown on the AFE, stating that applicant is the authorized party to receive the dry hole credit) that the applicant is the proper person to earn the dry hole credit if the well is certified as a dry hole credit well.

B.1. If the state mineral lease on which the certified dry hole credit well is drilled is part of a unit, either a voluntary unit or a commissioner's unit, which either:

- a. contains only a portion of the said state mineral lease; or
- b. if the unit contains the entirety of the lease on which dry hole credit well is drilled, but additional leases as well;

2. then the value of the dry hole credit allowed using that said dry hole credit well as its basis, whether the value of the dry hole credit is computed by utilizing the dry hole cost of that said dry hole credit well or by computing the value of 5 billion cubic feet of natural gas (or its equivalent in condensate), shall be reduced by multiplying the total dry hole credit by a fraction comprised of the proportion of the acreage of the state mineral lease on which the dry hole credit well is drilled, allocated in the unit to the total acreage of the unit.

C. All applicants must be duly registered with OMR pursuant to the requirements of Act 449 of the 2005 Regular Session of the Louisiana Legislature.

D. All data given to OMR on all dry hole credit wells certified pursuant to this rule shall be kept in a database at OMR and deemed a public record.

E. After all data submitted has been reviewed by the staff of OMR and the dry hole proposed by the applicant is determined to meet the criteria for a dry hole credit well, OMR shall issue a letter under the signature of the assistant

secretary of OMR to the applicant certifying that the submitted dry hole has been deemed a dry hole credit well, and further, containing the serial number of the dry hole credit well, the applicant's name as the party or entity to whom the dry hole credit will be issued, that portion of the accepted total dry hole cost of the dry hole credit well which may be applied against royalty from a royalty relief receiving well (or fraction thereof if the dry hole credit well was a unit well containing leases other than that on which the dry hole credit well was located) and the spud, and plugging and abandonment dates of the dry hole credit well.

F. A report shall be made by OMR to the SMB at its next called meeting following the issuance of the dry hole credit letter giving such information as shall be required by the SMB at the time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1609 (September 2006).

§405. Assignment of a Dry Hole Credit

A. The party named on the certification from OMR of a dry hole credit well as the party to whom the dry hole credit is issued may assign the entirety of the dry hole credit to another party or entity, but the dry hole credit shall not be divided in any assignment, either by assigning fractional interests or by assigning the entirety of the interest to more than one assignee.

B. Any assignment of a dry hole credit shall be in the form of an instrument signed by both assignor and assignee, duly witnessed and properly notarized, containing, in addition to language of transference of the dry hole credit, the complete legal names of the assignor and assignee, their respective business domiciliary addresses and correct, up-to-date telephone numbers, facsimile number and email address (if any), the serial number of the dry hole credit well which forms the basis of the dry hole credit together with the value of the dry hole credit being transferred, as both are set forth on the certification of dry hole credit well status belonging to the assignor. The original certification of dry hole credit well status shall be attached to and be a part of the assignment.

C. No assignment or transfer of a dry hole credit shall be valid unless approved by the SMB. The assignment or transfer of the dry hole credit shall utilize the same procedure as required for the assignment or transfer relating to minerals or mineral rights required under R.S. 30:128(A).

D. An assignee of a dry hole credit must be registered with OMR as a prospective lease holder in full compliance with Act 449 of the 2005 Regular Session of the Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1610 (September 2006).

§407. Application for Status as a Pre-Qualifying Well

A. A party desiring to apply a dry hole credit from a certified dry hole credit well to a proposed new well shall, prior to drilling the new well, complete in full an application form provided by, to be returned to, OMR at 617 North Third Street, LaSalle Building, Eighth Floor, P.O. Box 2827, Baton Rouge, LA 70821-2827, requesting that the proposed

new well be certified as a pre-qualifying well. Together with, and accompanying, the completed application form, the applicant shall provide the OMR staff with the following, to-wit:

1. a drilling permit from the Office of Conservation which indicates that the proposed pre-qualifying well will be spudded after July 1, 2005, and prior to June 30, 2009, and drilled to a depth reasonably calculated to secure hydrocarbon production below 19,999 feet SSTVD; and

2. written proof that the proposed pre-qualifying well is going to be drilled (bottom-holed) on a state mineral lease located in the coastal zone of Louisiana, either as a lease well or a unit well (for which only a portion of the total dry hole credit amount shall apply, as obtained by multiplying the dry hole calculated by a fraction which is equal to the proportion of the state mineral lease acreage on which the proposed pre-qualifying well is drilled as allocated within the unit to the total acreage of the unit); and

3. written proof in the form of an affidavit that all necessary permits and all rights-of-way have been acquired, that there are no impediments, including management approval, remaining to the drilling of the well and that the Office of Coastal Restoration and Management has been notified of the intended well in order to review the potential wetlands impact; and

4. the written certification of dry hole credit well status issued by OMR or an assignment of dry hole credit interest previously approved by the SMB showing that the applicant is the proper party to apply for pre-qualification status; and

5. written evidence from the Office of Coastal Restoration and Management, which shall have been notified of the application for pre-qualifying well status by OMR, obtained by the applicant, setting forth the estimated wetlands impact of the proposed new well together with an agreement by the applicant to mitigate not less than 125 percent of the wetlands impact, or more if required, in a manner approved by the Office of Coastal Restoration and Management.

B. No more than 20 active pre-qualifying wells and existing royalty relief receiving wells, in the aggregate, shall be certified by OMR at any one time. If a party or entity having a dry hole credit from a certified dry hole credit well proposes to drill a new well and applies for status of the new well as a pre-qualifying well, and there are already 20 active pre-qualifying wells and/or royalty relief receiving wells, in the aggregate, then that applicant shall be placed on a waiting list, in the order of date and time of application. Thereafter, if any active pre-qualifying wells become inactive, new applicants on the waiting list, in the order of their listing, may apply for status of a new well to be drilled as a pre-qualifying well provided that no pre-qualifying well status may be granted on or after June 30, 2009.

C. Upon applicant's furnishing the information hereinabove set forth, and if there are less than 20 active pre-qualifying wells and/or existing royalty relief receiving wells, in the aggregate, already certified, OMR may issue a letter certifying that:

1. as of the effective date set forth in the letter, the new proposed well, as designated by the serial number issued by the Office of Conservation on the drilling permit, is deemed an active pre-qualifying well; and

2. the pre-qualifying well status shall remain active only until:

i. the proposed new well is drilled, logged and deemed productive from hydrocarbon bearing sands located below 19,999 feet SSTVD or classified as a Status 29 dry hole by the Office of Conservation, or down hole drilling operations cease for a period in excess of six months without a log being run which indicates the well will be productive from hydrocarbon bearing sands below 19,999 feet SSTVD; or

ii. the expiration of the drilling permit used to obtain pre-qualifying status, whichever is earlier, but under no circumstances on or after June 30, 2009; and

3. the serial number of the dry hole credit well providing the basis for the dry hole credit and the amount of dry hole well cost (computed from the letter of certification of dry hole credit well status) which may be used to offset royalty payments if the pre-qualifying well becomes a royalty relief receiving well; and

4. reference, as an attachment, to the wetlands impact mitigation letter and agreement between the applicant and the Office of Coastal Restoration and Management reiterating applicant's agreement to mitigate found by the Office of Coastal Restoration and Management, but not less than 125 percent of any actual wetlands impact, upon drilling the pre-qualifying well.

D. Under no circumstances shall a well permitted as a re-entry into an existing well bore, whether for deepening, sidetracking or otherwise, qualify for certification as a pre-qualifying well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1610 (September 2006).

§409. Application for Status as a Royalty Relief Receiving Well

A. Only a pre-qualifying well may become a royalty relief receiving well.

B. A party drilling a pre-qualifying well which is logged and deemed productive from hydrocarbon bearing sands below 19,999 feet SSTVD as a producing well may request certification as a royalty relief receiving well by completing the appropriate form provided by, and returning same to OMR at P.O. Box 2827, 617 North Third Street, LaSalle Building, Eighth Floor, Baton Rouge, LA 70821-2827, accompanied by the following documentation, to-wit:

1. written proof, including appropriate portions of the drilling report showing spud location and date, and bottom hole location, date and SSTVD; the completion report and log showing SSTVD of all perforations which contribute to the present productivity; plats showing the state lease on which the well is drilled; unit plats, Office of Conservation orders or voluntary unit agreements, if drilled within a unit, showing unit allocation of acreage of the state lease on which well is drilled in proportion to total unit acreage; and data from well tests reasonably calculated to test for productivity in all completions below 19,999 feet SSTVD, indicating that:

a. the well was spudded between July 1, 2005 and completed before June 30, 2009; and

b. the well is completed as productive from hydrocarbon bearing sands below 19,999 feet SSTVD as

well as the percentage of perforations below 19,999 feet SSTVD; and

c. the well is drilled on a state mineral lease in the coastal zone of Louisiana; and

d. if the well is drilled in a unit, the proportion of state mineral lease acreage on which the well is drilled as allocated in the unit to the total acreage of the unit; and

2. the pre-qualification well certification issued by OMR showing the serial number of the pre-qualifying well, the party receiving the pre-qualifying well status and the sum of money attributed to the dry hole well cost which may be used to offset royalty payments to the state from the royalty relief receiving well; all of which indicates that the well for which royalty relief receiving well status is sought has been pre-qualified, that the applicant for royalty relief receiving well status is the same party or entity to whom the pre-qualifying well certification was given and, if applicable, the amount of dry hole well cost which may be applied to offset royalty payments to the state on production from the royalty relief receiving well, if certified. All information obtained by OMR relating to qualifying a drilled and completed well as a royalty relief receiving well shall be kept in a database at OMR as a public record.

C. If applicant's well meets all of the criteria set forth in Act 298 of the 2005 Regular Session of the Louisiana Legislature as necessary to earn a dry hole credit offset, as evidenced by the information furnished in Subsection B above, OMR shall:

1. determine the total amount of dry hole credit which may be used to offset royalty payments to the state if the royalty relief receiving well status is granted by:

a. ascertaining the Platts spot market price per cubic foot of natural gas at the Henry Hub (or any other gas gathering and marketing facility recognized by OMR from which spot market sales of gas occur, if Henry Hub is not available for comparison pricing) and multiply that price by 5 billion cubic feet of gas to arrive at a sum of money; then

b. comparing the sum of money obtained in Subparagraph a herein to that portion of the dry hole well cost which may be used as a dry hole credit as set forth on the pre-qualifying well certification; and

c. determining the lesser of the two amounts as the total dry hole credit which may be used; and

2. if the royalty relief receiving well is a unit well, ascertain the proportion of acreage allocated to the state lease on which the pre-qualifying well was actually drilled (bottom holed) within the unit to the entire acreage of the unit and multiply that proportion by the total value of the dry hole credit as previously determined in Paragraph 1 hereinabove to obtain the revised dry hole credit allowed to offset royalty payments to the state from unit production allocated to the state lease; and

3. divide the value of the dry hole credit determined in Paragraphs 1 and 2 hereinabove by 36 to yield the maximum monthly value of dry hole credit which may be used by the royalty payer to offset monthly royalty payments to the state; and

4. notify the Office of Conservation that it is in the process of qualifying a newly drilled and completed well as a royalty relief receiving well and have the applicant request that said Office of Conservation issue a new, unique LUW code for production purposes to the well serial number of the

pre-qualifying well sought to be certified as a royalty relief receiving well (no letter certifying status as a royalty relief receiving well will be issued until the Office of Conservation has issued the new, unique LUW code as requested); and

5. issue a letter certifying the previously certified pre-qualifying well, by serial number, as a royalty relief receiving well, which shall also contain the new, unique LUW code issued to that well by the Office of Conservation, the total monthly amount of dry hole credit, as calculated over a 36 month period, which may be used to offset any monthly royalty payments due the state on production from, or attributable to, the royalty relief receiving well, with the proviso that under no circumstances shall the value of monthly royalty paid to and received by the state on production from the royalty relief receiving well amount to less than one-eighth of the total value received for the sale of monthly production, less other lease allowable deductions, allocated to the lease on which the royalty relief receiving well is located.

D. Certification as a royalty relief receiving well shall attach to, and only to, the former pre-qualifying well so certified, regardless of whether interests in the said royalty relief receiving well or the lease on which the said well is located are transferred subsequent to the certification. The dry hole credit offset amount specified in the certification shall be available only to the royalty payer on royalty due the state on production from the said royalty relief receiving well.

E. The decimal percentage of production due the state which yields the value from which the dry hole credit may be deducted by the royalty payer shall be the royalty specified in the state mineral lease on which the royalty relief receiving well is located or, if a unit well, the decimal portion allocated to that lease within the unit. However, at no time shall the monthly royalty, in value, paid to the state, after deducting the maximum allowed value of the monthly dry hole credit offset, amount to less than one-eighth of the total value received for the sale of monthly production, less other lease allowable deductions, allocated to the lease on which the royalty relief receiving well is located, as mandated in R.S. 30:127 and Act 298 of the 2005 Regular Session of the Louisiana Legislature. If the royalty payer on production from the royalty relief receiving well determines that, by deducting the maximum monthly value of the dry hole credit offset allowed, the value of the monthly royalty payment to the state would amount to less than the value of a one-eighth royalty, then the royalty payer shall deduct only that much of the monthly value of the dry hole credit offset allowed as will yield a royalty payment to the state of the value of a one-eighth royalty.

F. Applicant must designate by registered business name, domiciliary address, current telephone number, facsimile number (if one) and e-mail address, the royalty payer which would be authorized by OMR to apply the extension of dry hole credit royalty relief beyond the 36 month period initially granted by OMR.

G. Only one dry hole credit well may form the basis for a dry hole credit to be used to offset royalty payments to the state from only one royalty relief receiving well, and no more than 20 dry hole credit wells, in total, may be utilized as a basis to offset royalty payments to the state. The royalty relief dry hole credit shall be deemed issued when the

pre-qualifying well has been certified as a royalty relief receiving well and its utilization to offset royalty payable to the state must begin within four years of the date of said certification.

H. If the pre-qualifying well is drilled and is a dry hole, the applicant may initiate the process to have that well qualified as a dry hole credit well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1611 (September 2006).

§411. Extending the Dry Hole Credit Offset beyond Thirty-Six Months

A. If the payer of royalty on production from, or allocated to, a certified royalty relief receiving well is not able to utilize the full amount of the dry hole credit determined as applicable to that royalty relief receiving well to offset royalty payments to the state within the 36 month period from date of first production, a request, in writing, by the party or entity entitled to the dry hole credit to OMR to extend the period of royalty offset beyond the 36 month period may be made. The written request must identify, by LUW code and serial number, the certified royalty relief receiving well on which the extension of royalty offset is being requested, the total amount of dry hole credit utilized to offset royalty payments to the state in the 36 month period and the level of production of the royalty relief receiving well at the time of the request. The written request must be accompanied by the letter certifying the royalty relief receiving well status.

B. Should OMR decide to grant the extension, it shall issue a letter authorizing the full monthly dry hole credit offset on royalty payments to the state, which was previously granted for the 36 month period, to continue for an extension period not to exceed 24 additional months or until the full dry hole credit value is utilized, whichever is earlier. Under no circumstances shall the value of monthly royalty paid to the state during the extended 24 month period fall below the value of a one-eighth royalty, as specified in R.S. 30:127, nor shall the additional dry hole credit period exceed a total of 60 months or remain in force beyond June 30, 2013, whichever is earlier. Any dry hole credit offset not utilized within 60 months from date of first production, or before June 30, 2013, shall be lost to the payer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1613 (September 2006).

§413. Termination of Dry Hole Credit Offset

A. Should the total dry hole credit issued to a royalty relief receiving well be utilized in full to offset royalty payments to the state within 36 months from date of first production (or within the additional 24 month extension if granted), or a total of 60 months elapse from date of first production from the royalty relief receiving well without the total dry hole credit being utilized, or June 30, 2013 arrive, in either case, OMR shall issue a letter notifying the payer that, as of a certain date, no further dry hole credit will be available for offset against royalty paid to the state from production from that royalty relief receiving well. Upon issuance of that letter, OMR shall note the serial number and

LUW code of that royalty relief receiving well in its database as one of only 20 such royalty relief receiving wells to be allowed.

B.1.a. Should production cease in whole or in part from productive sands below 19,999 feet in a royalty relief receiving well due to either:

i. a plug back from the formerly producing, but depleted sand below 19,999 feet and perforation into and production from sands above 19,999 feet in the same well; or

ii. perforations into and production from sands above 19,999 feet commingled with production from sands below 19,999 feet in the same well;

b. the dry hole credit offset allowed against production from that well shall be terminated in whole or in part in proportion to the percentage of production derived from sands above 19,999 feet as determined by the ratio of the rate of flow from perforations above and below 19,999 feet.

2. If production from sands below 19,999 feet remains separate from production from sands above 19,999 feet in the same royalty relief receiving well, the dry hole credit offset may be used against the production from below 19,999 feet only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:1613 (September 2006).

Scott A. Angelle
Secretary

0609#001

RULE

**Department of Public Safety and Corrections
Gaming Control Board**

Devices (LAC 42:XI.2413)

The Louisiana Gaming Control Board hereby amends LAC 42:XI.2413 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

Part XI. Video Poker

Chapter 24. Video Draw Poker

§2413. Devices

A. Device Specifications

1. All devices shall include all of the specifications and features as provided in R.S. 27:302. In addition, all devices shall include the following specifications and features:

a. a video display screen utilizing a cathode ray tube or other display device as approved by the division and microprocessors in order for a person or persons to view the actual games;

b. - e.ii. ...

f. fully functioning electronic (soft) meters and mechanical (hard) meters capable of displaying accurate monetary transactions and printing a record of those transactions. In addition, the electronic (soft) meters shall be

capable of printing an accurate record of the monetary transactions:

i. any device that produces inaccurate electronic (soft) meter data shall be disabled or removed from play immediately upon notification, from the division, that it is incapable of displaying and printing accurate monetary transactions. The device shall remain disabled until testing and repair forms indicate that soft meters are accurately recording monetary transactions;

g. electronic (soft) meters that shall retain the following transactions for a period of no less than 180 days, including:

- i. credits in;
- ii. credits played;
- iii. credits won;
- iv. credits paid out;
- v. number of games played;
- vi. number of games won;
- vii. credit for games won but not collected (i.e., credit balance);

- viii. number of times logic area is accessed; and
- ix. number of times cash door is accessed;

h. ...

i. permanent serial numbers not to exceed nine alpha and/or numeric characters. The serial number plate shall be located in the upper (front) right side panel of the device and shall contain the following information:

- i. serial number of the device;
- ii. manufacturer's name;
- iii. model number of the device; and
- iv. date of assembly of the device;

j. - n. ...

o. construction which is UL-22 or CSA/NRTL standards approved;

p. - q. ...

r. meet the required central computer communications protocol requiring compatibility with the system during the enrollment procedure. A security related data exchange shall occur between the device and the central computer prior to the transmission of any information. Failure of the device to send the appropriate data back to the central computer shall indicate a communication failure and shall preclude operation of the device. In addition:

i. if a device is not polled by the central computer within the specified time period, the device shall automatically become disabled and;

l.r.ii. - 4. ...

5. Devices shipped to and transported through Louisiana shall at all times remain in the demonstration mode or other non-functioning mode. In addition, after January 1, 1996, no device operating in demonstration mode shall accept coin or currency.

6. ...

B. Testing of Video Gaming Devices

1. - 5. ...

6. The testing, examination, and analysis of the devices may require dismantling of devices, and some tests may result in permanent damage to one or more components. All manufacturers shall be required to provide additional parts or components to complete testing, and specialized testing equipment to ensure integrity and durability to the satisfaction of the division. In addition:

a. all manufacturers shall submit all hardware, software, and testing equipment for the testing of their video gaming devices;

b. all devices shall have built in diagnostic functions for the testing of all major components; as defined by the division.

B.6.c. - D.3. ...

E. Maintenance

1. - 1.c....

2. All device owners shall maintain a current, written maintenance log for each device operating within a licensed establishment, on a form approved by the division, for the purpose of keeping records of routine maintenance and repairs. All log entries shall contain the following information:

- a. time and date of access of the device;
- b. reason for access of the device;
- c. mechanical (hard) and electronic (soft) meter readings of the device;

d. the signed and printed name and state issued permit number of the certified individual accessing the device;

E.2.e. - K.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq. and R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:197 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), amended LR 25:85 (January 1999), LR 30:269 (February 2004), repromulgated LR 30:446 (March 2004), amended LR 32:1613 (September 2006).

H. Charles Gaudin
Chairman

0609#008

RULE

Department of Revenue Policy Services Division

Natural Resources—Severance Tax (LAC 61:I.2903)

Under the authority of R.S. 47:633 and 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.2903 to extend the time allowed for filing certifications for reduced oil and gas severance tax rates from the fifteenth day of the second month following the month of production to the twenty-fifth day of the second month, which is the same due dates as the severance tax returns. In addition, proposed amendments require the filing of continuing certification forms for gas wells, which is consistent with the oil well requirements.

Acts 2005, No. 446 amended R.S. 47:635(A) and 640(A) to extend the oil and gas severance tax return and payment due dates to the twenty-fifth day of the second month following the month to which the tax applies effective for tax periods beginning on or after October 1, 2005. Act 38 of the 2006 Regular Legislative Session amended R.S. 47:633(7)(b) and (c)(i)(aa) to extend the due date for filing

the oil reduced severance tax rate certifications. The due date for filing reduced gas severance tax rate certifications is not specified by the severance tax statutes, R.S. 47:633(9)(b) and (c). These proposed amendments make the reduced oil and gas severance tax rate certification due dates the same as the severance tax return due dates.

Title 61

REVENUE AND TAXATION

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

Chapter 29. Natural Resources—Severance Tax **§2903. Severance Taxes on Oil; Distillate, Condensate or Similar Natural Resources; Natural Gasoline or Casinghead Gasoline; Liquefied Petroleum Gases and Other Natural Gas Liquids; and Gas**

A. ...

B. Certification for Reduced Tax Rates. A taxpayer may qualify for the lesser tax rates levied in R.S. 47:633(7)(b) and (c), and R.S. 47:633(9) by certifying and reporting production and test data, on forms prescribed by the secretary.

1. Oil. Oil production is certified for reduced severance tax rates provided by R.S. 47:633(7)(b) or (c)(i)(aa) by individual well. To receive the reduced tax rate on the crude oil production from an oil well, an application must be filed with the secretary on or before the twenty-fifth day of the second month following the month in which production subject to the reduced rate applies.

a. After a well has been certified for the reduced tax rate, it is necessary to file continuing certification forms on or before the twenty-fifth day of the second month following the months of production.

i. It is not necessary to include stripper wells that are certified with a "B" prefix code on the continuing certification forms.

ii. Failure to file or delinquent filing of the continuing certification forms may result in certification denial for the month's production that the report is delinquent or not filed.

b. Wells cannot be certified as both a stripper and an incapable oil well.

c. Recertification is required whenever the well operator changes.

d. All wells are subject to redetermination of their reduced rate status based on reports filed with the Department and the Office of Conservation. When a well no longer meets the qualifications for the reduced tax rate for which it was certified, the full tax rate becomes due.

2. Gas. Gas production is certified for reduced severance tax rates provided by R.S. 47:633(9)(b) and (c) by individual well. To receive the reduced severance tax rate on natural gas or casinghead gas production, an application must be filed with the secretary on or before the twenty-fifth day of the second month following the month in which production occurs.

a. After a well has been certified for the reduced tax rate, it is necessary to file continuing certification forms on or before the twenty-fifth day of the second month following the month of production.

i. It is not necessary to include incapable gas wells that are certified with an "F" prefix code on the continuing certification forms.

ii. Failure to file or delinquent filing of the continuing certification forms may result in certification denial for the month's production that the report is delinquent or not filed.

b. The well cannot be certified as both an incapable gas well and an incapable oil well.

c. If the well changes from one tax rate status to another a new certification is required.

d. Recertification is required whenever the well operator changes.

e. All wells are subject to redetermination of their reduced rate status based on reports filed with the Department and the Office of Conservation. When a well no longer meets the qualifications for the reduced tax rate for which it was certified, the full tax rate becomes due.

C. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:633, 47:648.3, and 47:1511.

HISTORICAL NOTE: Adopted by the Department of Revenue and Taxation, Severance Tax Division, August 1974, amended LR 3:499 (December 1977), amended LR 20:1129 (October 1994), repromulgated LR 20:1299 (November 1994), amended by the Department of Revenue, Severance Tax Division, LR 23:1167 (September 1997), LR 24:2321 (December 1998), Department of Revenue, Policy Services Division, LR 29:951 (June 2003), LR 32:1615 (September 2006).

Cynthia Bridges
Secretary

0609#025

RULE

Department of Social Services Office of Family Support

Interest and Dividend Income Exclusion; Student Eligibility Requirements; Workforce Investment Act (LAC 76:III.1229, 1935, 1937, 1979, 1980, and 5329)

The Department of Social Services, Office of Family Support, has amended LAC 67:III, Subpart 2, Subpart 3, and Subpart 13. This amendment was effected by a Declaration of Emergency signed March 1, 2006, and published in the March issue of the *Louisiana Register*.

Pursuant to the authority granted to the Department by Louisiana's Temporary Assistance to Needy Families Block Grant, the agency amended §1229 in the Family Independence Temporary Assistance Program (FITAP) and §5329 in the Kinship Care Subsidy Program to exclude interest and dividends from countable income with the exception of dividends received from a resource-exempt trust fund. Pursuant to P.L. 107-171, The Food Stamp Reauthorization Act of 2002 (also known as the Farm Bill), the agency amended §1980 in the Food Stamp Program to exclude education assistance received by any household member and the interest and dividend income specified above from countable income. Technical changes are being made to combine and amend §1935 and §1937 to clarify student eligibility requirements and to change the obsolete term Job Training Partnership Act to Workforce Investment Act in Section §1979.

Title 67
SOCIAL SERVICES

Part III. Family Support

Subpart 2. Family Independence Temporary Assistance Program

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1229. Income

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

1. - 18. ...
19. loans;
20. - 29. ...
30. effective March 1, 2006, interest income;
31. effective March 1, 2006, dividend income.

Exception: Dividends received from a resource-exempt trust fund will not be excluded as income.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S.36:474, R.S. 46:231.1.B., R.S. 46:231.2, P.L. 108-447, P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:1342 (June 2000), LR 26:2831 (December 2000) LR 31:2956 (November 2005), LR 32:1616 (September 2006).

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter E. Students

§1935. Student Provisions (Effective March 1, 2006)

A. An individual enrolled at least half-time (as defined by the institution) in an institution of higher education is considered a student. A student is ineligible to receive Food Stamp benefits unless the individual meets at least one of the following conditions:

1. under age 18 or over age 49;
2. physically or mentally unfit;
3. receiving FITAP benefits;
4. employed an average of at least 20 hours per week, and be paid for such employment, or if self-employed, employed for an average of at least 20 hours per week and receives weekly earnings at least equal to the federal minimum hourly wage multiplied by 20 hours;
5. participating in a state or federally financed work-study program during the regular school year;
6. participating in an on-the-job training program;
7. responsible for, and physically providing, the care of a dependent household member who is:
 - a. under age 6; or
 - b. age 6 or over but under age 12 and adequate child care is not available;
8. is a single parent who is a full-time student (as defined by the institution) and who is responsible for, and physically providing, the care of a dependent child under age 12, regardless of the availability of adequate child care;
9. assigned to or placed in an institution of higher education through:

a. the work program under Title IV of the Social Security Act, which is the Strategies to Empower People (STEP) Program;

- b. the Workforce Investment Act of 1998;
- c. a Food Stamp employment and training program (LaJET);
- d. a program under Section 236 of the Trade Act of 1974, or;
- e. a state or local government employment and training program, as determined appropriate by FNS.

B. An institution of higher education is a:

1. business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate (GED) for enrollment in the curriculum; or
2. college or university that offers degree programs regardless of whether a high school diploma or equivalency certificate (GED) is required.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.5., P.L. 107-171

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:131 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 24:1783 (September 1998), LR 32:1616 (September 2006).

§1937. Student Related Provisions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:91 (February 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 19:1436 (November 1993), repealed LR 32:1616 (September 2006).

Subchapter I. Income and Deductions

§1979. Income

A. Earnings to individuals who are participating in on-the-job training programs under the Workforce Investment Act (formerly the Job Training Partnership Act) shall be counted as income. This provision does not apply to household members under 19 years of age who are under the parental control of another adult member.

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:26937 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 13:657 (November 1987), LR 32:1616 (September 2006).

§1980. Income Exclusions

A. In addition to those income exclusions previously adopted and codified in Chapter 19, Certification of Eligible Households, the following income types will be excluded from countable income for the Food Stamp Program:

1. - 22. ...
 23. loans;
 24. - 39.b. ...
 40. effective March 1, 2006, dividend income.
- Exception: Dividends received from a resource-exempt trust fund will not be excluded as income;
41. effective March 1, 2006, interest income;
 42. effective March 1, 2006, education assistance.

AUTHORITY NOTE: Promulgated in accordance with P.L. 103-66, 7 CFR 273.9(c)(11), P.L. 104-193, P.L. 107-171, P.L. 108-447.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 21:188 (February 1995), amended LR 23:82 (January 1997), LR 29:607 (April 2003), LR 31:2956 (November 2005), LR 32:1616 (September 2006).

Subpart 13. Kinship Care Subsidy Program
Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§5329. Income

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

1. - 18. ...
19. loans;
20. - 28. ...
29. effective March 1, 2006, interest income;
30. effective March 1, 2006, dividend income.

Exception: Dividends received from a resource-exempt trust fund will not be excluded as income.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, P.L. 108-447, P. L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February 2000), amended LR 26:2832 (December 2000), LR 31:2958 (November 2005), LR 32:1617 (September 2006).

Ann Silverberg Williamson
Secretary

0609#034

RULE

Department of Social Services
Office of Family Support

Temporary Emergency Disaster Assistance Program
(LAC 67.III.5583)

The Department of Social Services, Office of Family Support, has adopted §5583, Temporary Emergency Disaster Assistance Program (TEDAP).

Pursuant to the TANF Emergency Response and Recovery Act of 2005, the agency adopted the Temporary Emergency Disaster Assistance Program as a new TANF Initiative effective October 26, 2005. The program provides disaster emergency services to families with dependent children or pregnant women who are displaced because of disasters. A Declaration of Emergency adopting this program was published in the November issue of the *Louisiana Register*. The Declaration was republished in January 2006 to clarify eligibility and verification requirements with an effective date of January 10, 2006. This Emergency Rule was extended May 10, 2006, as the January Declaration expired May 9, 2006. The final Rule was to be published in the June 2006 issue of the *Louisiana Register*. However, effective June 15, 2006, the agency decided to expand the type of services provided by TEDAP and to allow the provision of certain services beyond four months. The TANF goal to prevent and reduce out-of-wedlock pregnancies was added. A Potpourri announcing the changes and the public hearing scheduled to discuss these changes was published in the July issue of the *Louisiana Register*. The public hearing was held August 24, 2006, and no one other than agency personnel attended the hearing and no written comments were

submitted regarding the changes. Therefore, it is the agency's intention to make these changes final effective October 1, 2006.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

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

Chapter 55. TANF Initiatives

§5583. Temporary Emergency Disaster Assistance Program

A. Effective October 26, 2005, the agency will enter into contracts to provide disaster emergency services to needy families with dependent children or pregnant women who are displaced because of disasters. The program will provide the following services.

1. Services or benefits considered to meet on-going basic needs. These services shall not be provided for a period (in whole or in part) to exceed four months. Such services and benefits include, but are not limited to, the provision of such items as cash assistance, food assistance, child care and transportation for unemployed participants, basic personal items, household items, housing and utility assistance.

2. Services or benefits not considered to meet ongoing basic needs. These services may be provided to participant families for a period exceeding four months if considered vital to the long-term recovery of participant families. Such services may include, but are not limited to, supportive services such as transportation for employed participants, child care for employed participants, non-medical substance abuse treatment, employment assistance or job training, or other necessary supportive services as determined by the Department of Social Services, Office of Family Support.

B. These services meet the TANF goals to end dependence of needy parents by promoting job preparation, work and marriage; to encourage the formation and maintenance of two-parent families; and to prevent and reduce out-of-wedlock pregnancies.

C. Eligibility for services is limited to needy families with minor dependent children, or minor dependent children living with caretaker relatives within the fifth degree of relationship, or pregnant women:

1. who are displaced citizens of parishes or counties for which a major disaster has been declared under the Robert T. Stafford Disaster Relief and Assistance Act; and

2. whose income is at or below 200 percent of the federal poverty level or who are categorically eligible because a member of the family receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch.

D. The secretary may establish criteria whereby needy families are deemed to be needy based on their statement, circumstances, or inability to access resources and may also relax verification requirements for other eligibility factors.

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

F. The program shall be effective for the parishes or counties and time frames as designated by the secretary.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:1617 (September 2006).

Ann Silverberg Williamson
Secretary

0609#035

RULE

Department of Transportation and Development Professional Engineering and Land Surveying Board

Practice, Certification, Exams, Experience, and Services
(LAC 46:LXI.105, 901, 903, 907,
909, 1303, 1315, 1505, 2505)

Under the authority of the Professional Engineering and Land Surveying Licensure Law, R.S. 37:681, et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., the Professional Engineering and Land Surveying Board has amended its rules contained in LAC 46:LXI.Chapters 1 through 33.

The amendments are primarily technical housekeeping revisions of existing board rules.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXI. Professional Engineers and Land Surveyors

Chapter 1. General Provisions

§105. Definitions

A. The words and phrases defined in R.S. 37:682 shall apply to these rules. In addition, the following words and phrases shall have the following meanings, unless the content of the rules clearly states otherwise.

* * *

Practice of Engineering—

a. ...

b. teaching of engineering design and the responsible charge of the teaching of engineering design shall be considered as the practice of engineering. Educational programs accredited by EAC/ABET ensure the minimum quality requirements for the teaching of engineering design. Thus, the teaching of engineering design courses and the responsible charge of the teaching of engineering design courses must be conducted by professional engineers or by engineering faculty in an EAC/ABET accredited engineering curriculum. These unlicensed engineering faculty members are exempt from licensure by the board only for the purpose of teaching of engineering design courses and the responsible charge of the teaching of engineering design courses in an EAC/ABET accredited engineering curriculum and may not otherwise practice or offer to practice engineering in the state of Louisiana as defined by R.S. 37:682 without being licensed by the board.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Surveyors, LR 4:298 (August 1978),

amended LR 5:110 (May 1979), LR 7:643 (December 1981), LR 14:449 (July 1988), LR 16:772 (September 1990), LR 17:804 (August 1991), LR 20:901 (August 1994), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1020 (July 2001), LR 30:1704 (August 2004), LR 32:1618 (September 2006).

Chapter 9. Requirements for Certification and Licensure of Individuals and Temporary Permit to Practice Engineering

§901. Engineer Intern Certification

A. The requirements for certification as an engineer intern under the several alternatives provided in the licensure law are as follows.

1. Graduates of an Accredited Engineering Curriculum. The applicant shall be a graduate of an accredited engineering curriculum of four years or more approved by the board as being of satisfactory standing, who is of good character and reputation, who has passed the written examination in the fundamentals of engineering, who was recommended for certification by a professional engineer holding a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, who has submitted an application for certification in accordance with the requirements of R.S. 37:694, and who was duly certified as an engineer intern by the board.

2. Graduates with Advanced Engineering Degree. The applicant shall be a graduate of a non-EAC/ABET accredited engineering or related science or engineering technology curriculum of four years or more approved by the board as being of satisfactory standing, who has obtained an engineering graduate degree in an engineering discipline or sub-discipline from a university having an undergraduate accredited engineering curriculum in the same discipline or sub-discipline, approved by the board as being of satisfactory standing, who is of good character and reputation, who has passed the written examination in the fundamentals of engineering, who was recommended for certification by a professional engineer holding a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, who has submitted an application for certification in accordance with the requirements of R.S. 37:694, and who was duly certified as an engineer intern by the board.

3. Other Non-EAC/ABET Engineering Graduates. The applicant shall be a graduate of a non-EAC/ABET accredited engineering curriculum of four years or more approved by the board as being of satisfactory standing, who has a specific record of four years or more of verifiable progressive experience obtained subsequent to graduation, on engineering projects of a level and scope satisfactory to the board, who is of good character and reputation, who has passed the written examination in the fundamentals of engineering, who was recommended for certification by a professional engineer holding a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, and having a personal knowledge of his engineering experience, who has submitted an application for certification in accordance with the requirements of R.S. 37:694, and who was duly certified as an engineer intern by the board.

B. The authority for the executive secretary to issue a certificate can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1027 (July 2001), LR 30:1711(August 2004), LR 32:1618 (September 2006).

§903. Professional Engineer Licensure

A. The requirements for licensure as a professional engineer under the two alternatives provided in the licensure law are as follows:

1. the applicant for licensure as a professional engineer shall be an engineer intern, or an individual who meets the qualifications to be an engineer intern, who has a verifiable record of four years or more of progressive experience obtained subsequent to meeting the educational and applicable experience qualifications to be an engineer intern on engineering projects of a level and scope satisfactory to the board, who is of good character and reputation, who has passed the written examination in the principles and practice in the discipline of engineering in which licensure is sought, who was recommended for licensure by five personal references, three of whom are professional engineers who have personal knowledge of the applicant's engineering experience and character and ability, and who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and who was duly licensed as a professional engineer by the board; or

2. the applicant for licensure as a professional engineer shall be an individual who holds a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, based on requirements that do not conflict with the provisions of the licensure law, and which were of a standard not lower than that specified in the applicable licensure law in effect in Louisiana at the time such license was issued, who is of good character and reputation, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and if the state, territory, or possession, or the District of Columbia, in which he/she is licensed will accept the licenses issued by the board on a comity basis, and who was duly licensed as a professional engineer by the board.

B. The authority for the executive secretary to issue a license can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 5:365 (November 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), LR 10:804 (October 1984), LR 11:362 (April 1985), LR 19:56 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1028 (July 2001), LR 30:1712 (August 2004), LR 32:1619 (September 2006).

§907. Land Surveyor Intern Certification

A. A land surveyor intern shall be either:

1. a graduate holding a baccalaureate degree from a curriculum of four years or more who has completed at least 30 semester credit hours, or the equivalent, in land surveying, mapping, and real property courses approved by the board, who is of good character and reputation, who has passed the written examination in the fundamentals of land surveying, who was recommended for certification by a professional land surveyor holding a valid license to engage in the practice of land surveying issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia, who has submitted an application for certification in accordance with the requirements of R.S. 37:694, and who was duly certified as a land surveyor intern by the board; or

2. an individual certified by the board as a land surveyor in training or a land surveyor intern on or before January 1, 1995.

B. The authority for the executive secretary to issue a certificate can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:352 (November 1976), amended LR 5:114 (May 1979), LR 5:365 (November 1979), LR 6:735 (December 1980), LR 7:644 (December 1981), LR 10:90 (February 1984), LR 16:773 (September 1990), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1028 (July 2001), LR 30:1712 (August 2004), LR 32:1619 (September 2006).

§909. Land Surveyor Licensure

A. The requirements for licensure as a professional land surveyor under the two alternatives provided in the licensure law are as follows:

1. an applicant for licensure as a professional land surveyor shall be a land surveyor intern, or an individual who meets the qualifications to be a land surveyor intern, who is of good character and reputation, who has a verifiable record of four years or more of combined office and field experience in land surveying including two years or more experience in responsible charge of land surveying projects under the supervision of a professional land surveyor, who has passed the oral examination, who has passed the written examination in the principals and practices of land surveying and Louisiana laws of land surveying, and who was recommended for licensure by five personal references (at least three of whom must be professional land surveyors who have personal knowledge of the applicant), who has submitted an application for licensure in accordance with R.S. 37:694, and who was duly licensed as a professional land surveyor by the board; or

2. the applicant shall be an individual who holds a valid license to engage in the practice of land surveying issued to him/her by the proper authority of a state, territory, or possession of the United States, or the District of Columbia, based on requirements that do not conflict with the provisions of the licensure law, who is of good character and reputation, who has passed a written examination on the fundamentals of land surveying, principles and practice of

land surveying and Louisiana laws of land surveying, who has submitted an application for licensure in accordance with the requirements of R.S. 37:694, and if the state, territory, or possession, or the District of Columbia in which he/she is licensed will accept the licenses issued by the board on a comity basis, and who was duly licensed as a professional land surveyor by the board.

B. The authority for the executive secretary to issue a license can only be granted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:244 (August 1976), amended LR 2:352 (November 1976), LR 5:114 (May 1979), LR 6:735 (December 1980), LR 7:645 (December 1981), LR 11:362 (April 1985), LR 16:773 (September 1990), LR 19:56 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1029 (July 2001), LR 30:1713 (August 2004), LR 32:1619 (September 2006).

Chapter 13. Examinations

§1303. Approval to Take the Fundamentals of Engineering Examination

A. - D. ...

E. The board may waive the fundamentals of engineering examination for any applicant who has an earned doctoral degree in engineering from a college or university having an undergraduate accredited engineering curriculum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 4:88 (March 1978), amended LR 5:113 (May 1979), LR 6:735 (December 1980), LR 7:647 (December 1981), LR 10:805 (October 1984), LR 14:449 (July 1988), LR 17:804 (August 1991), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1030 (July 2001), LR 30:1714 (August 2004), LR 32:1620 (September 2006).

§1315. Re-Examinations

A. Except as otherwise provided in Subsection B, an individual who fails an examination is eligible to apply to retake the examination. A request for re-examination must be submitted in writing prior to the deadline for scheduling of the examination.

B. After an individual has failed an examination for the third time, he/she is not eligible to apply to retake the examination for the next two consecutive test cycles. If an individual has failed an examination five or more times, following each successive failed examination he/she is not eligible to apply to retake the examination for the next two consecutive test cycles and must successfully complete a board-approved review course prior to reapplying.

C. Before an applicant is given approval to retake an examination, he/she may be required to appear before the board, or a committee of the board, for an oral interview/oral examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:353 (November 1976), amended LR 4:516 (December 1978), LR 5:114 (May 1979), LR 7:647 (December 1981), LR 12:692 (October 1986), LR 16:774 (September 1990), LR 19:57 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1031 (July 2001), LR 30:1715 (August 2004), LR 32:1620 (September 2006).

Chapter 15. Experience

§1505. Work Experience

A. ...

B. Two years of the required work experience shall be obtained in a state, territory, or possession of the United States, or the District of Columbia. However, the board may allow substitution of two years of foreign work experience provided that the experience is obtained under the supervision of a professional engineer holding a valid license to engage in the practice of engineering issued to him/her by proper authority of a state, territory, or possession of the United States, or the District of Columbia.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:112 (May 1979), amended LR 7:647 (December 1981), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1031 (July 2001), LR 30:1716 (August 2004), LR 32:1620 (September 2006).

Chapter 25. Professional Conduct

§2505. Services

A. - E. ...

F. Firms may offer and/or provide a combination of engineering and construction services in connection with a design-build project without obtaining a firm license from the board, provided that:

1. prior to the execution of the contract for the project, the firm obtains an authorization certificate from the board by filing, on a form approved by the board, a written disclosure on which it shall designate a professional engineer (professional of record) employed by the firm and licensed in this state to be in responsible charge of all engineering services offered and/or provided by the firm for such project;

2. the professional of record and an officer of the firm sign the written disclosure submitted to the board, identifying the professional of record's role in the project and certifying that the professional of record will be in responsible charge of all engineering services offered and/or provided by the firm for the project;

3. all engineering services offered and/or provided by the firm for the project are performed by or under the responsible charge of the professional of record; and

4. in the event such professional of record's services terminate with respect to the project or his role in the project otherwise changes, then within five business days:

a. both the firm and the professional of record shall notify the board in writing of such termination or change; and

b. the firm shall file with the board a new written disclosure designating a new professional of record employed by the firm and licensed in this state to be in responsible charge of all engineering services offered and/or provided by the firm for such project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 7:648 (December

1981), amended by the Department of Transportation and Development, Professional Engineering and Surveying Board, LR 27:1037 (July 2001), LR 30:1721 (August 2004), LR 32:1620 (September 2006).

Donna D. Sentell
Executive Secretary

0609#024

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Fumigation of Conifer or Hardwood Seedlings (LAC 7:XV.132)

The Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, hereby proposes to amend regulations governing the use of methyl bromide as a fumigation treatment in seedling plant beds prior to seeding in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The proposed amendment to these rules and regulations will require the shipment of conifer or hardwood seedlings to be used for forestry purposes be accompanied by a certificate evidencing the apparent freedom of pests, diseases, and noxious plants. It further declares that the preferred method of treatment to aid in obtaining pest free status is fumigation with methyl bromide.

These rules are enabled by R.S. 3:1652.

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 1. Crop Pests and Diseases

Subchapter B. Nursery Stock Quarantines

§132. Conifer and Hardwood Seedlings Used for Forestation Purposes

A. The premises of nurseries growing seedlings for afforestation or reforestation purposes must be inspected and found to be apparently free of pests, diseases, and noxious plants.

B. Any shipment of conifer or hardwood seedlings into or within the state for afforestation or reforestation purposes must be accompanied by a valid certificate issued by the department or the state of origin evidencing that the seedlings are apparently free of pests, diseases, and noxious plants.

C. To aid in obtaining seedlings that are free of pests, diseases, and noxious plants, the preferred method of treatment is fumigation using methyl bromide in seedling plant beds prior to seeding. All such treatments shall be accomplished by utilizing state and federally registered pesticides in accordance with the label.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1652.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 32:

Family Impact Statement

The proposed adoption of LAC XV:132 governing the use of methyl bromide as a fumigation treatment in seedling plant beds prior to seeding should not have any known or

foreseeable impact on any family as defined by R.S. 9:972.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.

Any interested persons may submit written comments on the proposed Rule through the end of business on October 27, 2006, to Craig Roussel, Department of Agriculture and Forestry, 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble concerning the proposed Rule is available.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Fumigation of Conifer or Hardwood Seedlings

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

There will be no additional costs or savings to state or local governmental units.

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

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

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

Producers of forestry tree seedlings will be directly impacted by these proposed rules. They currently use methyl bromide to fumigate their seedling plant beds. The quarantine use formulation of methyl bromide is significantly cheaper than the non-quarantine use formulation. Additionally, the non-quarantine use of methyl bromide is being phased out. This proposed rule will allow the continued use of this important practice of producing healthy tree seedlings for the forest industry. Therefore, there should be no impact on receipts and/or income.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Skip Rhorer
Assistant Commissioner
0609#051

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Chloramphenicol in Seafood, Seafood Products and Honey (LAC 7:XXXV.501, 503 and 505)

The Louisiana Department of Agriculture and Forestry, Weights and Measures Commission, proposes to adopt regulations regarding the testing for Chloramphenicol in seafood and honey. This Rule is being adopted in accordance with R.S. 3:2A, 3:3B, 3:4608 and the rule making provisions of the Louisiana Administrative Procedure Act, (R.S 49:950 et seq.).

Chloramphenicol is a broad-spectrum antibiotic that has been restricted by the FDA for use in humans only in those cases where other antibiotics have not been successful. The FDA has set a zero tolerance level for Chloramphenicol in food and has prohibited the extra label use of Chloramphenicol in the United States in food producing animals, (21 CFR 530.41). Chloramphenicol has been found in food held, exposed or offered for sale, or sold in Louisiana.

Chloramphenicol is known to cause aplastic anemia, which adversely affects the ability of a person's bone marrow to produce red blood cells. Aplastic anemia can be fatal. In addition, according to the National Institute on Environmental and Health Sciences, Chloramphenicol can reasonably be anticipated to be a human carcinogen. In widely accepted references such as "Drugs in Pregnancy and Lactation," the use of Chloramphenicol is strongly dissuaded during pregnancy, especially late pregnancy. Chloramphenicol can be transmitted to an unborn child through the placenta and to an infant through the mother's milk. The dosage transmitted to an unborn child is essentially the same dosage as is taken in by the mother. However, the unborn child is unable to metabolize Chloramphenicol as efficiently, thereby causing the risk of an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

This Rule is enabled by R.S. 3:2A, 3:3B, R.S. 3:4608.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 5. Consumer Products—Testing and Labeling

Subchapter A. Chloramphenicol

§501. Definitions

A. As used in this Chapter the following terms shall have the meaning given to them except where the context expressly indicates otherwise.

Chloramphenicol Region—a geographic area where Chloramphenicol has been declared by the commissioner to be used on or administered to crabs, crawfish, or shrimp, or found in seafood, honey, or a product made from seafood or honey.

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

Honey—any raw or processed honey or any product that contains honey.

Seafood—any crab, crawfish or shrimp, whether whole, portioned, processed or shelled, or any item or product containing crab, crawfish or shrimp meat.

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

HISTORICAL NOTE: Promulgated by the Louisiana Department of Agriculture and Forestry, Office of Agro-Consumer Services, Weights and Measures Division, LR 32:

§503. Selling, Testing, Declarations, Records, Penalties

A. No seafood or honey may be held, offered or exposed for sale, or sold in Louisiana if the seafood or honey is contaminated with Chloramphenicol.

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

C. No seafood or honey harvested from or produced, processed, or packaged in a Chloramphenicol region may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection F.

D. The commissioner may make or rescind declarations related to Chloramphenicol in accordance with this Subsection.

1. The commissioner may declare a geographic area to be a Chloramphenicol region, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on, administered to, or found in seafood or honey in that geographic area.

2. Any declaration made pursuant to this Subsection and any rescission of any prior declaration shall be by rule promulgated in accordance with the provisions of the Administrative Procedure Act.

E. Declarations

1. The commissioner declares the following geographic areas to be Chloramphenicol regions for the following named seafood or honey because he has information that would lead a reasonable person to believe that Chloramphenicol is being used on, administered to, or found in seafood or honey in or from these geographic area(s):

- a. crab:
 - i. China;
 - ii. Vietnam;
 - iii. Thailand;
 - iv. Mexico;
 - v. Malaysia;
- b. crawfish and shrimp:
 - i. China;
- c. honey:
 - i. China;
 - ii. Thailand.

F. Seafood or honey that comes from a Chloramphenicol region must meet the following requirements for sampling, identification, sample preparation, testing, and analysis before being held, offered or exposed for sale, or sold in Louisiana.

1. Sampling of Seafood

a. The numbers of samples that shall be taken are as follows:

- i. two samples are to be taken of any seafood that is in lots of 50 pounds or less;
- ii. four samples are to be taken of any seafood that is in lots of 51 to 100 pounds;
- iii. twelve samples are to be taken of any seafood that is in lots of 10 pounds up to 50 tons;
- iv. twelve samples for each 50 tons are to be taken of any seafood that is in lots of over 50 tons.

b. Samples of unpackaged seafood must be approximately 1 pound, (454 grams), of seafood per sample from randomly selected areas.

c. For packaged seafood, each sample shall be at least 6 ounces, (170.1 grams), in size and shall be taken at random throughout each lot of seafood.

2. Sampling of Honey

a. The numbers of samples that shall be taken are as follows.

i. Two samples are to be taken of any honey that is in lots of 50 pounds or less.

ii. Four samples are to be taken of honey that is in lots of 51 to 100 pounds.

iii. Twelve samples are to be taken of honey that is in lots of 101 pounds up to 50 tons.

b. For honey in bulk wholesale containers, each sample shall be at least 1 pound or 12 fluid ounces and must be pulled at random throughout each lot.

c. For packaged honey, each sample shall be at least 8 ounces in size and shall be taken at random throughout each lot.

3. If the seafood or honey to be sampled consists of packages grouped together, but labeled under two or more trade or brand names, then the seafood or honey packaged under each trade or brand name shall be sampled separately. If the seafood or honey to be sampled are not packaged, but are segregated in such a way as to constitute separate groupings, then each separate grouping shall be sampled separately.

4. A composite of the samples shall not be made. Each sample shall maintain a separate identity so that each sample may be tested individually. Each sample shall be clearly identifiable as belonging to a specific group. All seafood samples shall be kept frozen and delivered to the lab unless it adversely affects the sample quality or the ability to accurately test the sample.

5. Sample Identification

a. Each sample shall be identified as follows:

- i. any package label;
- ii. any lot or batch numbers;
- iii. the country, province, state and city of origin;
- iv. the name and address of the importing company;

v. unique sample number identifying the group or batch sample and sub sample extension number for each sub sample.

6. Sample Preparation

a. Honey

i. For small packages of honey up to and including 8 ounces, use the entire sample. If honey sample includes more than one container, they shall be blended together. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample as a reserve.

b. Seafood

i. For small packages of seafood up to and including 1 pound, use the entire sample. Shell the seafood, exercising care to exclude all shells from sample. Grind sample with food processor type blender while semi-frozen or with dry ice. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample in a freezer as a reserve.

7. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is 1 part per billion, (1 ppb) or less. Acceptable test kits are the Ridascreen Chloramphenicol enzyme immunoassay kit and the Charm II Chloramphenicol kit. The commissioner may authorize other immunoassay kits with appropriate detection limits of 1 ppb or below to be used. Each sample must be run using the manufacturer's test method. The manufacturer's specified calibration curve must be run with each set. All results 1 ppb or above must be assumed to be Chloramphenicol unless further testing by approved GC/LC method indicates the result to be an artifact.

b. HPLC-MS, GC-ECD, GC-MS methods currently approved by FDA, the United States Department of Agriculture or the Canadian Food Inspection Agency with detection limits of 1 ppb or below may also be used.

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

8. Any qualified laboratory may perform the testing and analysis of the samples unless the laboratory is located in a Chloramphenicol region. The commissioner shall resolve any questions about whether a laboratory is qualified to perform the testing and analysis.

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

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

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

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

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

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

G. Any person who attempts to ship into Louisiana or to hold, offer or expose for sale, or sell in Louisiana any seafood or honey required to be sampled and tested under this Section shall be responsible for having such seafood or honey sampled and tested in accordance with Subsection F. Any such person must, at all times, be in full and complete compliance with all the provisions of this Chapter.

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

I. If any test results are rejected by the commissioner then all persons attempting to ship into Louisiana or holding, offering or exposing for sale, or selling in Louisiana any seafood or honey that were subject to the testing will be notified immediately of such rejection and shall be issued a stop-sale, hold or removal order as to the seafood or honey. Thereafter, it will be the duty of all such persons to abide by such order until the commissioner lifts the order in writing. Any such person may have the seafood or honey retested, at his expense, in accordance with this Section. If the certified results of the retesting show that the seafood or honey is free of Chloramphenicol then an application may be made to the commissioner to lift the order.

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

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

L. All records and information regarding the distribution, purchase and sale of seafood or honey shall be maintained for two years and shall be open to inspection by the department.

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Weights and Measures Division, LR 32:

§505. Labeling by Country of Origin

A. All seafood or honey specifically listed in §503.E.1 of this Chapter, which is being shipped into Louisiana or held, offered or exposed for sale, or sold in Louisiana, and which come from a foreign country, shall indicate the country of origin, except as otherwise provided in this Section.

B. Every package or container that contains foreign seafood or honey specifically listed in §503.E.1 of this Chapter shall be marked or labeled in a conspicuous place as legibly, indelibly, and permanently as the nature of the package or container will permit so as to indicate to the ultimate retail purchaser of the seafood or honey the English name of the country of origin.

1. Legibility must be such that the ultimate retail purchaser in the United States is able to find the marking or label easily and read it without strain.

2. Indelibility must be such that the wording will not fade, wash off or otherwise be obliterated by moisture, cold or other adverse factors that such seafood or honey are normally subjected to in storage and transportation.

3. Permanency must be such that, in any reasonably foreseeable circumstance, the marking or label shall remain on the container until it reaches the ultimate retail purchaser unless it is deliberately removed. The marking or label must be capable of surviving normal distribution and storing.

C. When foreign seafood or honey specifically listed in §503.E.1 of this Chapter are combined with domestic seafood or honey, the marking or label on the container or package or the sign included with any display shall clearly show the country of origin of the foreign seafood or honey.

D. In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any state, city or location in the United States, appear on any container or package containing foreign seafood or honey specifically listed in §503.E.1 of this Chapter, or any sign advertising such foreign seafood or honey for sale, and those words, letters or names may mislead or deceive the ultimate retail purchaser as to the actual country of origin, then the name of the country of origin preceded by "made in," "product of," or other words of similar meaning shall appear on the marking, label or sign.

1. The wording indicating that the seafood or honey is from a country other than the United States shall be placed in close proximity to the words, letters or name that indicates the seafood or honey is a product of the United States in a legible, indelible and permanent manner.

2. No provision of this Section is intended to or is to be construed as authorizing the use of the words "United States," "American," or the letters "U.S.A.," or any variation of such words or letters, or the name of any state, city or location in the United States, if such use is deceptive, misleading or prohibited by other federal or state law.

E. Foreign seafood or honey specifically listed in §503.E.1 of this Chapter shall not have to be marked or labeled with the country of origin if such seafood or honey is included as components in a product manufactured in the United States and the seafood or honey is substantially transformed in the manufacturing of the final product. In no event shall thawing, freezing, packing, packaging, re-packing, re-packaging, adding water, portioning, shelling, processing, peeling, partially cooking or combining with domestic seafood or honey shall be considered to be a substantial transformation.

F. The commissioner shall have all the powers granted to him by law, or in accordance with any cooperative endeavor with any other public agency, to enforce this Section, including the issuance of stop-sale, hold or removal orders and the seizing of seafood or honey mislabeled or misbranded as to the country of origin.

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Weights and Measures Division, LR 32:

Family Impact Statement

The proposed adoption of LAC 7:XXXV.501, 503 and 505 regarding the testing of seafood and honey for the chemical Chloramphenicol set out in R.S. 3:2, 3:3, and 3:4608 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 Rule to Todd Thompson through October 27, 2006 at 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding this Rule is available.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Chloramphenicol in Seafood, Seafood Products and Honey

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

The estimated implementation cost to state government is \$30,000 per year. Since implementation of this rule does not take effect until January 2007, the estimated implementation cost for fiscal year 2006-2007 will be \$15,000.00. The implementation of these rules requires the regulatory sampling and testing of certain foreign foods to ensure chemical free products. The rule, as proposed, would require importers of certain seafood products and honey to test prior to sale if the product comes from an area known to use chloramphenicol in food or food products. Chloramphenicol is a known health risk and its use in food or food producing animals is ban by FDA. There is estimated to be no implementation costs to local government.

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

It is estimated that these rules will not have an 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 will be a cost to importers of some foreign seafood and honey from countries where chloramphenicol (a banned antibiotic in food and food producing animals) is known to be found. The importers must have these certain foods tested prior to being offered for sale or sold in Louisiana. The estimated cost is \$500 per 50 tons of product.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition or employment. These emergency regulations have been in place for about three years and the foreign product being tested is still considerably lower in price than domestic product.

Skip Rhorer
Assistant Commissioner
0609#052

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Fluoroquinolones in Seafood (LAC 7:XXXV.511)

The Commissioner of Agriculture and Forestry proposes to adopt the following Rule governing the testing and sale of seafood in Louisiana. This Rule is being amended in accordance with R.S. 3:2.A, 3:3.B, R.S. 3:4608 of the Administrative Procedure Act.

The commissioner intends to promulgate these rules and regulations to implement standards relating to Fluoroquinolones in seafood that are consistent with standards adopted by the United States Food and Drug Administration, (FDA), regarding Fluoroquinolones in foods. All seafood sold in Louisiana must meet the standards set out in these regulations prior to distribution and sale of seafood in Louisiana.

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

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

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

Toxicity can affect multiple organ systems and include peripheral neuropathies, seizures, phototoxicity, tendon rupture, fatal drug interactions and arthropathies in children. Fluoroquinolones should not be taken by pregnant and

lactating women due to concern over the potential effect on a developing fetus.

This Rule is enabled by R.S. 3:2.A, 3:3.B, R.S. 3:4608.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 5. Consumer Products—Testing and Labeling

Subchapter B. Fluoroquinolones

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

A. Definitions

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

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

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

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

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

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

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

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

E. Seafood that comes from a geographic area declared by the commissioner to be a location where Fluoroquinolones is being used on, or is found in food producing animals or in products from such animals, must meet the following requirements for sampling, identification, sample preparation, testing and analysis before being held, offered or exposed for sale, or sold in Louisiana.

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

2. Each sample shall be identified as follows:

- a. any package label;
- b. any lot or batch numbers;

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

3. Sample Preparation

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

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

4. Sample Analysis

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

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

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

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

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

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

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

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

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

8. Upon actual receipt by the department of a copy of the certified test results and written documentation required to accompany the certified test results then the seafood may

be held, offered or exposed for sale, or sold in Louisiana, unless a written stop-sale, hold or removal order is issued by the commissioner.

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

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

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

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

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

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

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

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

1. The geographic area or areas are:

a. the country of Vietnam.

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

M. All records and information regarding the distribution, purchase and sale of seafood or any food

containing seafood from the listed geographic areas shall be maintained for two years and shall be open to inspection by the department.

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

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

HISTORICAL NOTE: Promulgated by the Louisiana Department of Agriculture and Forestry, Office of Agro-Consumer Services, Weights and Measures Division, LR 32:

Family Impact Statement

The proposed adoption to LAC 7:XXXV.511 regarding the testing and sale of seafood in Louisiana for Fluoroquinolones set out in R.S. 3:2, 3:3, and 3:4608 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 Rule to Todd Thompson through October 27, 2006 at 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding this Rule is available.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Fluoroquinolones in Seafood

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

The estimated implementation cost to state government is \$30,000 per year. Since implementation of this rule does not take effect until January 2007, the estimated implementation cost for fiscal year 2006-2007 will be \$15,000.00. The implementation of these rules requires the regulatory sampling and testing of certain foreign foods to ensure chemical free products. The rule, as proposed, would require importers of certain seafood products and fish to test prior to sale if the product comes from an area known to use Fluoroquinolones in food or food products. Fluoroquinolones is a known health risk and its use in food or food producing animals is banned by FDA. There is estimated to be no implementation costs to local government.

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

It is estimated that these rules will not have an 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 will be a cost to importers of foreign seafood and fish from countries where fluoroquinolones (a banned antibiotic in food and food producing animals) is known to be found. The importers must have these certain foods tested prior to being

offered for sale or sold in Louisiana. The estimated cost is \$500 per lot of product.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition or employment. These emergency regulations have been in place for about one year and the foreign product being tested is still considerably lower in price than domestic product.

Skip Rhorer
Assistant Commissioner
0609#053

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Agriculture and Forestry
Structural Pest Control Commission**

Change of Status of Permittee and Change in Structural Pest Control Business (LAC 7:XXV.101 and 105)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Structural Pest Control Commission, proposes to amend regulations defining and setting requirements for the change of status of a permittee and the selling or transferring of wood destroying insect contracts and closure of a place of business.

The Department of Agriculture and Forestry deems the implementation of these rules and regulations necessary to insure that those persons notify their customers with wood destroying insect contracts and the department of the change of status of the permittee or the closure of the place of business. These rules allow the department to better regulate the pest control industry by insuring that they keep their customers informed of the changes in their status and business.

These rules comply with and are enabled by R.S. 3:3203.

Title 7

**AGRICULTURE AND ANIMALS
Part XXV. Structural Pest Control**

Chapter 1. Structural Pest Control Commission

§101. Definitions

* * *

Permittee—any person who holds a place of business permit issued by the Louisiana Structural Pest Control Commission.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3362 and R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:954 (November 1989), LR 17:251 (March 1991), LR 23:855 (July 1997), LR 30:1143 (June 2004), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 31:26 (January 2005), LR 32:

§105. Permit for Operation of Structural Pest Control Business; Changes in Structural Pest Control Business

A. Every place of business engaged in structural pest control work must obtain a permit for operation from the commission prior to engaging in structural pest control work.

B. No permit for operation shall be issued by the commission unless there is a licensee domiciled at the business location for which the permit is sought.

C. Each permit for operation must be renewed annually, on or before June 30 of each year.

D. The fee for issuance of a permit for operation shall be \$125 for firms which employ two or less employees and \$175 for firms which employ three or more employees.

E. When two or more businesses which are separate legal entities, even though owned by the same individual or the same legal entity, are operated at one physical location, each separate entity must obtain a permit for operation.

F. Whenever a license is suspended or revoked under §131, the commission may also revoke the permit to operate. In such cases, the commission shall recall the permit and require the licensee to immediately return the permit to the commission.

G. Whenever a permit is recalled by the commission as provided in §105.F, no structural pest control work of any kind may be provided by persons domiciled at the location for which the recalled permit has been issued.

H. Except as provided in this Subsection, any change in the status of a permittee (e.g., death, retirement, prolonged illness, merger, sale, change of ownership, etc.) must be reported to the commission, in writing, within 14 days after the change in status occurs.

1. If the change in the permittees status would result in the non-renewal of the place of business permit or would require the commission to issue a new place of business permit, then the notice must be accompanied by the following information:

a. the reason for the change in the status and the effective date of the change;

b. the status of all licensee(s) and registered and certified technicians;

I. If a permittee sells or otherwise transfers any wood destroying insects contract then the commission and each customer whose contract was sold or transferred shall receive the following written notification.

1. The selling or transferring permittee and the person purchasing or receiving the wood destroying insects contract shall each provide the commission in writing the following information and statements.

a. If all the wood destroying insects contracts of the permittee selling or transferring such contracts are being purchased or transferred then a statement that all wood destroying insects contracts are being sold or transferred and that all the contracts shall remain in full force and effect in accordance with the terms and conditions of the customers' contracts shall be sufficient.

b. If all the wood destroying insects contracts are not being sold or transferred then the information provided to the commission shall include:

i. a statement that all wood destroying insects contracts are being sold or transferred except for the specific contracts listed;

ii. a list of the specific contracts that are not being sold or transferred;

iii. for each contract being sold or transferred, a statement that all contracts being sold or transferred shall remain in full force and effect in accordance with the terms and conditions of the customers' contracts.

2. The person acquiring a wood destroying insects contract by a sale or transfer shall notify the customer in writing, within 30 days after the sale or transfer of:

a. the effective date of the sale, transfer, or change in status; and

b. the name, address, and telephone number of the person acquiring the customer's wood destroying insects contract;

c. a statement that the customer's contract shall remain in full force and effect in accordance with the terms and conditions of the contract.

J. A permittee who is closing his business or is otherwise not going to honor or service existing wood destroying insects contracts shall, within 14 days of the time of the close of business or ceasing to honor or service existing wood destroying insects contracts shall provide certified written notification of the decision to affected customers along with the following information:

1. the commission's address and telephone number;

2. the date of closure or last date the contract will be honored or serviced;

3. a statement of bond coverage; and

4. the bond company's name, address, telephone number, and contact person.

K. Any person who fails to comply with the provisions of this Section shall personally come before the commission prior to that person being granted a registration, certification, license, or permit, or renewal thereof. The commission may deny or defer action on a request to grant a registration, certification, license or permit, or renewal thereof. The commission may deny a renewal or impose civil penalties for violation of this Section only after the person has been brought to an adjudicatory proceeding and found guilty of violating the provisions of this Section.

L. All information and all documents relating to written contracts transmitted to the commission in accordance with the requirements of this Section shall be confidential and shall be exempt from the Public Records Law, R.S. 44:1 et seq., as provided in R.S. 3:3370.E.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:325 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:954 (November 1989), LR 32:

Family Impact Statement

The proposed amendments to LAC 7:XXV.101 and 105 defining and setting requirements for the change of status of a permittee and the selling or transferring of wood destroying insect contracts and closure of a place of business 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 Rule to Bobby Simoneaux through the close of business on October 27, 2006, at 5825 Florida Blvd., Baton Rouge, LA 70806. A public hearing will be held on these rules on October 27, 2006 at 9 a.m. at the address listed above. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at the hearing. No preamble regarding this Rule is available.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Change of Status of Permittee and Change in Structural Pest Control Business

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

No estimated implementation costs or savings to state or local governmental units.

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

There is estimated to be no effect on revenue collections of the state or local governmental units.

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

There is estimated to be no costs and/or economic benefits to directly affected persons or non-governmental units.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendments are not anticipated to have an effect on competition and employment.

Skip Rhorer
Assistant Commissioner
0609#050

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1674—Safety Manual for Career and Technical Education Programs (LAC 28:CXXXIII.Chapters 1-31)

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 *Bulletin 1674—Safety Manual for Career and Technical Education Programs*. Bulletin 1674 will be printed in codified format as Part CXXXIII of the Louisiana Administrative Code. This document replaces any previously advertised versions. The proposed Safety Manual for Career and Technical Education programs provides a guide for safety curriculum and instruction, and serves as a general reference checklist for safety and health concepts taught and adhered to within Louisiana career and technical education courses. It is also intended for school and district administrators and school board members to use as a vision for safety and health education and as a basis for planning resource allocations, materials purchases, local curriculum

development, teachers' professional development, and faculty recruitment.

Title 28
EDUCATION

**Part CXXXIII. Bulletin 1674—Safety Manual for
Career and Technical Education Programs**
Subpart 1. General Provisions

Chapter 1. Introduction

§101. Purpose

A. Rapid changes are occurring in our world and economy. The increasing complexity of work that spans the entire work force of today's society demands that education for all students be made more relevant and useful to future careers.

B. To prepare Louisiana Agricultural Education, Technology Education and Trade and Industrial Education Students to meet the demands of society and the workplace in the twenty-first century, industry-based certification standards were developed to address content knowledge and the application of skills. These standards focus on what students should know, be able to do, and be able to demonstrate in the workplace. They promote and develop critical thinking processes, which students will use in the classroom and real work applications, address the diversity of educational needs of Louisiana students enrolled in Career and Technical Education courses, and address industry-based certification programs for employability. This must be accomplished in a safe environment.

C. The Safety Manual for Career and Technical Programs was written to fulfill the need for an up-to-date industry-based practical educational resource that focuses upon the needs of teachers, supervisors, and students involved in laboratory instruction at the secondary level in Louisiana public schools. It is also intended for use in:

1. universities;
2. career centers;
3. high schools; and
4. junior high school career and technical education laboratories.

D. Louisiana has made significant strides toward improving the education of our children. Our goal is to build our strengths as we continue to improve education in our state. By developing rigorous standards and challenging assessments that align with industry-based standards and by holding schools accountable for results, we are ensuring a better future for our children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§103. Intended Audience

A. The Safety Manual for Career and Technical Programs is intended for a broad audience, including agriculture, technology, trade and industrial education teachers, parents, school and district administrators, school board members, policy makers, Louisiana Department of Education staff, college/university faculty/administrators, business/industry leaders, and government agency staff. The framework serves as a guide for safety curriculum and instruction, and as a general reference "checklist" to the safety and health concepts and skills taught and adhered to within Louisiana career and technical education courses. The intended users of the framework include:

1. career and technical education teachers to use in planning curriculum, instruction, and assessment;
2. parents to use as a means of assessing the safety and effectiveness of their children's career and technical laboratories;
3. school and district administrators and school board members to use as a vision for safety and health education and a basis for planning resource allocations, materials purchases, local curriculum development, teachers' professional development, and faculty recruitment;
4. policy makers and state education staff to use as a basis for:
 - a. developing and obeying laws;
 - b. health and safety policies;
 - c. professional development activities and materials;
 - d. assessment strategies; and
 - e. funding priorities to support local program development;
5. university faculty and administrators to use as a basis for the content and design of pre-service and in-service teacher education programs regarding safety and health instruction;
6. business/industry leaders and government agency staff to use as a basis for developing effective partnerships for supporting safety and health education programs and professional development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§105. How Teachers Should Use This Publication

A. This Part outlines the appropriate content to be taught in Louisiana Career and Technical Education programs that require laboratories. Local needs will determine how this should be taught in local career and technical education programs. Teachers will be able to use this framework to guide them in the restructuring of their laboratory curricula. This document contains specific performance criteria essential to laboratory safety education. These specific assessment criteria must be supported on the local level by all individuals involved in the educational process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Chapter 3. Elements of a Successful Safety, Health and Environment Program

§301. Overview

A. The key to preventing harm to school employees, students, and the environment is to establish a good occupational safety, health, and environmental program.

B. A good program may take years to put in place, but the guidelines below are a good place to begin. Start with individual items or parts of items. The guidelines are divided into five sections:

1. identify and prioritize potential hazards;
2. eliminate, prevent, and control hazards;
3. train employees, students, and management;
4. assure management commitment;
5. assure employee and student involvement:
 - a. the occupational safety, health, and environmental safety program should be tailored to the

needs of the school, department, or school system. Small schools with limited resources may form safety and health cooperatives with other schools to help manage all or parts of their programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§303. Identify, Prioritize Potential Hazards in Designated Areas

A. Designated Areas. Divide the school and associated structures into designated areas and sub-areas.

1. Designate structural or functional major areas of the school (i.e., administrative offices, classrooms, labs, etc.)

2. Designate sub-areas of each major area (i.e., specific office, classroom or lab, etc.).

B. Conduct walk-through inspections.

1. Each designated sub-area should be inspected to identify potential hazards associated with the equipment, materials and function of the area.

2. Checklists specific to the equipment, materials and function of the area (See Inspection Worksheets) can help identify hazards and determine whether the organization complies with applicable safety and health or environmental regulations.

C. Compile and/or update a hazardous material inventory.

1. Record:

a. the names and amounts of all hazardous materials used;

b. the means of their disposal; and

c. the occurrence of any spills or releases on the premises.

2. Collect and maintain Material Safety Data Sheets (MSDSs) for all hazardous materials listed in the inventory.

3. Determine which hazardous materials are regulated by federal, state or local agencies. These include:

a. the Occupational Safety and Health Administration (OSHA);

b. the Environmental Protection Agency (EPA); and

c. the Louisiana Department of Environmental Quality (LDEQ).

D. Maintain and update a process and equipment inventory.

1. Record the location of hazardous processes or equipment, and the dates when maintenance or monitoring must be performed.

2. Keep an inventory of safety equipment related to specific equipment and those who use it.

E. Establish a purchase screening procedure.

1. Establish a procedure for consideration of health and safety elements when purchasing goods and services and leasing new space. Avoiding a hazard is easier than controlling it.

2. Before any purchase of chemicals, equipment, or services, develop a system that may be reviewed by a safety representative or committee member.

3. Similarly, review plans for renovating, constructing, or leasing new facilities.

F. Investigate incidents, spills, and releases.

1. A safety representative or committee member should investigate every incident or release to determine how to prevent such a problem in the future.

2. A "Chemical Release" and other incident report forms should be developed. At a minimum, the form should have a space to answer, "What were the causes of the incident or release?" and "What precautions or controls could have prevented the incident or release?"

3. Employees and students should be encouraged to report *near hits* or *close calls* as well.

G. Record Evaluation

1. Evaluate injury and illness records.

a. The OSHA Log 300, a required employee occupational illness and injury record-keeping system, should be reviewed by persons responsible for safety and health on a regular basis.

b. Personal injury claims and workers' compensation claims may also identify whether certain classrooms, buildings, or processes pose an undue risk.

2. Evaluate environmental records.

a. Review existing records such as the hazard communication inventory, air permits, hazardous waste records, solid waste records, and medical waste records to identify chemicals or processes that should be substituted, recycled, or prevented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§305. Eliminate, Prevent, and Control Hazards

A. Hazard Elimination

1. Perform routine housekeeping.

a. Get rid of trash by disposing of it properly.

b. Make sure that hazardous chemicals and other materials are stored safely.

2. Provide regular equipment maintenance, repair, and replacement.

a. Equipment includes:

i. hazardous machinery;

ii. safety gear; and

iii. ventilation system.

b. Check that machine guards are in place.

c. Implement a maintenance and repair record-keeping system.

B. Hazard Control

1. Engineering Controls

a. The safety and health controls that are built into a process are referred to as "engineering controls". Engineering controls are the first in the hierarchy of controls that are used to reduce teachers' and students' exposure to a hazard.

b. Incorporate safety and health controls in the design of the process or operation rather than have students follow certain rules, wear protective gear, or clean up excess pollution.

c. Engineering controls may include:

i. substitution;

ii. isolation;

iii. enclosure; and

iv. ventilation of a process or equipment.

2. Work Practice Controls and/or Programs

a. Written safety procedures may be developed for specific operations or tasks to control or eliminate the associated hazards.

b. Written general programs for respiratory protection, vehicle safety, etc., will help to emphasize the importance of specific controls.

C. Hazard Protection

1. Provide personal protective equipment (PPE).

a. Respiratory Protections

i. Respiratory protection should be used only as a temporary or last-resort solution when engineering controls are inadequate to control the hazards.

ii. Respirators could be used routinely if job hazards require it.

b. Other forms of PPE could be required depending on the job and hazards involved and include:

i. hearing protection;

ii. welders' masks;

iii. hard hats;

iv. safety glasses or goggles.

c. Using PPE involves careful selection, maintenance, and user training.

2. Eyewash Facilities and Showers. Install eyewashes and/or showers near battery-changing stations, maintenance operations, heating and ventilating operations, and other processes that use corrosive chemicals or emit irritant aerosols.

D. Develop Emergency Response Plans and Procedures. (Additional guidance material may be found in Appendix F, Emergency Procedures, in the Safety Manual for Career and Technical Programs on the Louisiana Department of Education website (<http://www.doe.state.la.us/lde/index.html>).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§307. Employee, Management, and Student Training

A. Train all new employees and students. This training can be built into basic orientation and the curriculum.

B. Provide mandated training programs to employees and students.

1. Depending on the types of classes the school provides, training may be required on the following:

a. emergency procedures;

b. fire prevention and the use of fire extinguishers;

c. respiratory protection;

d. occupational noise exposure;

e. woodworking machinery;

f. welding;

g. asbestos handling;

h. hazard communication;

i. hazardous waste handling.

2. Training is also recommended for video display terminal operators.

3. Direct supervisors should receive the same training as the students or subordinates.

C. Train safety representatives and hazard prevention committees.

1. Training can enhance the ability of students and employees to carry out the functions listed in Subparagraphs a-i above. In particular, they may wish to obtain training in:

a. computerizing the program;

b. investigation of injuries or other incidents;

c. safety and environmental record keeping;

d. hazard identification and control;

e. industrial hygiene fundamentals; or

f. environmental regulations.

2. Outside training opportunities provide an essential means for safety, health, and environmental personnel to network with and learn from programs in other schools.

D. Training assistance may be obtained from various safety and health organizations, local industry and regulating agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§309. Management Commitment

A. Top administration must be involved. The school board, superintendent, school principal, and top school administrators should all be leaders in implementing the program. They should stay informed and involved.

B. Develop a written safety and health policy.

1. Top administration should issue a written policy supporting a safe and healthy environment in the schools.

2. This policy may take the form of one or more policy statements or a policy manual that covers issues ranging from safety procedures to energy conservation.

3. The policy should be posted and/or issued to all employees and students.

C. Assure adequate personnel resources.

1. Assign appropriate individuals responsibility for the functions listed in the remaining sections of this Chapter. It is important to select people who are competent and motivated, and who have the skills and adequate resources to do the job.

2. Make sure adequate time is given to do the job.

D. Assure adequate financial resources.

1. Money must be allocated for the safety and health program.

2. Make sure adequate time is given to do the job.

E. Evaluate program performance regularly.

1. The occupational safety and health and environmental safety program should be a part of all performance reviews, including those of top administration, teachers, and students.

2. Acknowledge those who have been involved in identifying and correcting hazards and working safely.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§311. Employee and Student Involvement

A. Establish a hazard prevention committee.

1. A Hazard Prevention Committee should be composed of:

a. representatives of management;

b. school employees; and

c. perhaps students.

2. For such a committee to succeed it should:

a. be selected carefully;

b. have a clear idea of its mission, power, and functions; and

c. be skilled in conducting effective meetings.

3. This committee can do the following:

a. take on many of the functions described below that are too much for any one person;

- b. seek immediate input from all areas of the school, such as:
 - i. the classroom;
 - ii. maintenance; and
 - iii. purchasing;
- c. brainstorm by creatively combining and modifying ideas from many perspectives;
- d. improve communication among the various representatives;
- e. prioritize hazard controls, training, and other activities in a way that is satisfactory to all parties;
- f. establish a procedure for reporting potential hazards using a written form.

B. Communicate regularly.

- 1. Use newsletters, bulletin boards, paycheck envelopes, and class time to communicate new procedures and new safety assignments and to introduce new committee members.
- 2. Keep the program on people's minds. Make safety, health, and the environment a regular item on the agenda of staff, board, union, and PTA meetings.
- 3. Post committee minutes, reports, surveys, and (especially) memos referring to problems, solutions, and achievements.

C. Develop a hazard-reporting procedure.

- 1. Students and employees should be encouraged to look for and report potential hazards to the safety and health coordinator, or to the chairperson of the Hazard Prevention Committee.
- 2. Students may also report hazards to a teacher, the school principal, or to another responsible adult. The person who discovers the hazard should then fill out the designated form and submit it to the safety and health coordinator for follow-up action.
- 3. Students should fill out this form with the help of the safety and health coordinator.

NOTE: Teachers, safety committees, and supervisors should not be discouraged if only small parts of an occupational safety and health environmental safety program are in place early in the program. It takes time, money, and persistence to have a good program. Each new step is a great improvement over the way things were run before the program was in place.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Chapter 5. Curriculum Content

§501. Introduction

A. Career and technical instruction is important not only for the knowledge and skills it provides for the learner but, perhaps even more so, for the attitudes it imparts to the learner. These attitudes will, in large part, influence the manner in which the learner will employ his/her newly gained knowledge and skills. They become a formidable influence for the remainder of the learner's life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§503. Two-Fold Objective

A. One of the most important attitudes a young person can pick up is a healthy respect for safety and health on the job. This attitude affects not only the learner, but all of the others with whom he/she will associate. Someday their very

lives may depend on having assumed a deep-seated conviction that the only way to do a job is the safe way. Therefore, educators have a two-fold objective:

- 1. to provide the job knowledge base in the area of the educator's own expertise in the best possible manner possible. Both the manual and mental skills must be provided that will best prepare the future worker for his/her job in this increasingly complex, technical world; and
- 2. an integral part of the instructional process must be safe methods for doing each and every job. Students must be taught, not as the best way to do a job, but as the only way to do a job. In other words, if a job is not performed safely, it is not performed correctly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§505. Purposes of the Manual

A. The Manual serves two purposes.

1. The Manual provides guidelines that can be used to develop inspection checklists that can be used for instructional facilities. Students will recognize the measures that have implemented to make a workplace safe. They can participate in the inspections. When they go into the workplace of their eventual employment, they will be equipped to recognize the safety measures that are already in place, and they will know how to add what needs to be done to complete the safety and health process. The guidelines are found in Subpart 3, Inspection Worksheets.

2. The Manual provides five basic elements, listed in §507, that should be incorporated into the instructional materials to teach principles of safety and health along with the technical content of the curriculum. These elements should become an integral part of the instructional method, as if it were the only way to teach and perform the job. Students should understand that there is no alternative way to work other than the safe way.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§507. Curriculum Elements

A. Five Curriculum Elements

1. Safe Job Procedures. Each lesson plan must include emphasis on the step-by-step procedures to accomplish the project. Students must learn that the only way to do the job is by following the procedures. Short cuts are not permitted. Changes in procedures are allowed only when it can be shown that they are as safe, or safer, than the original procedures. The instructor must both set the tone and demonstrate the example of how it is done by his/her own work. It must be exemplary. The instructor will be the most memorable influence students will have.

2. Clean Workplace. Workplace housekeeping is probably the clearest indicator of the amount of emphasis that a safety program is getting. Safety professionals learned long ago that the impressions they get in the first few minutes on the job regarding the general cleanliness and order of the work site are accurate predictors of the rest of the safety program. Each classroom lesson must emphasize the importance of complete and thorough cleanup at the end of each work period. The lesson should also point out that hazards, such as spills, etc., may be created while work

progresses, and when this occurs, the project should be halted temporarily while the situation is corrected. Then work can continue.

3. Well-Maintained Equipment and Machinery. Instruction must include how to inspect machinery for signs of wear and damage. It must include proper preventive maintenance intervals and techniques. It must also include the proper and safe way to remove a defective piece of equipment from service and to secure it so that it cannot be used until the repairs have been completed.

4. Proper Use of Machines and Equipment

a. Students must learn that machine guards have a critical purpose that must never, under any circumstances, be circumvented. A machine must never be operated without all of its guards in place. If a student feels awkward or clumsy using the guards, special attention should be provided until he/she feels comfortable with the guards in place.

b. A student should always be taught the importance of using the proper tool for the job, and the right way to use that tool. Operating parameters such as adjustments, speeds, and other important factors must all be included. New trainees should be taught with the objective in mind that they will become experts on the equipment, and they can take great pride in their work and their newly acquired skills.

5. Personal Responsibility and Integrity. The entire structure of workplace safety and health rests upon the two pillars of responsibility and integrity. Students must understand that honesty is not just the best policy—it is the only policy. They must learn that, where workplace safety and health are concerned, reporting accidents promptly and accurately is of paramount importance. Problems can be corrected and hazards eliminated only when there is adequate factual information. Hiding details to avoid taking responsibility leads to exercises in futility when trying to correct problems. Instructors contribute by helping the student understand that an accident investigation is not an attempt to lay blame upon someone, but rather, an effort to find the sequence of events that went wrong, and to correct them so they will not occur again.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subpart 3. Inspection Worksheets

Chapter 15. Emergency Procedures Worksheet

Subchapter A. Introduction

§1501. Worksheet Instructions

A. Use the following worksheet as a guide to conduct a survey of instructional facilities. Answer each of the listed questions by circling the answer that applies to the condition at the facility. "Y" indicates "Yes," "N" indicates "No," and "N/A" indicates "Not Applicable." If any of the questions are answered "N" for "No," it is the sign of a condition that may indicate a possible hazard. For every "N" marked, write a brief description of the deficient condition observed in the space provided at the end of the worksheet.

1. Additional guidance material may be found in Appendix F, Emergency Procedures, in the Safety and Health Manual on the Louisiana Department of Education website (<http://www.doe.state.la.us/lde/index.html>).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter B. Hazard Identification

§1507. Injuries and Illnesses

A. Medical Care

	Circle the Appropriate Answer
1. Are provisions made in advance of any project or class involving potential hazards for prompt medical attention in case of any injury?	Y N N/A
2. Is an injury/illness response program in place?	Y N N/A
3. Have persons with disabilities and/or chronic illnesses been identified?	Y N N/A
4. Are medical personnel available for advice and consultation?	Y N N/A
5. If emergency medical care is not readily available, is a certified person available to render first aid? <i>Certified Person</i> —a person who has a valid certificate in first-aid training from the American Red Cross, or equivalent training that can be verified by documentary evidence.	Y N N/A
6. Are first-aid supplies readily available?	Y N N/A
7. Are first-aid supplies in a weatherproof container with individual sealed packages for each type of item?	Y N N/A
8. Are first-aid supplies checked to replace expended items on a regular basis?	Y N N/A
9. Is transportation available for taking an injured or ill person to medical care if necessary, or is a communication system available for contacting an ambulance service?	Y N N/A
10. Are telephone numbers of physicians, hospitals, or ambulances conspicuously posted?	Y N N/A

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

§1509. Emergency Response

A. Emergency Plans and Systems

	Circle the Appropriate Answer
1. Has an emergency action plan and procedures to respond to emergency situations been established?	Y N N/A
2. Have high potential hazards such as fire hazards, hazardous materials locations, hazardous equipment locations and other hazards and issues specific to the site been identified?	Y N N/A
3. Have emergency systems (i.e., fire alarms, sprinkler systems, etc.) and emergency equipment used for fire and spill control, etc., been identified?	Y N N/A
4. Is there a procedure to account for all persons on-site in the event of an emergency?	Y N N/A
5. Have personnel responsibilities for rescue and medical emergencies been established?	Y N N/A
6. Have mechanisms to report emergency situations to proper authorities been established?	Y N N/A

	Circle the Appropriate Answer
7. Are evacuation route maps posted in designated areas to display: a. emergency exists; b. primary and secondary exit routes; c. locations of: i. fire extinguishers; ii. fire alarm pull station locations; and iii. assembly points?	Y N N/A
8. Are all emergency procedures reviewed and updated on a regular basis?	Y N N/A

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

§1511. Training

A. Certification and Training

	Circle the Appropriate Answer
1. Are all personnel and students instructed on injury, illness, emergency response procedures and their specific roles on a regular basis?	Y N N/A
2. Do designated certified persons obtain and maintain their certifications through the American Red Cross or other qualified organizations?	Y N N/A
3. Are periodic drills conducted to prepare students and personnel in the event of an emergency?	Y N N/A

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Subchapter C. Hazard Evaluation and Prioritization

§1519. Relative Risk Factors

A. Introduction

1. This part of the worksheet enables the instructor to examine each of the potential hazards (the "N" answers) that were identified in Subchapter B of this Chapter, Hazard Identification, and to assign it a value corresponding to its relative risk. *Relative Risk* is usually defined in terms of three factors:

- a. severity;
- b. frequency/probability; and
- c. exposure.

2. Each of the factors listed in Subparagraphs a-c is described in Subsections B-D.3 below and the point values are provided for the corresponding degree of risk.

NOTE: The greater the risk, the higher the point value.

B. Severity. Consider the potential losses or destructive and disruptive consequences that are most likely to occur if any of the hazards that have been identified in Subchapter B of this Chapter 15, Hazard Identification, result in an actual incident. The following point values are suggested.

- 1. Four Points—Catastrophic:
 - a. loss of life;
 - b. permanent disability;
 - c. loss of entire facility;
 - d. permanent.

- 2. Three Points—Critical:
 - a. severe injury or illness with lost time;
 - b. major property damage;
 - c. no permanent disability or fatality;
 - d. interruption of activities for extended period of time.
- 3. Two Points—Marginal:
 - a. minor injury or illness;
 - b. minor property damage;
 - c. interruption of activities for more than one day.
- 4. One Point—Negligible:
 - a. probably no injury or illness;
 - b. no loss other than interruption of activities for a short period of time.

C. Frequency/Probability (Likelihood of Occurrence)

- 1. Consider the probability that a loss would occur. Ask yourself the following key questions.
 - a. How likely is it that things will go wrong as a result of the hazard that has been identified?
 - b. How often is the activity which creates the hazard performed?
 - c. How often is the hazard present?
- 2. Use the following point values.
 - a. Three Points—high probability of occurrence.
 - b. Two Points—moderate probability of occurrence.
 - c. One Point—low probability of occurrence.

D. Exposure. Consider the number of persons (students and faculty) who could be potentially affected by a worse case scenario caused by each of the potential hazards that have been identified. The following point values are suggested.

- 1. Three Points—many persons are affected frequently.
- 2. Two Points—a few persons are affected frequently.
- 3. One Point—a few persons are affected up to a few times per day.

E. Prioritization. Based on the analysis above, and using the hazard prioritization matrix below, prioritize the hazards identified in Subchapter B of this Chapter, and evaluated in §1519.B-D.3.

- 1. Step One. List each of the hazardous conditions that were identified in Subchapter B of this Chapter 15 in the first column of the worksheet.
- 2. Step Two. Based on the criteria given above in §1519.B-D.3, assign a point value for each hazard in each of the three columns.
- 3. Step Three. Add up the point values, horizontally, for each of the hazards.
- 4. Step Four. Rearrange the hazards that were identified in descending order with the one with the highest total point value first, then the one with the next-highest point value; and so on.

Hazard Prioritization Matrix				
Hazard Identified	Severity	Probability	Exposure	Total Points

5. Step Five. A list has just been developed of the potentially hazardous conditions existing at the school facility, based on their relative priority.

F. The items on the prioritized list with the highest point value will generally be those that are most serious, and should receive the greatest attention in terms of resources expended to eliminate it. As with all organizations, especially educational institutions, resources are without limitations. There is a finite amount of money, time, and personnel available to solve these problems. By prioritizing the hazards and concentrating on those with the highest priority, concentration will be on the "worst first." This is the smart way to allocate limited resources. Even though instructors might not get all the way through the list, there will be the satisfaction and peace of mind that comes with dealing with the "really important" problems first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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Subchapter D. Hazard Control Measures

§1529. Control Categories

A. This Subchapter D is to implement those control measures that will either eliminate or minimize hazards to the point where they will become acceptable. Also, these control measures will be applied to the most serious hazards first, then to the next-most-serious, and so on.

B. Most control measures fall into one or more of three categories. Paragraphs 1-3 below list the three types and also outline the preferred sequence for applying the controls, as engineering controls are the most effective way to control a hazard, followed by administrative controls and finally by personal protective equipment. Many times, the most effective controls are a blending of all three types. They are:

1. engineering controls;
2. administrative controls; and
3. personal protective equipment (PPE).

C. Engineering Controls. Usually engineering controls are considered the most effective because, if they are successful, they eliminate the hazard, or remove it from the presence of people. When applying engineering controls, look for ways to:

1. design or redesign hazardous situations or equipment;
2. substitute safer materials in the place of dangerous ones; and
3. install guards or other protective devices.

D. Management/Administrative Controls. Management/administrative controls are next in line to be applied in the control of a hazard because they are the direct responsibility of the persons who are operating the facility. In an educational environment, that means the administration and faculty. These controls involve such things as:

1. implementation and enforcement of safe policies and procedures;
2. limitations on the exposure to hazards through work assignments;
3. number of persons involved in an activity, etc.; and
4. similar approaches.

E. Personal Protective Equipment (PPE). The last approach to hazard control involves the use of PPE. This is because PPE does not eliminate the hazard but, rather, only establishes a barrier or shield between the hazard and the exposed person. If the exposed person does not have the correct type of PPE, or does not use it properly, then that person will be exposed to the full effect of the hazard.

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

Chapter 17. Environmental Protection Worksheet

Subchapter A. Introduction

§1701. Worksheet Instructions

A. Use the following worksheet as a guide to conduct a survey of the instructional facility. Answer each of the listed questions by circling the answer that applies to the condition at the facility. "Y" indicates "Yes," "N" indicates "No," and "N/A" indicates "Not Applicable." If any of the questions are answered "N" for "No," it is the sign of a condition that may indicate a possible hazard. For every "N" marked, write a brief description of the deficient condition observed in the space provided at the end of the worksheet.

1. Additional guidance material may be found in Appendix E, Indoor Air Quality, in the Safety and Health Manual on the Louisiana Department of Education website (<http://www.doe.state.la.us/lde/index.html>).

NOTE: See Appendix E: Indoor Quality for additional guidance material.

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

Subchapter B. Hazard Identification

§1707. Air Pollution Control

A. Air Pollution Control Permits

	Circle the Appropriate Answer
1. Are air pollution permits on file for the equipment or operations permitted under state regulations?	Y N N/A
2. Is a procedure in place to ensure air pollution control permits and certificates are applied for and received before the installation and operation of new equipment?	Y N N/A

B. Requirements for Gasoline-Powered Engines

	Circle the Appropriate Answer
1. Is the removal of any emission control device from a gasoline-powered engine prohibited except during repairs or replacement activities?	Y N N/A
2. When catalytic converters are replaced on automobiles, are they only replaced by the same type of converter as the original (i.e., oxidation, three-way, or three-way plus oxidation), and are they the same type of converter specified by the vehicle catalog?	Y N N/A

C. Volatile Organic Compound (VOC) Surface Cleaners. Questions in this Subsection C are based on EPA Reasonable Available Control Technology (RACT) guidelines for solvent cleaners.

	Circle the Appropriate Answer
1. Are all tanks that contain VOC equipped with a lid to prevent evaporation or escape of vapors when the tank is not in use? (e.g., auto body shops, metalworking shops, etc.)	Y N N/A
2. Do all unheated open-top surface cleaners with openings between 6 and 25 square feet (auto body shops): a. have a high liquid mark to prevent overfilling; b. have a wand that produces mist or droplets or delivers spray below 15 pounds per square inch (psi); c. have a freeboard ratio of 0.5 or greater?	Y N N/A
3. Do all unheated open-top surface cleaners with openings >25 square feet have either: a. a freeboard ratio of 0.75 or greater; or b. a freeboard ratio of 0.5 or greater and separation from windows, exhaust systems, and other sources of drafts?	Y N N/A
4. Do all heated open-top and surface cleaners have the following: a. a thermostat that automatically maintains temperature below the boiling point of the liquid; b. a cover that is kept closed except when processing parts; c. no agitating system that can cause splashing; and d. a freeboard ratio >0.75?	Y N N/A
5. In addition to meeting the above conditions, do all conveyORIZED surface cleaners have: a. a condenser with heat removal capacity greater than the input into the bath; b. a freeboard chiller or a vapor control system; c. covers protecting the conveyor inlet; d. outlet ports for reduction of losses when the cleaner is not in use; and e. hanging flaps when the unit is in use?	Y N N/A
6. Do written standard operating procedures govern the proper use, inspection, and maintenance of all surface cleaners?	Y N N/A
7. Have all persons using this equipment been trained in these standard operating procedures?	Y N N/A
8. Are copies of the standard operating procedures located at the cleaner?	Y N N/A

D. Surface Coating and Graphic Arts

	Circle the Appropriate Answer
1. Are all surface-coating operations done with controls to prevent emissions of VOCs? (paint spray booths, graphic arts shops) [RACT Reference 2, RACT Reference 3]	Y N N/A

E. Dry Cleaning Operations

	Circle the Appropriate Answer
1. Are petroleum-using dry cleaning operations with a manufacturer's total dryer capacity equal to or greater than 84 pounds equipped with a cartridge filter?	Y N N/A
2. Are all solvent filtration systems operated so that cartridge filters are allowed to drain for eight hours before removal?	Y N N/A
3. Are all leaking washers, dryers, filters, etc., that could result in VOC emissions corrected immediately?	Y N N/A
4. Is information about leak inspection and repair procedures clearly posted?	Y N N/A

F. Dry Cleaning Operations Using Perchloroethylene

	Circle the Appropriate Answer
1. Are all dry cleaning machines connected to a properly operated and maintained air pollution control device?	Y N N/A
2. Are all transfer dry cleaning units operated in a room or enclosure that vents all solvent vapors to an air pollution control device?	Y N N/A
3. Are policies in place to prevent the venting or release of perchloroethylene vapors at any time?	Y N N/A
4. Is a complete check for leaks performed weekly?	Y N N/A
5. Are condenser control devices operated at less than 45°F?	Y N N/A
6. Are the exhaust emissions from carbon absorbers checked weekly?	Y N N/A

G. Toxic Substances

	Circle the Appropriate Answer
1. Do all cold-cleaning machines using toxic substances have a 1-inch layer of water on the solvent surface, or a freeboard ratio of 0.75 or more?	Y N N/A
2. Are all waste solvents stored in closed containers with pressure relief systems?	Y N N/A
3. Are all spills cleaned up immediately, and are the wipe rags stored in covered containers?	Y N N/A
4. Do all heated-vapor machines have a device to shut off the sump heater if the solvent levels drop to the heater coils?	Y N N/A
5. Are all heated-vapor machines provided with a pollution control device designed to keep emissions below 0.045 lbs/hour?	Y N N/A
6. Are standard operating procedures written for all open-top surface cleaners that contain toxic substances?	Y N N/A
7. Do all persons using this equipment receive training in and adhere to the standard operating procedures?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§1709. Indoor Air Quality

A. General

	Circle the Appropriate Answer
1. Is someone designated to develop and implement an indoor air quality management plan for your school district?	Y N N/A
2. Does your district have an indoor air quality management plan that includes steps for preventing and resolving indoor air quality problems?	Y N N/A
3. Has your school district been tested for radon, and have radon-mitigation systems been installed where needed?	Y N N/A
4. Does your school district use integrated pest management in all areas?	Y N N/A
5. Is spot-treatment of pesticides used to control infested areas?	Y N N/A
6. Are all pesticide applicators trained in the safe use of pesticides?	Y N N/A
7. Have painted surfaces in your district been tested for lead-based paint, and has a lead control or removal program been implemented?	Y N N/A
8. Are school buildings inspected once or twice each year for conditions that may lead to indoor air quality problems?	Y N N/A
9. Is a preventive maintenance schedule established and in operation for the heating, ventilation, and air conditioning (HVAC) system? Is the schedule in accordance with the manufacturer's recommendations or accepted practice for the HVAC system?	Y N N/A
10. Does the HVAC preventive maintenance schedule include the following: a. checking and/or changing air filters and belts; b. lubricating equipment parts; c. checking the motors; and d. confirming that all equipment is in operating order?	Y N N/A
11. Are damaged or inoperable components of the HVAC system replaced or repaired as appropriate?	Y N N/A
12. Are reservoirs or parts of the HVAC system with standing water checked visually for microbial growth?	Y N N/A
13. Are water leaks that could promote growth of biologic agents promptly repaired?	Y N N/A
14. Are damp or wet materials that could promote growth of biologic agents promptly dried, replaced, removed, or cleaned?	Y N N/A
15. Are microbial contaminants removed from ductwork, humidifiers, other HVAC, building system components, and from building surfaces (i.e., carpeting and ceiling tiles) when found during regular or emergency maintenance activities or visual inspection?	Y N N/A
16. Is general or local exhaust ventilation used where housekeeping and maintenance activities could reasonably be expected to result in exposure to hazardous substances above applicable exposure limits?	Y N N/A

	Circle the Appropriate Answer
17. When point sources generate airborne concentrations of contaminants above applicable limits, are local exhaust ventilation or substitution used to reduce the exposure concentrations to below the limits?	Y N N/A
18. When the carbon dioxide level exceeds 1,000 parts per million, is the HVAC system checked and repaired as necessary to ensure the system is operating properly?	Y N N/A
19. When the temperature is outside the range of 68° to 79°F, is the HVAC system checked and repaired as necessary to ensure the system is operating properly?	Y N N/A
20. Are humidity levels maintained between 30 percent to 60 percent relative humidity?	Y N N/A
21. When a contaminant is identified in the make-up air supply, is the source of the contaminant eliminated, or are the make-up inlets or exhaust air outlets relocated to avoid entry of the contaminant into the air system?	Y N N/A
22. If buildings do not have mechanical ventilation, are windows, doors, vents, stacks, and other portals used for natural ventilation operating properly?	Y N N/A
23. Are complaints promptly investigated that may involve a building-related illness?	Y N N/A

B. Smoking

	Circle the Appropriate Answer
1. Is smoking in school buildings prohibited except as part of a classroom instruction or a theatrical production?	Y N N/A
2. Do written district board of education policies and procedures prohibit smoking in school buildings?	Y N N/A

C. Renovations and Remodeling

	Circle the Appropriate Answer
1. During renovation work or new construction, are local ventilation or other protective devices used to safeguard employees and students from dust, stones, other small particles, and toxic gases, which may be harmful in certain quantities?	Y N N/A
2. Are renovation areas in occupied buildings isolated so that dust and debris is confined to the renovation or construction area?	Y N N/A
3. Are precautions implemented in case lead-based paint is disturbed during renovation or new construction?	Y N N/A
4. When renovating or during new construction, are product labels checked, or is information obtained on whether paints, adhesives, sealants, solvents, insulation, particleboard, plywood, floor coverings, carpet backing, textiles, or other materials contain volatile organic compounds that could be emitted during regular use?	Y N N/A
5. Are employees notified at least 24 hours in advance, or promptly in emergency situations, of work to be performed on the building that may introduce air contaminants into their work area?	Y N N/A

D. Shafting

	Circle the Appropriate Answer
1. Is the maintenance schedule updated to show all maintenance performed on the building systems?	Y N N/A
2. Does the maintenance schedule include the dates that the building systems maintenance was performed and the names of the persons or companies performing the work?	Y N N/A
3. Are maintenance schedules retained for at least three years?	Y N N/A

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

§1711. Hazardous Waste Management

A. Generators of Regulated Amounts of Hazardous Waste

	Circle the Appropriate Answer
1. Does the container storing hazardous waste meet U.S. Department of Transportation container requirements?	Y N N/A
2. Is the container storing hazardous waste in good condition?	Y N N/A
3. Is the container storing hazardous waste compatible with the waste material? (For instance, solvents and paint waste should be placed in steel drums, but acidic or alkaline waste should not be placed in steel drums.)	Y N N/A
4. Is the container storing hazardous waste kept securely closed when not in use?	Y N N/A
5. Are unused keyways filled up or covered?	Y N N/A
6. Is the container storing hazardous waste at or near the point of generation and under the operator's control?	Y N N/A
7. Is the container storing hazardous waste marked with the words "Hazardous Waste"?	Y N N/A
8. If the container is being shipped for disposal, have arrangements been made for a licensed treatment, storage, and disposal (TSD) facility to accept the hazardous waste? <i>Note: Although the school is responsible for completing manifest forms, the TSD facility handling the waste should be consulted about completing the paperwork necessary to ship hazardous waste.</i>	Y N N/A
9. If the container is being shipped for disposal, have arrangements with the registered hazardous waste hauler been made for transport of wastes to the TSD facility?	Y N N/A
10. Have hazardous waste manifests been completed for all shipments of hazardous wastes within your state (or other state's manifest for shipments to other states)?	Y N N/A
11. Has a copy of the manifest with the signature of the initial transporter and date of shipment been retained by the school?	Y N N/A
12. Has the hauler been supplied with all remaining copies of the manifest?	Y N N/A

	Circle the Appropriate Answer
13. Have "Land Ban" forms been completed prohibiting land disposal of affected wastes unless treated below regulatory levels?	Y N N/A
14. Have appropriate markings and labels been affixed to containers prior to shipment?	Y N N/A
15. Has the hauler's vehicle been inspected by the generator (or his/her designee) to ensure proper placarding before leaving the generator's premises?	Y N N/A
16. Has the school kept a copy of each signed manifest for at least three years, or until a copy is received from the owner and operator of the facility that received the waste, for at least three years?	Y N N/A
17. Has the school prepared and submitted a copy of a Biennial Report to the EPA regional administrator by March 1 of each even numbered year for all hazardous waste shipped off-site for treatment, storage, or disposal?	Y N N/A

B. Satellite Accumulation Sites

	Circle the Appropriate Answer
1. Is the quantity of acutely toxic waste less than 55 gallons or less than one quart for acutely toxic waste?	Y N N/A
2. If the quantities of hazardous waste exceed the amounts in question 1 above, are the containers moved within three days to a less than 90-day accumulation area, or off-site to an authorized facility?	Y N N/A

C. Small Quantity-Generator (Generate between 100 and 1,000 Kilograms of Hazardous Waste Per Month)

	Circle the Appropriate Answer
1. Have hazardous waste containers been accumulated at your facility for 180 days or less? <i>Note: If you store hazardous waste for more than 180 days, additional regulations apply which are not covered in this checklist. Contact your state environmental agency for additional information. The quantity of waste accumulated on-site may never exceed 6,000 kilograms. Wastes may be stored longer than 180 days for certain situations.</i>	Y N N/A
2. Are containers marked with accumulation start date?	Y N N/A
3. Are container labels visible?	Y N N/A
4. Are containers segregated according to waste type?	Y N N/A
5. Are the containers inspected weekly?	Y N N/A
6. Is there adequate aisle space between container rows? <i>Note: 18 inches between single stacked drums and 30 inches between double or triple stacked drums.</i>	Y N N/A

D. Large Quantity Generator (Generate More than 1,000 Kilograms of Hazardous Wastes per Month)

	Circle the Appropriate Answer
7. Is there immediate access to communication or alarm systems whenever hazardous waste is poured, mixed, or handled?	Y N N/A
8. Is there an adequate supply of fire extinguishers and spill control equipment in the accumulation area?	Y N N/A
9. Is there adequate water pressure to supply fire hoses?	Y N N/A
10. Is the fire fighting equipment, communications and alarm equipment, and decontamination equipment, spill control and water supply tested and maintained?	Y N N/A
11. Have the police, fire department, and emergency response teams been familiarized with the layout of the facility?	Y N N/A
12. Are there written agreements with emergency response contractors and equipment suppliers?	Y N N/A
13. Have arrangements been made with the local hospitals to familiarize them with the properties of the hazardous waste handled at your facility and the types of injuries, which may result from contact with these wastes? (This is usually a letter to the local hospitals identifying the wastes generated and the types of injuries that result from contact with the waste.)	Y N N/A
14. Is there an emergency coordinator on site or on call who is available to respond to an emergency? <i>Note: The emergency coordinator or his designee must respond to any emergencies that arise.</i>	Y N N/A
15. Is the following information posted next to the telephone: a. the name and address of the emergency coordinator; b. the location of fire extinguishers and spill control material, and if present, fire alarm; and c. the telephone number of the fire department, unless the facility has a direct alarm? <i>Note: In the event of a fire, explosion, or other release which could threaten human health outside the facility, or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using their 24-hour toll free number 800-424-8802).</i>	Y N N/A
16. Are all employees thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies?	Y N N/A
17. Has the school notified the EPA regional administrator of any manifests that were not received for shipments made to a designated facility within 60 days?	Y N N/A

	Circle the Appropriate Answer
1. Have hazardous waste containers been accumulated at your facility for 90 days or less? <i>Note: If you store hazardous wastes for more than 90 days, additional regulations apply which are not covered in this checklist. Contact the Louisiana Department of Environmental Quality (LDEQ) at 225-342-1234 for additional information.</i>	Y N N/A
2. Are containers marked with accumulation start dates?	Y N N/A
3. Are container labels visible?	Y N N/A
4. Are containers segregated according to waste type?	Y N N/A
5. Are the containers inspected weekly?	Y N N/A
6. Are containers of ignitable and reactive wastes located greater than 50 feet from the facility's property line?	Y N N/A
7. Is there adequate aisle space between container rows?	Y N N/A
8. Is there immediate access to communication or alarm systems whenever hazardous waste is poured, mixed, or handled?	Y N N/A
9. Is there an adequate supply of fire extinguishers and spill control equipment in the accumulation area?	Y N N/A
10. Is there adequate water pressure to supply fire hoses?	Y N N/A
11. Is the fire fighting equipment, spill control and water supply tested and maintained?	Y N N/A
12. Have the police, fire department and emergency response teams been familiarized with the layout of the facility?	Y N N/A
13. Are there written agreements with emergency response contractors and equipment suppliers?	Y N N/A
14. Have arrangements been made with the local hospitals to familiarize them with the properties of the hazardous waste handled at your facility and the types of injuries, which may result from contact with these wastes? (This is usually a letter to the local hospitals identifying the wastes generated and the types of injuries that result from contact with the waste.)	Y N N/A
15. Has a contingency plan been developed describing the actions to be taken by facility personnel in the event of a fire, explosion or hazardous materials release?	Y N N/A
16. Does the plan describe arrangements with local authorities including fire police, and emergency medical services personnel, for handling such emergencies?	Y N N/A
17. Does the plan list telephone numbers for the emergency coordinator and alternates?	Y N N/A

	Circle the Appropriate Answer
18. Does the plan list the locations and capabilities of emergency equipment kept at the school including fire extinguishers, spill control equipment and communications and alarm systems and decontamination systems?	Y N N/A
19. Does the plan include primary and alternate evacuation routes for students and faculty?	Y N N/A
20. Is a copy of the plan available at the school for inspection?	Y N N/A
21. Has a copy of the plan been forwarded to local emergency agencies including: a. police; b. fire emergency medical; c. the local emergency planning committee; and d. any emergency response contractors who may be called upon during an accident?	Y N N/A
22. Are there provisions for updating the contingency plan as operations and/or personnel change?	Y N N/A
23. Is the training program directed by a person trained in hazardous waste management procedures?	Y N N/A
24. Is the training program designed to ensure that personnel are able to respond effectively?	Y N N/A
25. Does the training program include: a. procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; b. key parameters for automatic waste feed cut-off systems; c. communications for alarm systems; d. response to fires or explosions; e. response to ground-water contamination incidents; and f. shutdown of operations?	Y N N/A
26. Does the plan include provisions for: a. the use of personnel safety equipment; b. procedures for using facility emergency and monitoring equipment; c. procedures for utilizing communications or alarm systems; d. response procedures for fires and explosions; e. ground water contamination response procedures?	Y N N/A
27. Is training provided for all employees of this facility within six months of the date of employment, or assignment to an area involving the handling of hazardous waste?	Y N N/A
28. Is training reviewed annually?	Y N N/A
29. Is training documented with the following information: a. job title for each position and the name of the person filling each job; b. a written job description; c. a description of the training given; and d. documentation of actual training?	Y N N/A
30. Are training records maintained for at least three years?	Y N N/A

	Circle the Appropriate Answer
31. Has the school contacted the transporter and/or owner or operator of the designated facility of any manifests which were not received for shipments made to a designated facility within 35 days?	Y N N/A
32. Has an Exception Report been submitted to the EPA regional administrator if the generator has not received a copy of the manifest within 45 days? <i>Note: Efforts to obtain the manifest must be documented.</i>	Y N N/A
33. Are Biennial Reports and Exception Reports kept on file for three years?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter C. Hazard Evaluation and Prioritization
§1721. Relative Risk Factors

A. Introduction

1. This part of the worksheet enables the instructor to examine each of the potential hazards (the "N" answers) that were identified in Subchapter B of this Chapter 17, Hazard Identification, and to assign it a value corresponding to its relative risk. Relative risk is usually defined in terms of three factors:

- a. severity;
- b. frequency/probability; and
- c. exposure.

2. Each of the factors listed in Subparagraphs a-c is described in Subsections B-D.3 below, and the point values are provided for the corresponding degree of risk.

NOTE: The greater the risk, the higher the point value.

B. Severity. Consider the potential losses or destructive and disruptive consequences that are most likely to occur if any of the hazards that have been identified in Subchapter B of this Chapter 17, Hazard Identification, result in an actual incident. The following point values are suggested.

1. Four Points—Catastrophic:

- a. loss of life;
- b. permanent disability;
- c. loss of entire facility;
- d. permanent.

2. Three Points—Critical:

- a. severe injury or illness with lost time;
- b. major property damage;
- c. no permanent disability or fatality;
- d. interruption of activities for extended period of time.

3. Two Points—Marginal:

- a. minor injury or illness;
- b. minor property damage;
- c. interruption of activities for more than one day.

4. One Point—Negligible:

- a. probably no injury or illness;
- b. no loss other than interruption of activities for a short period of time.

C. Frequency/Probability (Likelihood of Occurrence)

1. Consider the probability that a loss would occur. Ask yourself the following key questions.

- a. How likely is it that things will go wrong as a result of the hazard that has been identified?
- b. How often is the activity which creates the hazard performed?
- c. How often is the hazard present?

2. Use the following point values.

- a. Three Points—high probability of occurrence.
- b. Two Points—moderate probability of occurrence.
- c. One Point—low probability of occurrence.

D. Exposure. Consider the number of persons (students and faculty) who could be potentially affected by a worst case scenario caused by each of the potential hazards that have been identified. The following point values are suggested.

- 1. Three Points—many persons are affected frequently.
- 2. Two Points—a few persons are affected frequently.
- 3. One Point—a few persons are affected up to a few times per day.

E. Prioritization. Based on the analysis above, and using the hazard prioritization matrix below, prioritize the hazards identified in Subchapter B of this Chapter and evaluated in §1721.B-D.3.

1. Step One. List each of the hazardous conditions that were identified in Subchapter B of this Chapter 17 in the first column of the worksheet.

2. Step Two. Based on the criteria given above in §1721.B-D.3, assign a point value for each hazard in each of the three columns.

3. Step Three. Add up the point values, horizontally, for each of the hazards.

4. Step Four. Rearrange the hazards that were identified in descending order with the one having the highest total point value first, then the one with the next-highest point value; and so on.

the hazards, and concentrating in order on those with the highest priority, concentration will be on the "worst first." This is the smart way to allocate limited resources. Even though instructors might not get all the way through the list, there will be the satisfaction and peace of mind that comes with dealing with the "really important" problems first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter D. Hazard Control Measures

§1731. Control Categories

A. This Subchapter D is to implement those control measures that will either eliminate or minimize hazards to the point where they will become acceptable. Also, these control measures will be applied to the most serious hazards first, then to the next-most-serious, and so on.

B. Most control measures fall into one or more of three categories. Paragraphs 1-3 below list the three types and also outline the preferred sequence for applying the controls, as engineering controls are the most effective way to control a hazard, followed by administrative controls and finally by PPE. Many times, the most effective controls are a blending of all three types. They are:

- 1. engineering controls;
- 2. administrative controls; and
- 3. personal protective equipment (PPE).

C. Engineering Controls. Usually engineering controls are considered the most effective because, if they are successful, they eliminate the hazard, or remove it from the presence of people. When applying engineering controls look for ways to:

- 1. design or redesign hazardous situations or equipment;
- 2. substitute safer materials in the place of dangerous ones; and
- 3. install guards or other protective devices.

D. Management/Administrative Controls. Management/administrative controls are next in line to be applied in the control of a hazard because they are the direct responsibility of the persons who are operating the facility. In an educational environment, that means the administration and faculty. These controls involve such things as:

- 1. implementation and enforcement of safe policies and procedures;
- 2. limitations on the exposure to hazards through work assignments, number of persons involved in an activity, etc.; and
- 3. similar approaches.

E. Personal Protective Equipment (PPE). The last approach to hazard control involves the use of PPE. This is because PPE does not eliminate the hazard but, rather, only establishes a barrier or shield between the hazard and the exposed person. If the exposed person does not have the correct type of PPE, or does not use it properly, then that person will be exposed to the full effect of the hazard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Hazard Prioritization Matrix

Hazard Identified	Severity	Probability	Exposure	Total Point

5. Step Five. A list has just been developed of the potentially hazardous conditions existing at the school facility based on their relative priority.

F. The items on the prioritized list with the highest point value will generally be those that are most serious, and should receive the greatest attention in terms of resources expended to eliminate it. As with all organizations, especially educational institutions, resources are not without limitations. There is a finite amount of money, time, and personnel available to solve these problems. By prioritizing

Chapter 19. Hazard Communication Worksheet

Subchapter A. General Provisions

§1901. Definitions

Article—a manufactured item other than a fluid or particle that:

1. is formed to a shape or design during manufacture;
2. has end use function(s) dependent in whole or in part on its shape or design during end use; and
3. under normal conditions of use does not release more than very small quantities, e.g., minute or trace amounts of a hazardous chemical, and does not pose a physical hazard or health risk to employees.

Hazardous Chemical—any chemical that is a physical hazard or a health hazard.

Health Hazard—a chemical for which statistically significant evidence exists that acute or chronic health effects may occur in exposed employees. This evidence must be based on at least one study conducted in accordance with established scientific principles.

Physical Hazard—a chemical for which scientifically valid evidence exists that it is:

1. a combustible liquid;
2. a compressed gas;
3. explosive;
4. flammable;
5. an organic peroxide;
6. an oxidizer;
7. pyrophoric (self igniting);
8. unstable (reactive) or water-reactive.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§1903. Worksheet Instructions

A. Use the following worksheet as a guide to conduct a survey of the instructional facility. Answer each of the listed questions by circling the answer that applies to the condition at the facility. "Y" indicates "Yes," "N" indicates "No," and "N/A" indicates "Not Applicable." If any of the questions are answered "N" for "No," it is the sign of a condition that may indicate a possible hazard. For every "N" marked, write a brief description of the deficient condition observed in the space provided at the end of the worksheet.

1. Additional guidance material may be found in Appendix K, Material Safety Data Sheets Guidelines, in the Safety and Health Manual on the Louisiana Department of Education website (<http://www.doe.state.la.us/lde/index.html>).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter B. Hazard Identification

§1911. Elements of a Hazard Communication Program

A. Hazard Communication Program

	Circle the Appropriate Answer
1. Has a written hazard communication program been developed, implemented, and maintained at your worksite?	Y N N/A
2. Has a list of known hazardous chemicals at your facility been prepared?	Y N N/A
3. Have methods been developed to inform personnel and students of the hazards of non-routine tasks? <i>Note: Such tasks may include emergency response or equipment.</i>	Y N N/A
4. Are methods developed for communicating hazards to outside contractors or vendors who may be exposed to hazardous chemicals at your facility?	Y N N/A

B. Labels

	Circle the Appropriate Answer
1. Are all containers of hazardous chemicals in the workplace labeled, tagged, or marked with the identity of the hazardous chemical(s)?	Y N N/A
2. Are all containers of hazardous chemicals in the workplace labeled, tagged, or marked with the appropriate warnings?	Y N N/A
3. Are all containers of hazardous chemicals in the facility labeled, tagged, or marked with the name and address of the chemical manufacturer, importer, or other responsible party?	Y N N/A
4. If a container is received without a hazard warning label, is a good faith effort made to obtain the missing information from the manufacturer or supplier? <i>Note: Manufacturers are required to affix labels to all containers of hazardous chemicals when they are shipped. The following hazardous chemicals are exempt from this labeling requirement, although subject to other labeling requirements:</i> <ol style="list-style-type: none"> i. pesticides; ii. foods; iii. food additives; iv. color additives; v. drugs; vi. cosmetics vii. medical devices; viii. alcoholic beverages; ix. consumer products; x. hazardous waste; xi. tobacco products; and xii. wood products. 	Y N N/A
5. Is removal or defacing of labels on incoming containers of hazardous chemicals prohibited?	Y N N/A
6. Are labels or other forms of warning legible in English and prominently displayed?	Y N N/A

C. Material Safety Data Sheets

	Circle the Appropriate Answer
1. Are material safety data sheets on hand for each hazardous chemical used and identified on the hazardous chemicals list?	Y N N/A
2. If a hazardous chemical has no material safety data sheet, are attempts made to obtain one from the chemical manufacturer or imported as soon as possible?	Y N N/A
3. Are material safety data sheets for the hazardous chemical kept in the facility and made readily accessible to personnel and students?	Y N N/A

D. Information and Training

	Circle the Appropriate Answer
1. Is information and training on hazardous chemicals in the worksite provided on initial assignment and whenever new physical hazards or health hazards are introduced into a facility area?	Y N N/A
2. Does the information provided include the operations performed at the worksite where hazardous chemicals are present?	Y N N/A
3. Does the information provided include the location and availability of the written hazard communication program, including the list of hazardous chemicals and material safety data sheets?	Y N N/A
4. Does the training provided include information about the methods and observations that may be used to detect the presence or release of a hazardous chemical in a work area such as: a. monitoring conducted by the employer; b. continuous monitoring devices; c. visual appearance or odor of hazardous chemicals when being released; d. etc.?	Y N N/A
5. Does the training provided include information about the physical hazards and health hazards of the chemicals in the work area?	Y N N/A
6. Does the training provided include information about the measures employees can take to protect themselves from these hazards, including procedures the school has implemented to protect employees from exposures to hazardous chemicals: a. appropriate work practices; b. emergency procedures; and c. personal protective equipment?	Y N N/A
7. Does the training provided include information about the details of the hazard communication program developed by the school, including: a. explanations of the labeling system; b. material safety data sheets; and c. how employees can obtain and use the appropriate hazard information?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter C. Hazard Evaluation and Prioritization §1921. Relative Risk Factors

A. Introduction

1. This part of the worksheet enables the instructor to examine each of the potential hazards (the "N" answers) that were identified in Subchapter B of this Chapter 19, Hazard Identification, and to assign it a value corresponding to its relative risk. Relative risk is usually defined in terms of three factors:

- a. severity
- b. frequency/probability; and
- c. exposure.

2. Each of the factors listed in Subparagraphs a-c is described in Subsections B-D.3 below, and the point values are provided for the corresponding degree of risk.

NOTE: The greater the risk, the higher the point value.

B. Severity. Consider the potential losses or destructive and disruptive consequences that are most likely to occur if any of the hazards that have been identified in Subchapter B of this Chapter 19, Hazard Identification, result in an actual incident. The following point values are suggested.

1. Four Points—Catastrophic:

- a. loss of life;
- b. permanent disability;
- c. loss of entire facility;
- d. permanent.

2. Three Points—Critical:

- a. severe injury or illness with lost time;
- b. major property damage;
- c. no permanent disability or fatality;
- d. interruption of activities for extended period of time.

3. Two Points—Marginal:

- a. minor injury or illness;
- b. minor property damage;
- c. interruption of activities for more than one day.

4. One Point—Negligible:

- a. probably no injury or illness;
- b. no loss other than interruption of activities for a short period of time.

C. Frequency/Probability (Likelihood of Occurrence)

1. Consider the probability that a loss would occur. Ask yourself the following key questions.

- a. How likely is it that things will go wrong as a result of the hazard that has been identified?
- b. How often is the activity which creates the hazard performed?
- c. How often is the hazard present?

2. Use the following point values.

- a. Three Points—high probability of occurrence.
- b. Two Points—moderate probability of occurrence.
- c. One Point—low probability of occurrence.

D. Exposure. Consider the number of persons (students and faculty) who could be potentially affected by a worst case scenario caused by each of the potential hazards that have been identified. The following point values are suggested.

- 1. Three Points—many persons are affected frequently.
- 2. Two Points—a few persons are affected frequently.

3. One Point—a few persons are affected up to a few times per day.

E. Prioritization. Based on the analysis above, and using the hazard prioritization matrix below, prioritize the hazards identified in Subchapter B of this Chapter 19 in the first column of the worksheet.

1. Step One. List each of the hazardous conditions that were identified in this Chapter 19, Subchapter B of the worksheet in the first column.

2. Step Two. Based on the criteria given above in §1921.B-D.3, assign a point value for each hazard in each of the three columns.

3. Step Three. Add up the point values, horizontally, for each of the hazards.

4. Step Four. Rearrange the hazards that were identified in descending order with the one having the highest total point value first, then the one with the next-highest point value; and so on.

Hazard Prioritization Matrix				
Hazard Identified	Severity	Probability	Exposure	Total Points

5. Step Five. A list has just been developed of the potentially hazardous conditions existing at the school facility based on their relative priority.

F. The items on the prioritized list with the highest point value will generally be those that are most serious, and should receive the greatest attention in terms of resources expended to eliminate it. As with all organizations, especially educational institutions, resources are not without limitations. There is a finite amount of money, time, and personnel available to solve these problems. By prioritizing the hazards and concentrating in order on those with the highest priority, concentration will be on the "worst first." This is the smart way to allocate limited resources. Even though instructors might not get all the way through the list, there will be the satisfaction and peace of mind that comes with dealing with the "really important" problems first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter D. Hazard Control Measures
§1931. Control Categories

A. This Subchapter D is to implement those control measures that will either eliminate or minimize hazards to the point where they will become acceptable. Also, these control measures will be applied to the most serious hazards first, then to the next-most-serious, and so on.

B. Most control measures fall into one or more of three categories. Paragraphs 1-3 below list the three types, and also outline the preferred sequence for applying the controls,

as engineering controls are the most effective way to control a hazard, followed by administrative controls and finally by personal protective equipment. Many times, the most effective controls are a blending of all three types. They are:

1. engineering controls;
2. administrative controls; and
3. personal protective equipment (PPE).

C. Engineering Controls. Usually engineering controls are considered the most effective because, if they are successful, they eliminate the hazard, or remove it from the presence of people. When applying engineering controls, look for ways to:

1. design or redesign hazardous situations or equipment;
2. substitute safer materials in the place of dangerous ones; and
3. install guards or other protective devices.

D. Management/Administrative Controls. Management/administrative controls are next in line to be applied in the control of a hazard because they are the direct responsibility of the persons who are operating the facility. In an educational environment, that means the administration and faculty. These controls involve such things as:

1. implementation and enforcement of safe policies and procedures;
2. limitations on the exposure to hazards through work assignments, number of persons involved in an activity, etc.; and
3. similar approaches.

E. Personal Protective Equipment (PPE). The last approach to hazard control involves the use of PPE. This is because PPE does not eliminate the hazard but, rather, only establishes a barrier or shield between the hazard and the exposed person. If the exposed person does not have the correct type of PPE, or does not use it properly, then that person will be exposed to the full effect of the hazard.

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

Chapter 21. Fire Prevention and Protection
Worksheet

Subchapter A. General Provisions
§2101. Worksheet Instructions

A. Use the following worksheet as a guide to conduct a survey to determine the level of fire prevention and protection readiness for the instructional facility. Answer each of the listed questions by circling the answer that applies to the condition at the facility. "Y" indicates "Yes," "N" indicates "No," and "N/A" indicates "Not Applicable." If any of the questions are answered "N" for "No," it is the sign of a condition that may indicate a possible hazard. For every "N" marked, write a brief description of the deficient condition observed in the space provided at the end of the worksheet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter B. Hazard Identification

§2111. Facilities

A. Buildings and Functions

	Circle the Appropriate Answer
1. Are classroom and laboratory facilities separated?	Y N N/A
2. Are classes being conducted in more than one part of the building at a time?	Y N N/A
3. Do classrooms, laboratories, offices, lavatories, and other facilities empty into a common interior hallway?	Y N N/A
4. Does the building have more than one level or floor?	Y N N/A
5. If the building is multi-level, is there more than one stairway leading to egress (exit) from the building?	Y N N/A
6. Are means of egress (exit) from the building clearly marked?	Y N N/A
7. In the event of loss of power to the building, is there battery-powered emergency lighting that will be turned on automatically?	Y N N/A
8. Are exit facilities inspected daily to make sure that all stairways, doors, and other exists are in proper working condition?	Y N N/A
9. Are all exit paths free and unobstructed? <i>Note: Exit doors must not be locked, barred, or blocked in such a way as to prevent exit from the building.</i>	Y N N/A
10. Are wedges or devices holding exit doors open prohibited?	Y N N/A
11. Are all fire escapes, stairs, passageways, doors, and windows free of obstructions that would interfere with the operation of the fire department?	Y N N/A
12. Are all fire doors tight fitting and in good operational condition?	Y N N/A
13. Are all classroom doors self closing?	Y N N/A
14. Are openings in the walls, floors, or ceilings that would contribute to the spread of fire from one room to another repaired?	Y N N/A
15. Is the vertical clearance between sprinklers and material below (such as head deflectors) at least 18 inches?	Y N N/A
16. Are accumulations of flammable or combustible waste materials and residues removed so that they will not contribute to a fire? <i>Note: Examples of violations include open boxes of papers stored under the stairs and stored empty cardboard boxes.</i>	Y N N/A
17. Is adequate clearance maintained between stored materials and light fixtures to prevent possible ignition?	Y N N/A
18. Is the clearance between stored materials and unit heaters, radiant space heaters, furnace ducts, and flues not less than 3 feet in all directions or in accordance with the clearances shown on the approval agency label?	Y N N/A
19. Are furnishings or decorations of an explosive or highly flammable character prohibited?	Y N N/A
20. Are decorative materials such as curtains, draperies, streamers, and fabrics flame resistant?	Y N N/A
21. Do teaching materials and children's artwork cover 20 percent or less of the wall area?	Y N N/A

B. Occupants

	Circle the Appropriate Answer
1. Are any of the occupants handicapped in anyway?	Y N N/A
2. Are there ever any individuals in the facility who are not part of the regular occupants of the buildings?	Y N N/A
3. Are there ever times when there are only one or two occupants in the building/	Y N N/A

C. Applicable Codes

	Circle the Appropriate Answer
1. Have the NFPA Building, Life, Safety, and Electrical Codes been identified and consulted for applicability to this building and its purpose?	Y N N/A
2. Have municipality and school board safety codes been identified and consulted for applicability to this building and its purpose?	Y N N/A
3. Are all applicable codes being followed regarding the occupation use of this building?	Y N N/A
4. Are all applicable codes being followed regarding the installation, use and maintenance of equipment within the building?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§2113. Materials and Equipment

A. Flammable and Combustible Materials

	Circle the Appropriate Answer
1. Are flammable materials of any kind stored or used in the Area? a. Flammable materials are usually in either the liquid or gas form and include, but are not limited to: i. fuels; ii. welding gases; iii. paints; iv. solvents; v. thinners; vi. etc. b. These fuels are usually considered quite volatile, i.e., they are very watery and they evaporate rapidly.	Y N N/A
2. Are combustible materials of any kind stored or used in the area? a. Combustible materials are usually in the solid form and include, but are not limited to: i. wood; ii. plastics; iii. paper; iv. etc. b. Combustible materials may also include heavier liquid fuels such as lubricating oils and heating oils.	Y N N/A

B. Potential Ignition Sources

	Circle the Appropriate Answer
1. Is all electrical equipment, such as switches, portable power tools, motors, and other devices which may serve as a source of ignition, either prohibited in areas where flammable materials are stores or used, or allowed only when special procedures such as a "Hot Work Permit" are in force?	Y N N/A
2. Is internal-combustion-engine powered equipment located so that their exhausts are well away from combustible materials?	Y N N/A
3. When internal combustion engine exhausts are piped outside the building, is a clearance of at least 6 inches maintained between such piping and combustible materials?	Y N N/A
4. Are temporary heating devices used and stored away from flammable and combustible materials?	Y N N/A

C. Fire Protection Equipment

	Circle the Appropriate Answer
1. Are telephone numbers and other means for summoning the fire department clearly posted and available for all to use?	Y N N/A
2. Is access to firefighting equipment maintained at all times?	Y N N/A
3. Is firefighting equipment conspicuously located and visible, and is each location marked and identified?	Y N N/A
4. Is firefighting equipment periodically inspected and maintained and operating?	Y N N/A
5. Is a fire extinguisher, rated not less than 2A provided for each 3,000 square feet of protected building area?	Y N N/A
6. Is the travel distance to each fire extinguisher 100 feet or less?	Y N N/A
7. Are one or more fire extinguishers, rated not less than 2A provided on each floor?	Y N N/A
8. In multistory facilities, is at least one fire extinguisher located adjacent to the stairway?	Y N N/A
9. If more than 5 gallons of flammable or combustible liquid, or five pounds or more of flammable gas are present, is a fire extinguisher rated not less than 10B provided within 50 feet?	Y N N/A
10. Are portable fire extinguishers selected according to the classes of anticipated fires and the size and degree of hazards?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§2115. Work Methods

A. Material Handling Use

	Circle the Appropriate Answer
1. Are volatile, flammable materials used in such a way that gases and vapors from such materials are not allowed to escape the storage container, or are gases or vapors vented to a safe area?	Y N N/A
2. When not in use, are flammable and combustible materials kept in containers that are specifically designed for holding and storing such materials?	Y N N/A

B. Material Storage—Outdoor

	Circle the Appropriate Answer
1. Is stability maintained when combustible materials are piled?	Y N N/A
2. Are weeds and grass kept down and a regular procedure provided for periodic cleanup of outside storage areas?	Y N N/A

C. Material Storage—Indoor

	Circle the Appropriate Answer
1. Are indoor materials stored so that they do not obstruct or adversely affect the means of exit?	Y N N/A
2. Are indoor materials stored, handled, and piled to minimize the spread of fire, and permit convenient access for firefighting?	Y N N/A
3. Where sprinkler systems are installed, are indoor materials stored so that a clearance of at least 36 inches is maintained between the top level of stored materials and the sprinkler deflectors?	Y N N/A
4. Is proper clearance maintained around lights and heating units to prevent ignition of combustible materials?	Y N N/A
5. Is a clearance of at least 24 inches maintained around the path of travel of fire doors, unless a barricade is provided?	Y N N/A
6. Are materials stored more than 36 inches away from a fire door opening?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter C. Hazard Evaluation and Prioritization

§2127. Relative Risk Factors

A. Introduction

1. This part of the worksheet enables the instructor to examine each of the potential hazards (the "N" answers) that were identified in Subchapter B of this Chapter 21, Hazard Identification, and to assign it a value corresponding to its

relative risk. Relative risk is usually defined in terms of three factors:

- a. severity;
- b. frequency/probability; and
- c. exposure.

2. Each of the factors listed in Subparagraphs a-c is described in Subsections B-D.3 below, and the point values are provided for the corresponding degree of risk.

NOTE: The greater the risk, the higher the point value.

B. Severity. Consider the potential losses or destructive and disruptive consequences that are most likely to occur if any of the hazards that have been identified in Subchapter B of this Chapter 21, Hazard Identification, result in an actual incident. The following point values are suggested.

1. Four Points—Catastrophic:
 - a. loss of life;
 - b. permanent disability;
 - c. loss of entire facility;
 - d. permanent.
2. Three Points—Critical:
 - a. severe injury or illness with lost time;
 - b. major property damage;
 - c. no permanent disability or fatality;
 - d. interruption of activities for extended period of time.
3. Two Points—Marginal:
 - a. minor injury or illness;
 - b. minor property damage;
 - c. interruption of activities for more than one day.
4. One Point—Negligible:
 - a. probably no injury or illness;
 - b. no loss other than interruption of activities for a short period of time.

C. Frequency/Probability (Likelihood of Occurrence)

1. Consider the probability that a loss would occur. Ask yourself the following key questions.

- a. How likely is it that things will go wrong as a result of the hazard that has been identified?
- b. How often is the activity which creates the hazard performed?
- c. How often is the hazard present?

2. Use the following point values.

- a. Three Points—high probability of occurrence.
- b. Two Points—moderate probability of occurrence.
- c. One Point—low probability of occurrence.

D. Exposure. Consider the number of persons (students and faculty) who could be potentially affected by a worst case scenario caused by each of the potential hazards that have been identified. The following point values are suggested.

1. Three Points—many persons are affected frequently.
2. Two Points—a few persons are affected frequently.
3. One Point—a few persons are affected up to a few times per day.

E. Prioritization. Based on the analysis above, and using the hazard prioritization matrix below, prioritize the hazards identified in Subchapter B of this Chapter and evaluated in §2127.B-D.3.

1. Step One. List each of the hazardous conditions that were identified in Subchapter B of this Chapter 21 in the first column of the worksheet.

2. Step Two. Based on the criteria given above in §2127.B-D.3, assign a point value for each hazard in each of the three columns.

3. Step Three. Add up the point values, horizontally, for each of the hazards.

4. Step Four. Rearrange the hazards that were identified in descending order with the one having the highest total point value first, then the one with the next-highest point value; and so on.

Hazard Prioritization Matrix				
Hazard Identified	Severity	Probability	Exposure	Total Points

5. Step Five. A list has just been developed of the potentially hazardous conditions existing at the school facility based on their relative priority.

F. The items on the prioritized list with the highest point value will generally be those that are most serious, and should receive the greatest attention in terms of resources expended to eliminate it. As with all organizations, especially educational institutions, resources are not without limitations. There is a finite amount of money, time, and personnel available to solve these problems. By prioritizing the hazards and concentrating in order on those with the highest priority, concentration will be on the "worst first." This is the smart way to allocate limited resources. Even though instructors might not get all the way through the list, there will be the satisfaction and peace of mind that comes with dealing with the "really important" problems first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter D. Hazard Control Measures
§2135. Control Categories

A. This Subchapter D is to implement those control measures that will either eliminate or minimize hazards to the point where they will become acceptable. Also, these control measures will be applied to the most serious hazards first, then to the next-most-serious, and so on.

B. Most control measures fall into one or more of three categories. Paragraphs 1-3 below list the three types and also outline the preferred sequence for applying the controls, as engineering controls are the most effective way to control a hazard, followed by administrative controls and finally by personal protective equipment. Many times, the most effective controls are a blending of all three types. They are:

1. engineering controls;
2. administrative controls; and
3. personal protective equipment (PPE).

C. Engineering Controls. Usually engineering controls are considered the most effective because, if they are successful, they eliminate the hazard, or remove it from the presence of people. When applying engineering controls, look for ways to:

1. design or redesign hazardous situations or equipment;
2. substitute safer materials in the place of dangerous ones; and
3. install guards or other protective devices.

D. Management/Administrative Controls. Management/administrative controls are next in line to be applied in the control of a hazard because they are the direct responsibility of the persons who are operating the facility. In an educational environment, that means the administration and faculty. These controls involve such things as:

1. implementation and enforcement of safe policies and procedures;
2. limitations on the exposure to hazards through work assignments, number of persons involved in an activity, etc.; and
3. similar approaches.

E. Personal Protective Equipment (PPE). The last approach to hazard control involves the use of PPE. This is because PPE does not eliminate the hazard but, rather, only establishes a barrier or shield between the hazard and the exposed person. If the exposed person does not have the correct type of PPE, or does not use it properly, then that person will be exposed to the full effect of the hazard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Chapter 23. Hearing Conservation and Noise Protection Worksheet

Subchapter A. General Provisions

§2301. Worksheet Instructions

A. Use this worksheet as a guide to conduct a survey of the instructional facilities. Answer each of the listed questions by circling the answer that applies to the condition at the facility. "Y" indicates "Yes," "N" indicates "No," and "N/A" indicates "Not Applicable." If any of the questions are answered "N" for "No," it is the sign of a condition that may indicate a possible hazard. For every "N" marked, write a brief description of the deficient condition observed in the space provided at the end of the worksheet.

NOTE: The Occupational Safety and Health Administration (OSHA) and other regulatory agencies specify that persons exposed to noise levels of 85 dBA over an eight-hour period must wear hearing protection, and be provided with and trained in the use of hearing protection. In order to provide a margin of safety and simplify the evaluation process, any equipment or operation found to expose persons to a noise level of 85 dBA or above over any time period should be considered a hazard, and hearing protection should be required.

1. Additional guidance material may be found in Appendix H, Hearing Conservation and Noise Control in the Safety and Health Manual on the Louisiana Department of Education website (<http://www.doe.state.la.us/lde/index.html>).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter B. Hazard Identification

§2311. Facilities and Equipment

A. Evaluation

	Circle the Appropriate Answer
1. Have all operations or equipment believed to be excessively noisy (85 dBA or above) been measured to determine their noise levels?	Y N N/A
2. Are noise measurements repeated when a change in operations or equipment may increase noise exposure?	Y N N/A

B. Training

	Circle the Appropriate Answer
1. Does the school administer a continuing, effective hearing conservation program?	Y N N/A
2. Do all students or employees exposed to 85 dBA or above receive hearing conservation training at least annually?	Y N N/A
3. Are training materials and literature on hearing conservation available to employees or students?	Y N N/A

C. Noise Control and Hearing Protection

	Circle the Appropriate Answer
1. Have feasible engineering and/or administrative controls been used to reduce operation or equipment noise levels determined to be excessive (85 dBA or above)?	Y N N/A
2. Are hearing protectors evaluated to verify that they effectively reduce noise to levels below 85 dBA?	Y N N/A
3. Are hearing protectors available to all persons exposed to noise levels at or above 85 dBA?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter C. Hazard Evaluation and Prioritization

§2321. Relative Risk Factors

A. Introduction

1. This part of the worksheet enables the instructor to examine each of the potential hazards (the "N" answers) that were identified in Subchapter B of this Chapter 23, Hazard Identification, and to assign it a value corresponding to its relative risk. Relative risk is usually defined in terms of three factors:

- a. severity
- b. frequency/probability; and
- c. exposure.

2. Each of the factors listed in Subparagraphs a-c is described in Subsections B-D.3 below, and the point values are provided for the corresponding degree of risk.

NOTE: The greater the risk, the higher the point value.

B. Severity. Consider the potential losses or destructive and disruptive consequences that are most likely to occur if any of the hazards that have been identified in Subchapter B of this Chapter 23, Hazard Identification, result in an actual incident. The following point values are suggested.

1. Four Points—Catastrophic:
 - a. loss of life;
 - b. permanent disability;
 - c. loss of entire facility;
 - d. permanent.
2. Three Points—Critical:
 - a. severe injury or illness with lost time;
 - b. major property damage;
 - c. no permanent disability or fatality;
 - d. interruption of activities for extended period of time.
3. Two Points—Marginal:
 - a. minor injury or illness;
 - b. minor property damage;
 - c. interruption of activities for more than one day.
4. One Point—Negligible:
 - a. probably no injury or illness;
 - b. no loss other than interruption of activities for a short period of time.

C. Frequency/Probability (Likelihood of Occurrence)

1. Consider the probability that a loss would occur. Ask yourself the following key questions.
 - a. How likely is it that things will go wrong as a result of the hazard that has been identified?
 - b. How often is the activity which creates the hazard performed?
 - c. How often is the hazard present?
2. Use the following point values.
 - a. Three Points—high probability of occurrence.
 - b. Two Points—moderate probability of occurrence.
 - c. One Point—low probability of occurrence.

D. Exposure. Consider the number of persons (students and faculty) who could be potentially affected by a worst case scenario caused by each of the potential hazards that have been identified. The following point values are suggested.

1. Three Points—many persons are affected frequently.
2. Two Points—a few persons are affected frequently.
3. One Point—a few persons are affected up to a few times per day.

E. Prioritization. Based on the analysis above, and using the hazard prioritization matrix below, prioritize the hazards identified in Subchapter B of this Chapter and evaluated in §2321.B-D.3.

1. Step One. List each of the hazardous conditions that were identified in Subchapter B of this Chapter 23 in the first column of the worksheet.
2. Step Two. Based on the criteria given above in §2321.B-D.3, assign a point value for each hazard in each of the three columns.
3. Step Three. Add up the point values, horizontally, for each of the hazards.
4. Step Four. Rearrange the hazards that were identified in descending order with the one having the highest total point value first, then the one with the next-highest point value; and so on.

Hazard Prioritization Matrix				
Hazard Identified	Severity	Probability	Exposure	Total Points

5. Step Five. A list has just been developed of the potentially hazardous conditions existing at the school facility based on their relative priority.

F. The items on the prioritized list with the highest point value will generally be those that are most serious, and should receive the greatest attention in terms of resources expended to eliminate it. As with all organizations, especially educational institutions, resources are not without limitations. There is a finite amount of money, time, and personnel available to solve these problems. By prioritizing the hazards and concentrating in order on those with the highest priority, concentration will be on the "worst first." This is the smart way to allocate limited resources. Even though instructors might not get all the way through the list, there will be the satisfaction and peace of mind that comes with dealing with the "really important" problems first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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Subchapter D. Hazard Control Measures
§2331. Control Categories

A. This Subchapter D is to implement those control measures that will either eliminate or minimize hazards to the point where they will become acceptable. Also, these control measures will be applied to the most serious hazards first, then to the next-most-serious, and so on.

B. Most control measures fall into one or more of three categories. Paragraphs 1-3 below list the three types, and also outline the preferred sequence for applying the controls, as engineering controls are the most effective way to control a hazard, followed by administrative controls and finally by personal protective equipment. Many times, the most effective controls are a blending of all three types. They are:

1. engineering controls;
2. administrative controls; and
3. personal protective equipment (PPE).

C. Engineering Controls. Usually engineering controls are considered the most effective because, if they are successful, they eliminate the hazard, or remove it from the presence of people. When applying engineering controls, look for ways to:

1. design or redesign hazardous situations or equipment;
2. substitute safer materials in the place of dangerous ones; and
3. install guards or other protective devices.

D. Management/Administrative Controls. Management/administrative controls are next in line to be applied in the control of a hazard because they are the direct responsibility of the persons who are operating the facility. In an

educational environment, that means the administration and faculty. These controls involve such things as:

1. implementation and enforcement of safe policies and procedures;
2. limitations on the exposure to hazards through work assignments, number of persons involved in an activity, etc.; and
3. similar approaches.

E. Personal Protective Equipment (PPE). The last approach to hazard control involves the use of PPE. This is because PPE does not eliminate the hazard but, rather, only establishes a barrier or shield between the hazard and the exposed person. If the exposed person does not have the correct type of PPE, or does not use it properly, then that person will be exposed to the full effect of the hazard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Chapter 25. Mechanical Hazards Worksheet

Subchapter A. General Provisions

§2501. Worksheet Instructions

A. Use this worksheet as a guide to conduct a survey of the instructional facility. Answer each of the listed questions by circling the answer that applies to the condition at the facility. "Y" indicates "Yes," "N" indicates "No," and "N/A" indicates "Not Applicable." If any of the questions are answered "N" for "No," it is the sign of a condition that may indicate a possible hazard. For every "N" marked, write a brief description of the deficient condition observed in the space provided at the end of the worksheet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter B. Hazard Identification

§2511. General Requirements

	Circle the Appropriate Answer
1. Are all machines guarded to protect the operator and other people in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips, and sparks?	Y N N/A
2. Is the point of operation guarded in conformity with appropriate standards, if operation of machinery exposes individuals to injury? <i>Note: In the absence of applicable specific standards, guarding shall be so designed and constructed as to prevent the operator from having any part of his/her body in the danger zone during the operating cycle. Examples of cited violations include:</i> i. paper cutters had no finger guards; ii. a radial arm saw's blade protruded beyond the edge of the cutting table during its operating cycle; iii. bench and pedestal drills had no bit guards; and iv. lathes had no shields.	Y N N/A

	Circle the Appropriate Answer
3. Are guards attached to the machine when possible, and if that is not possible, attached elsewhere?	Y N N/A
4. If hand tools are used for placing or removing material, are they designed to be easily handled without a need to place hands in a danger zone? <i>Note: Such tools are not a substitute for guarding. They can only be used as supplemental protection.</i>	Y N N/A
5. Are revolving drums, barrels, and containers guarded by an enclosure that is interlocked so that containers cannot revolve unless the enclosure is in place?	Y N N/A
6. Are all fans less than 7 feet from the floor equipped with guards that have openings no larger than 1/2 inch? <i>Note: Examples of cited violations include:</i> i. exhaust fan blades and floor fans were not provided with protective guards; ii. a portable table fan had a blade guard whose openings were approximately 1 inch in width; and iii. a guard was broken creating a hole approximately 4" x 2".	Y N N/A
7. Is all machinery designed for a fixed location securely anchored to prevent "walking" or "moving"?	Y N N/A
8. Are all machines constructed, installed and maintained as to be free from excessive vibration or play?	Y N N/A
9. Are all machines and equipment requiring the presence of an operator not left unattended while in operation or still in motion?	Y N N/A
10. Are all machines provided with a power cutoff switch that can be reached from the operating position?	Y N N/A
11. Is all fixed motorized machinery equipped with a magnetic-type switch designed to prevent automatic restarting of machinery when power is restored after a power failure or electrical cutoff?	Y N N/A
12. Are all machine operating controls easily reachable from the standard operating position and away from any hazardous point of operation?	Y N N/A
13. Are all electrically powered machines provided with a positive means for rendering the motor starting controls inoperative while repairs or tool changes are being made?	Y N N/A
14. Is your shop or lab equipped with two or more push-type emergency cut-out switches, provided at appropriate locations for each (maximum) 1,000 square feet of shop floor areas, for de-energizing the electrical supply to non-portable machinery? <i>Note: The switch must have a clear unobstructed access of at least 36 inches. In addition, the reset of the switch must be key operated.</i>	Y N N/A
15. Are all power tools and machines which generate dust connected to a dust collection system?	Y N N/A
16. If required in your state, are dust collection systems permitted by the appropriate state agency?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§2513. Control of Hazardous Energy Sources (Lockout/Tagout)

A. General Energy Control

	Circle the Appropriate Answer
1. Does the program require that all hazardous energy sources be isolated, locked or tagged, and otherwise disabled before anyone performs any activity where the unexpected energization, startup, or release of stored energy could occur and cause injury?	Y N N/A
2. Have procedures been developed, documented, and implemented for the control of hazardous energy when working with such equipment?	Y N N/A
3. Do the procedures clearly outline the scope, purpose, responsibility, authorization, rules, and techniques to be applied to the control of hazardous energy, and measures to enforce compliance?	Y N N/A
4. Do procedures exist for shutting down, isolating, blocking, and securing (locks and tags) energy?	Y N N/A
5. Do procedures exist and is someone assigned responsibility for removing and transferring locks and tags?	Y N N/A

B. Protective Materials and Hardware

	Circle the Appropriate Answer
1. Are locks, tags, chains, adapter pins, or other hardware available for securing or blocking energy sources?	Y N N/A
2. Are these devices standardized in either color, shape, size, or format?	Y N N/A
3. Do these devices have a provision for identifying the person applying the device?	Y N N/A
4. Do tagout devices or danger tags warn against hazardous conditions if the equipment is re-energized? <i>Note: Acceptable wording includes Do Not Open, Do Not Start, Do Not Close and Do Not Energize</i>	Y N N/A

C. Inspection

	Circle the Appropriate Answer
1. Are inspections conducted at least annually by an authorized person (other than the ones using the energy control procedures) to ensure control procedures are being implemented?	Y N N/A
2. Is each inspection certified by identifying: a. the machine or equipment on which the energy control procedure was being used; b. the date of the inspection; and c. the person performing the inspection?	Y N N/A

D. Training and Communication

	Circle the Appropriate Answer
1. Is training provided and documented to ensure that: a. the purpose and function of the energy control procedures are understood; and b. the knowledge and skills required for the safe application and removal of energy controls are acquired?	Y N N/A
2. Is this training repeated periodically when changes or deviations occur in the energy control procedure?	Y N N/A

E. Energy-Isolating Devices

	Circle the Appropriate Answer
1. Are all energy-isolated devices operated only by authorized persons or under the direct supervision of an authorized person?	Y N N/A

F. Notification of Employees

	Circle the Appropriate Answer
1. Are all employees notified of the application and removal of lockout and tagout controls whenever such controls directly affect their work activities?	Y N N/A

G. Application of Control

	Circle the Appropriate Answer
1. Does the application of energy control follow the sequence listed below? Step 1. Machine or equipment shutdown by authorized personnel. Step 2. Machine or Equipment Isolation. All energy-isolated devices that are needed shall be located and operated in a manner that isolates the machine or equipment from the energy source(s). Step 3. Lockout and Tagout Application i. Lockout devices shall be affixed in a manner that will hold the energy-isolating device in a safe or off position. ii. Tagout devices shall be affixed in a manner that clearly indicates that the operation or movement of energy isolating devices from the safe or off position is prohibited. iii. If a tag cannot be affixed directly to the energy isolating device, the tag shall be located as close as safely permissible to the device, in a position that will be immediately obvious to anyone operating the device.	Y N N/A

	Circle the Appropriate Answer
<p>Step 4. Stored Energy. Following the application of lockout and tagout devices, all hazardous, stored, or residual energy shall be relieved, disconnected, restrained, or otherwise rendered safe.</p> <p>Step 5. Verification of Isolation. Before starting work on the isolated equipment or process, an authorized person must verify that isolation and de-energization of the machine or equipment has been accomplished.</p>	
2. Has the work area been inspected before the removal of lockout and tagout devices?	Y N N/A
3. Has the lockout and tagout device been removed by the person who put it on? <i>Note: This rule has some limited exceptions.</i>	Y N N/A
4. Are outside servicing personnel informed of the lockout and tagout procedures before equipment is serviced?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§2515. Mechanical Power-Transmission Devices

A. Care of Equipment

	Circle the Appropriate Answer
1. Is all power-transmission equipment inspected every 60 days or less and kept in good working condition at all times?	Y N N/A
2. Are hangers inspected to make certain that all supporting bolts and screws are tight and that supports of hanger boxes are adjusted properly?	Y N N/A
3. Is machinery oiled wherever possible when not in motion?	Y N N/A
4. Do regular oilers wear tight fitting clothing?	Y N N/A

B. Prime-Mover Guards

	Circle the Appropriate Answer
1. When exposed to contact, are flywheels guarded by an enclosure, guard rail, or toeboard?	Y N N/A
2. Are crank and connecting rods guarded when exposed to contact?	Y N N/A
3. Are tail rods or extension piston rods guarded?	Y N N/A

C. Shafting

	Circle the Appropriate Answer
1. Is each continuous line of shafting secured against excessive end movement?	Y N N/A
2. Are inclined and vertical shafts (particularly inclined idler shafts) securely held in position against end-wise thrust?	Y N N/A
3. For horizontal shafting 7 feet or less above the floor or working platform, are all exposed parts protected by: <ul style="list-style-type: none"> a. a stationary casing completely enclosing the shafting; or b. a trough enclosing the side and top, or sides and bottom of the shafting (as the location requires)? 	Y N N/A
4. Is shafting under bench machinery enclosed by: <ul style="list-style-type: none"> a. stationary casing; or b. a trough at sides and top, or sides and bottom (as the location requires)? <i>Note: The sides of the trough shall come within at least 6 inches of the underside of the table, or within 6 inches of the floor if shafting is near the floor. In every case, the sides of the trough shall extend at least 2 inches beyond the shafting or protuberance.</i>	Y N N/A
5. Is vertical or inclined shafting that is 7 feet or less from the floor or working platform (except maintenance runways) enclosed with a stationary casing?	Y N N/A
6. Do projecting shaft ends have a smooth edge and end?	Y N N/A
7. Are shaft ends that project more than one-half of the diameter of the shaft guarded by non-rotating caps or safety sleeves?	Y N N/A
8. Are unused keyways filled up or covered?	Y N N/A
9. Is shafting kept in alignment and free from rust and excess oil or grease?	Y N N/A

D. Pulleys

	Circle the Appropriate Answer
1. Are pulleys 7 feet or less from the floor guarded?	Y N N/A
2. Are pulleys with cracks or pieces broken out of the rims taken out of service?	Y N N/A
3. Are pulleys kept in proper alignment to prevent belts from running off?	Y N N/A

E. Belt, Rope, and Chain Drives

	Circle the Appropriate Answer
1. Are horizontal belts 7 feet or less from the floor level guarded?	Y N N/A
2. Are belts, lacings, and fasteners inspected and maintained in good repair?	Y N N/A

F. Gears, Sprockets, and Chains

	Circle the Appropriate Answer
1. Are all gears fully guarded?	Y N N/A
2. Are all sprocket wheels and chains that are less than 7 feet above the floor or platform fully guarded?	Y N N/A
3. Are openings with hinged or sliding self-closing covers provided when frequent oiling must be done on gears, sprockets, and chains?	Y N N/A

G. Keys, Set-Screws, and Other Projections

	Circle the Appropriate Answer
1. Are all projecting keys, set-screws, and other projections in revolving parts guarded by metal covers or made flush?	Y N N/A

H. Collars and Couplings

	Circle the Appropriate Answer
1. Are shaft couplings constructed so they do not present hazards from bolts, nuts, set-screws, or revolving surfaces? <i>Note: Bolts, nuts, and set-screws are permitted if covered with safety sleeves.</i>	Y N N/A

I. Bearings and Facilities for Oiling

	Circle the Appropriate Answer
1. Are all drip cups and pans securely fastened?	Y N N/A
2. Are bearings kept in alignment and properly adjusted?	Y N N/A

J. Guards

	Circle the Appropriate Answer
1. Are all metal guards free from burrs and sharp edges?	Y N N/A
2. Are all metal guards securely fastened to the floor or to frame of the machine?	Y N N/A
3. Are all guards rigidly braced every 3 feet or fractional part of their height to a fixed part of machinery or building structure?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§2517. Abrasive Wheel Machinery

A. General Requirements

	Circle the Appropriate Answer
1. Do grinding wheels fit freely on the spindle?	Y N N/A
2. Is forcing the grinding wheel on the spindle prohibited?	Y N N/A
3. Are all wheels closely inspected and sounded by the user (ring test) to make sure they have not been damaged before being mounted? <i>Note: Before mounting the wheel, make sure the spindle speed of the machine does not exceed the maximum operating speed marked on the wheel.</i>	Y N N/A
4. Is the spindle nut-tightened only enough to hold the wheel in place?	Y N N/A
5. Are all grinding wheel operators required to use eye protection?	Y N N/A
6. Are all contact surfaces of the wheel, blotters, and flanges flat and free of foreign material?	Y N N/A
7. When a bushing is used in the wheel hole, is it positioned so it does not exceed the width of the wheel nor make contact with the flange?	Y N N/A

B. Floor and Bench-Grinding Machines

	Circle the Appropriate Answer
1. Are all floor- and bench-mounted abrasive wheels equipped with safety guards?	Y N N/A
2. Does the safety guard cover the spindle end, nut, and flange projections?	Y N N/A
3. Is the maximum angular exposure of the grinding wheel and side 90° or less? Exception. When work requires contact with the wheel below the horizontal plane of the spindle, the angular exposure shall not exceed 125°. In either case, the exposure shall begin at not more than 65° above the horizontal place of the spindle.	Y N N/A
4. Are work rests provided which are rigidly supported and readily adjustable?	Y N N/A
5. Are work rests kept adjusted closely to the wheel with a maximum opening of 1/8 inch to prevent the work from being jammed between the wheel and the rest?	Y N N/A

C. Portable and Other Abrasive Wheels

	Circle the Appropriate Answer
1. Do all machines with abrasive wheels greater than 2 inches in diameter have safety guards? <i>Note: Some abrasive wheels may be equipped with flanges.</i>	Y N N/A
2. Is the maximum exposure angle on all grinding wheels 180° or less?	Y N N/A

	Circle the Appropriate Answer
3. When in use, is the guard on right angle head or vertical portable grinders located between the operator and the wheel?	Y N N/A
4. Is the guard on right angle head or vertical portable grinders adjusted so that pieces of a broken wheel will be deflected away from the operator?	Y N N/A
5. Is the top half of the wheel on other grinders always enclosed?	Y N N/A

D. General Requirements for Guards

	Circle the Appropriate Answer
1. Are the guard and its fastenings strong enough to retain fragments of the wheel in case of breakage?	Y N N/A
2. Are guards mounted to maintain proper alignment with the wheel?	Y N N/A
3. Are tongue guards at the top of the wheel bench, floor stand, and cylindrical grinders adjusted to the decreasing diameter of the wheel so that the gap is never more than one-fourth of an inch?	Y N N/A

E. Ping Test

1. Wheels should be tapped gently with a light nonmetallic implement, such as the handle of a screwdriver for light wheels, or a wooden mallet for heavier wheels. Tap wheels about 45° each side of the vertical centerline and about 1 or 2 inches from the edge of the wheel. Then rotate the wheel 45° and repeat the test. A sound and undamaged wheel will give a clear metallic tone. If cracked, there will be a dead sound and not a clear "ring."

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§2519. Woodworking Machinery

A. General Machine Construction

	Circle the Appropriate Answer
1. Is each machine constructed and installed so it is free from sensible vibration when the largest tool is mounted and run at full speed?	Y N N/A
2. Are arbors and mandrels constructed to have firm and secure bearing and be free from play?	Y N N/A
3. Are saw frames on tables constructed with lugs cast on the frame or with equivalent means to limit the size of the saw blade that can be mounted? <i>Note: This is done to avoid overspeed caused by mounting a saw larger than intended.</i>	Y N N/A
4. Are circular saw fences constructed so they can be firmly secured to the table without changing their alignment with the saw?	Y N N/A

	Circle the Appropriate Answer
5. Are circular saw gauges constructed so they slide in grooves or tracts that are securely machined, to ensure exact alignment with the saw for all positions on the guide?	Y N N/A
6. Are hinged table saws constructed so that the table can be firmly secured in any position and in true alignment with the saw?	Y N N/A
7. Are all belts, pulleys, gears, shafts, and moving parts guarded?	Y N N/A
8. Is each woodworking machine provided with a disconnect switch that can be locked in the off position? <i>Note: The construction standard 1926-304 permits a disconnect switch that can be tagged in the off position.</i>	Y N N/A
9. Are the frames of all exposed non-current-carrying metal parts grounded?	Y N N/A
10. If the possibility exists of contacting part of a circular saw either beneath or behind the table, is that part covered with either an exhaust hood or guard?	Y N N/A
11. Are revolving double arbor saws fully guarded?	Y N N/A
12. Is the placement and mounting of saws, cutter heads, or tool collars on machine arbors accomplished when the tool has been accurately machined to size and shape to fit the arbor?	Y N N/A
13. Are combs (featherboards) or suitable higs provided at the shop or lab for use when a standard guard cannot be used, as in dadoing, grooving, joining, moulding, and rabbetting?	Y N N/A
14. Is the operating speed etched or otherwise permanently marked on all circular saws over 20 inches in diameter and operating at over 10,000 peripheral feet per minute?	Y N N/A
15. Do woodworking tools and machinery meet the American National Standards Institute (ANSI) codes for safety? <i>Note: A label on the equipment or manufacturer's literature might indicate that it meets ANSI's standards. If in doubt, the manufacturer of the equipment should be contacted.</i>	Y N N/A

B. Machine Controls and Equipment

	Circle the Appropriate Answer
1. Are mechanical or electrical power controls provided on each machine to make it possible for the operator to cut off the power without leaving his or her operating position?	Y N N/A
2. On machines driven by belts and shaftings, is a locking type belt shifter or equivalent positive device used?	Y N N/A
3. Is each operating treadle protected against unexpected tripping?	Y N N/A
4. Are automatic feeding devices installed on machines whenever the nature of the work permits?	Y N N/A
5. Do feeder attachments have the feed rolls or other moving parts covered or guarded to protect the operator from hazardous points?	Y N N/A

C. Inspection and Maintenance of Woodworking Machinery

	Circle the Appropriate Answer
1. Are dull, badly set, improperly filed, or improperly tensioned saws immediately removed from service before they cause the material to stick, jam, or kickback when it is fed to the saw at normal speed?	Y N N/A
2. Are all knives and cutting heads of woodworking machines kept sharp, properly adjusted, and firmly secured?	Y N N/A
3. Are all bearings well lubricated and kept free from lost motion?	Y N N/A
4. Are arbors of circular saws free from play?	Y N N/A
5. Is sharpening or tensioning of saw blades or cutters done only by people with demonstrated skill in this kind of work?	Y N N/A
6. Is cleanliness maintained around woodworking machinery so guards function properly and fire hazards are prevented in switch enclosures, bearings, and motors?	Y N N/A
7. Are all cracked saws immediately removed from service? <i>Note: Dispose of cracked saws in a manner that will prevent injury to anyone handling the discarded saws.</i>	Y N N/A
8. Is inserting wedges between the saw disk and the collar to form what is commonly known as a wobble saw prohibited?	Y N N/A
9. Are push sticks or blocks provided at workplaces in several sizes and types suitable for the work to be done?	Y N N/A

D. Hand-Fed Ripsaws

	Circle the Appropriate Answer
1. Is each circular hand-fed ripsaw guarded by a hood that completely encloses the portions of the saw that are above the table and above the material being cut?	Y N N/A
2. Is the hood and mounting arranged so that the hood will automatically adjust itself to the thickness of the material and remain in contact with the material being cut? <i>Note: The hood should not offer considerable resistance to insertion of the material.</i>	Y N N/A
3. Is each hand-fed circular ripsaw furnished with a spreader to prevent material from squeezing the saw or being thrown back on the operator?	Y N N/A
4. Is each hand-fed circular ripsaw provided with non-kickback fingers or dogs located to oppose the thrust or tendency of the saw to pick up the material or throw it back toward the operator?	Y N N/A

E. Hand-Fed Crosscut Table Saws

	Circle the Appropriate Answer
1. Is each hand-fed crosscut table saw guarded by a hood that completely encloses portions of the saw that are above the table and above the material being cut?	Y N N/A
2. Is the hood and mounting arranged so that the hood will automatically adjust itself to the thickness of and remain in contact with the material being cut? <i>Note: The hood should not offer considerable resistance to insertion of the material.</i>	Y N N/A

F. Circular Resaws

	Circle the Appropriate Answer
1. Is each circular resaw guarded by a hood or shield of metal above the saw?	Y N N/A
2. Does each circular resaw have a spreader fastened securely behind the saw?	Y N N/A

G. Self-Feed Circular Saws

	Circle the Appropriate Answer
1. Are feed rolls and saws protected by a hood or guard to prevent the hands of the operator from coming into contact with the in-running rolls at any point? <i>Note: The guard must be constructed of heavy material (preferable metal), and the bottom of the guard must come down to within 3/8 inch of the plane formed by the bottom or working surfaces of the feed rolls. This distance may be increased to 3/4 inch, provided the lead edge of the hood is extended to at least 5-1/2 inches in front of the nip point between the front roll and the work.</i>	Y N N/A
2. Is each self-feed circular ripsaw provided with sectional non-kickback fingers for the full width of the feed rolls?	Y N N/A

H. Swing and Sliding Cutoff Saws

	Circle the Appropriate Answer
1. Are swing and sliding cutoff saws provided with a hood that completely encloses the upper half of the saw, the arbor end, and the point of operation of all positions of the saw? <i>Note: The hood must be constructed to protect the operator from flying splinters and broken saw teeth. It must automatically cover the lower portion of the blade so that when the saw is returned to the back of the table, the hood will rise on top of the fence, and when the saw is moved forward, the hood will drop on top of and remain in contact with the table or material being cut.</i>	Y N N/A

	Circle the Appropriate Answer
2. Are swing and sliding cutoff saws equipped with an effective device to return the saw automatically to the back of the table when released at any point of its travel?	Y N N/A
3. Are swing and sliding cutoff saws equipped with limit chains or other equally effective devices to prevent the saw from swinging beyond the front or back edges of the table, or beyond a forward position where the gullets of the lowest saw teeth rise above the table top?	Y N N/A
4. Are inverted swing cutoff saws provided with a hood that covers the part of the saw that protrudes above the table or above the material being cut? <i>Note: The hood must automatically adjust itself to the thickness of the material and remain in contact with the material being cut.</i>	Y N N/A

I. Radial Saws

	Circle the Appropriate Answer
1. Does the upper hood completely enclose the upper portion of the blade down to the point that will include the end of the saw arbor?	Y N N/A
2. Are the sides of the lower exposed portion of the blade guarded to the full diameter of the blade by a device that automatically adjusts itself to the thickness of the stock? Does this device remain in contact with the stock being cut to give maximum protection for the operation being performed?	Y N N/A
3. Are radial saws used for ripping provided with non-kickback fingers or dogs located on both sides of the saw to oppose the thrust or tendency of the saw to throw material back toward the operator?	Y N N/A
4. Is an adjustable stop provided that prevents the forward travel of the blade beyond the position necessary to complete the cut in repetitive operations?	Y N N/A
5. Is the installation designed so that the front end of the unit is slightly higher than the rear? (This design causes the cutting head to return gently to the starting position when released by the operator.) <i>Note: The cutting head should be fitted with an automatic return device.</i>	Y N N/A
6. Is the direction of saw rotation conspicuously marked on the hood?	Y N N/A
7. Is a permanent label (at least 1/2 inch by 3/4 inch) affixed to the rear of the guard at approximately the level of the arbor that reads as follows? Danger: Do not rip or plow from this end	Y N N/A

J. Bandsaws and Band Resaws

	Circle the Appropriate Answer
1. Are all portions of the band saws and band resaws enclosed or guarded, except for the working portion of the blade between the bottom of the guide rolls and the table?	Y N N/A
2. Does a self-adjusting guard raise and lower the guide?	Y N N/A
3. Is each bandsaw machine provided with a tension control device to indicate the proper tension for the standard saws used on the machine?	Y N N/A
4. Are feed rolls of band resaws protected with a suitable guard to prevent the hands of the operator from coming in contact with the in-going rolls at any point?	Y N N/A

K. Jointers

	Circle the Appropriate Answer
1. Is each hand-fed planer or jointer with a horizontal head equipped with a cylindrical cutting head? <i>Note: The knife projection of the cylindrical cutting head cannot exceed 1/8 inch beyond the cylindrical body of the head.</i>	Y N N/A
2. Is the opening in the table kept as small as possible? <i>Note: The clearance between the edge of the rear table and the cutting head shall be 1/8 inch or less. The table throat opening shall not be more than 1 1/2 inches when tables are set or aligned with each other for a zero cut.</i>	Y N N/A
3. Does each hand-fed jointer with a horizontal cutting head have an automatic guard that covers all sections of the head on the working side of the fence or gauge?	Y N N/A
4. Does each wood jointer with a vertical head have either an exhaust hood or other guard arranged so it completely encloses the revolving head, except for a slot wide enough for the material to be jointed?	Y N N/A
5. Is the knife blade of jointers installed and adjusted so that it does not protrude more than 1/8 inch beyond the cylindrical body of the head?	Y N N/A

L. Tenoning Machines

	Circle the Appropriate Answer
1. Are feed chains and sprockets of double-end tenoning machines completely enclosed, except for the portion of chain used for conveying the stock?	Y N N/A
2. Are sprockets and chains at the rear ends of frames guarded at the sides by plates projecting beyond the edges of sprockets and lugs?	Y N N/A

	Circle the Appropriate Answer
3. If used on tenoning machines, are cutting heads and saws covered by metal guards? <i>Note: The guards must cover at least the unused part of the periphery of the cutting head. If the guard is made of sheet metal, the material used must be at least 1/16 inch thick, and if it is cast iron, it must be at least 3/16 inch thick.</i>	Y N N/A
4. If an exhaust system is used on a tenoning machine, is the guard part of the exhaust hood?	Y N N/A

M. Boring and Mortising Machines

	Circle the Appropriate Answer
1. Are safety-bit chucks with projecting-set screws prohibited?	Y N N/A
2. Are boring bits provided with a guard that encloses all portions of the bit and chuck above the material being worked?	Y N N/A
3. Is the top of the cutting chain and driving mechanism enclosed?	Y N N/A
4. When a counterweight is used, is one of the following (or equivalent means) used to prevent its dropping? a. It is bolted to the bar by a bolt passing through both bar and counterweight. b. A bolt is put through the extreme end of the bar. c. Where the counterweight does not encircle the bar, a safety chain is attached to it. d. Other types of counterweights are suspended by chain or wire rope and shall travel in a pipe (or other suitable enclosure) if they might fall and cause injury.	Y N N/A
5. Are universal joints on spindles of boring machines completely enclosed to prevent contact by the operator?	Y N N/A
6. Is each operating treadle covered by an inverted U-shaped metal guard, fastened to the floor, and of adequate size to prevent tripping?	Y N N/A

N. Wood Shapers and Similar Equipment

	Circle the Appropriate Answer
1. Is the cutting head of each wood shaper or hand-fed panel raiser (or other similar machine that is not automatically fed) enclosed with a cage or adjustable guard designed to keep the operator's hand away from the cutting edge?	Y N N/A

O. Planing, Molding, Sticking, and Matching Machines

	Circle the Appropriate Answer
1. Is each planing, molding, sticking, and matching machine equipped with a metal guard covering the cutting heads?	Y N N/A
2. When an exhaust system is used, does the guard form part of the exhaust hood? <i>Note: If the guard is constructed of sheet metal, the material used shall be at least 1/16 inch thick, and if it is constructed of cast iron, it must be at least 3/16 inch thick.</i>	Y N N/A
3. Are feed rolls guarded by a hood or suitable guard to prevent the hands of the operator from contacting the in-running rolls?	Y N N/A
4. Do the surfaces and planers (provided with the sectional infeed rolls) give sufficient feeding contact pressure on the stock thickness?	Y N N/A

P. Profile and Swing-Head Lathes and Wood Heel Turning Machines

	Circle the Appropriate Answer
1. Are the cutting heads of each profile and swing head lathe covered by a metal guard?	Y N N/A
2. Are cutting heads on wood-turning lathes covered as much as possible by hoods or shields?	Y N N/A
3. Do the following have hoods enclosing the cutter blades completely? (except at the contact points where the stock is being cut): a. shoe last and spoke lathes; b. doweling machines; c. wood heel-turning machines; and d. other automatic wood-turning lathes of the rotating knife type.	Y N N/A
4. Are lathes used for turning long pieces of wood stock held only between the two centers equipped with long, curved guards extending over the tops of the lathe? <i>Note: This is to prevent the work pieces from being thrown out of the machine if they become loose.</i>	Y N N/A
5. When an exhaust system is used, does the guard form part or all of the exhaust hood? <i>Note: If the guard is constructed of sheet metal, the material used must be at least 1/16 inch thick, and if it is constructed of cast iron, it must be at least 3/16 inch thick.</i>	Y N N/A

Q. Sanding Machines

	Circle the Appropriate Answer
1. Are the feed rolls of self-feeding sanding machines protected with a semi-cylindrical guard to prevent contact with the in-running rolls?	Y N N/A
2. Does the bottom guard come to within 3/8 inch of a plane formed by the bottom or contact face of the feed roll where it touches the stock?	Y N N/A
3. Is each drum-sanding machine equipped with an exhaust hood or other guard if no exhaust hood is required?	Y N N/A
4. Does each disk-sanding machine enclose the revolving disk (except for the portion of the disk above the table if a table is used)?	Y N N/A
5. Is each belt-sanding machine provided with guards at each nip point where the sanding belt runs onto a pulley?	Y N N/A

R. Veneer, Cutting and Wringers

	Circle the Appropriate Answer
1. Are veneer-slicer knives guarded at the front and ready to prevent contact with the knife edge?	Y N N/A
2. Do veneer clippers have automatic feeds, or are they provided with a guard that makes it impossible to place a finger or fingers under the knife while feeding or removing the stock?	Y N N/A
3. Are sockets on chain or slat-belt conveyors enclosed?	Y N N/A
4. Are hand and foot power guillotine veneer cutters provided with rods or plates or other satisfactory means, arranged on the feeding side so that the hands cannot reach the cutting edge of the knife while feeding or holding the stock in place?	Y N N/A
5. Is the operator required to make sure that the machine is clear and that other people are not in a hazardous position before starting or restarting the machine? (For example, when veneer slivers or rotary veneer-cutting machines have been shut down to insert logs or to make adjustments.)	Y N N/A

S. Miscellaneous Woodworking Machinery

	Circle the Appropriate Answer
1. Are the feed rolls of roll-type glue spreaders guarded by a semi-cylindrical guard? <i>Note: The bottom of the guard shall come to within 3/8 inch of a plane formed by the bottom or contact face of the feed roll where it touches the stock.</i>	Y N N/A
2. Is each point of operation for combination or universal woodworking machines guarded as required for such a tool in a separate machine?	Y N N/A

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

Subchapter C. Hazard Evaluation and Prioritization §2529. Relative Risk Factors

A. Introduction

1. This part of the worksheet enables the instructor to examine each of the potential hazards (the "N" answers) that were identified in Subchapter B of this Chapter 25, Hazard Identification, and to assign it a value corresponding to its relative risk. Relative risk is usually defined in terms of three factors:

- a. severity
- b. frequency/probability; and
- c. exposure.

2. Each of the factors listed in Subparagraphs a-c is described in Subsections B-D.3 below, and the point values are provided for the corresponding degree of risk.

NOTE: The greater the risk, the higher the point value.

B. Severity. Consider the potential losses or destructive and disruptive consequences that are most likely to occur if any of the hazards that have been identified in Subchapter B of this Chapter 25, Hazard Identification, result in an actual incident. The following point values are suggested.

1. Four Points—Catastrophic:

- a. loss of life;
- b. permanent disability;
- c. loss of entire facility;
- d. permanent.

2. Three Points—Critical:

- a. severe injury or illness with lost time;
- b. major property damage;
- c. no permanent disability or fatality;
- d. interruption of activities for extended period of time.

3. Two Points—Marginal:

- a. minor injury or illness;
- b. minor property damage;
- c. interruption of activities for more than one day.

4. One Point—Negligible:

- a. probably no injury or illness;
- b. no loss other than interruption of activities for a short period of time.

C. Frequency/Probability (Likelihood of Occurrence)

1. Consider the probability that a loss would occur. Ask yourself the following key questions.

a. How likely is it that things will go wrong as a result of the hazard that has been identified?

b. How often is the activity which creates the hazard performed?

c. How often is the hazard present?

2. Use the following point values.

- a. Three Points—high probability of occurrence.
- b. Two Points—moderate probability of occurrence.
- c. One Point—low probability of occurrence.

D. Exposure. Consider the number of persons (students and faculty) who could be potentially affected by a worst case scenario caused by each of the potential hazards that have been identified. The following point values are suggested.

1. Three Points—many persons are affected frequently.
2. Two Points—a few persons are affected frequently.
3. One Point—a few persons are affected up to a few times per day.

E. Prioritization. Based on the analysis above, and using the hazard prioritization matrix below, prioritize the hazards identified in Subchapter B of this Chapter and evaluated in §2529.B-D.3.

1. Step One. List each of the hazardous conditions that were identified in Subchapter B of this Chapter 25 in the first column of the worksheet.

2. Step Two. Based on the criteria given above in §2529.B-D.3, assign a point value for each hazard in each of the three columns.

3. Step Three. Add up the point values, horizontally, for each of the hazards.

4. Step Four. Rearrange the hazards that were identified in descending order with the one having the highest total point value first, then the one with the next-highest point value; and so on.

Hazard Prioritization Matrix				
Hazard Identified	Severity	Probability	Exposure	Total Points

5. Step Five. A list has just been developed of the potentially hazardous conditions existing at the school facility based on their relative priority.

F. The items on the prioritized list with the highest point value will generally be those that are most serious, and should receive the greatest attention in terms of resources expended to eliminate it. As with all organizations, especially educational institutions, resources are not without limitations. There is a finite amount of money, time, and personnel available to solve these problems. By prioritizing the hazards and concentrating in order on those with the highest priority, concentration will be on the "worst first." This is the smart way to allocate limited resources. Even though instructors might not get all the way through the list, there will be the satisfaction and peace of mind that comes with dealing with the "really important" problems first.

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Subchapter D. Hazard Control Measures

§2537. Control Categories

A. This Subchapter D is to implement those control measures that will either eliminate or minimize hazards to the point where they will become acceptable. Also, these control measures will be applied to the most serious hazards first, then to the next-most-serious, and so on.

B. Most control measures fall into one or more of three categories. Paragraphs 1-3 below list the three types, and also outline the preferred sequence for applying the controls, as engineering controls are the most effective way to control a hazard, followed by administrative controls and finally by personal protective equipment. Many times, the most effective controls are a blending of all three types. They are:

1. engineering controls;
2. administrative controls; and
3. personal protective equipment (PPE).

C. Engineering Controls. Usually engineering controls are considered the most effective because, if they are successful, they eliminate the hazard, or remove it from the presence of people. When applying engineering controls, look for ways to:

1. design or redesign hazardous situations or equipment;
2. substitute safer materials in the place of dangerous ones; and
3. install guards or other protective devices.

D. Management/Administrative Controls. Management/administrative controls are next in line to be applied in the control of a hazard because they are the direct responsibility of the persons who are operating the facility. In an educational environment, that means the administration and faculty. These controls involve such things as:

1. implementation and enforcement of safe policies and procedures;
2. limitations on the exposure to hazards through work assignments, number of persons involved in an activity, etc.; and
3. similar approaches.

E. Personal Protective Equipment (PPE). The last approach to hazard control involves the use of PPE. This is because PPE does not eliminate the hazard but, rather, only establishes a barrier or shield between the hazard and the exposed person. If the exposed person does not have the correct type of PPE, or does not use it properly, then that person will be exposed to the full effect of the hazard.

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Chapter 27. Walking, Working, Surfaces/Stairs/Railings Worksheet

Subchapter A. General Provisions

§2701. Worksheet Instructions

A. Use this worksheet as a guide to conduct a survey of the instructional facilities. Answer each of the listed questions by circling the answer that applies to the condition at the facility. "Y" indicates "Yes," "N" indicates "No," and "N/A" indicates "Not Applicable." If any of the questions are answered "N" for "No," it is the sign of a condition that may indicate a possible hazard. For every "N" marked, write a brief description of the deficient condition observed in the space provided at the end of the worksheet.

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

Subchapter B. Hazard Identification

§2711. Facilities

A. Stairs

	Circle the Appropriate Answer
1. Are fixed stairs (rather than ladders or other means of access) provided where access to elevation is necessary on a daily or regular basis?	Y N N/A
2. Do fixed stairs have a minimum width of 22 inches?	Y N N/A
3. Are fixed stairs installed at angles to the horizontal between 30° and 50°?	Y N N/A
4. Are all treads reasonably slip-resistant with the front protruding edge of the tread of a non-slip finish?	Y N N/A
5. Do fixed stairs have a uniform rise height and tread width throughout the flight of stairs?	Y N N/A
6. Are stairway landing platforms no less than the width of the stairway and a minimum of 30 inches long measured in the direction of travel?	Y N N/A
7. Are standard railings provided on all open sides of exposed stairways and stair platforms?	Y N N/A
8. Is a vertical clearance above the stair tread to an overhead obstruction that is at least 7 feet measured from the edge of the tread?	Y N N/A

B. Classrooms, Lavatories, etc.

	Circle the Appropriate Answer
1. Are all changes in classroom use and alterations, repairs, construction, or installation of new equipment reviewed with the appropriate state and local agencies that have jurisdiction over school modifications?	Y N N/A
2. Is an electric solenoid key-operated gas shut-off switch installed on each gas supply line to your shop, lab or instructional area?	Y N N/A
3. Are classrooms kept clean and free from debris to the greatest extent practical given the types of activities being performed?	Y N N/A
4. Are waste materials that are prone to rotting placed in leak-proof receptacles with tight fitting covers and removed daily for disposal?	Y N N/A
5. Are classrooms maintained, as far as reasonably practicable, to prevent the entrance or harborage of rodents, insects, and other vermin?	Y N N/A
6. Is water available that is suitable for drinking, personal hygiene, food preparation or cleaning?	Y N N/A
7. Are all non-drinking water outlets clearly marked as such?	Y N N/A
8. Are lavatories equipped with hot and cold running water, hand soap, and towels or driers?	Y N N/A
9. Where showers are required, are soap, hot and cold running water through a common discharge line, and individual towels provided?	Y N N/A

	Circle the Appropriate Answer
10. Is the consumption of food and beverages prohibited in or near toilet rooms or areas containing toxic materials?	Y N N/A
11. Is storage of food or beverages prohibited in toilet rooms or in an area exposed to a toxic material?	Y N N/A
12. Where employees are required to wear protective clothing, are change rooms provided with storage facilities for street clothes and separate storage facilities for the protective clothing?	Y N N/A
13. Is material stored so as not to create a hazard? <i>Note: Bags, containers, bundles, etc., stored in tiers must be stacked, blocked, interlocked, and limited in height so that they are stable and secured against sliding and collapse.</i>	Y N N/A
14. Are storage areas kept free from hazards that may cause tripping, fire, explosion, or pest harborage?	Y N N/A
15. Is sufficient safe clearance available through aisles, loading docks, turns, or doorways when mechanical handling equipment is used?	Y N N/A
16. Are head clearance warning signs provided where needed?	Y N N/A
17. Are all passageways, work areas, storerooms, and washing facilities kept orderly and sanitary? <i>Note: Examples of violations include floor areas strewn with lumber, tires, books, and boxes.</i>	Y N N/A
18. Are all floors kept clean and as far as possible dry?	Y N N/A
19. If floors are likely to get wet (such as in food preparation), are platforms, mats, or other dry standing places provided where practicable?	Y N N/A
20. Are floors kept free of protruding nails, splinters, holes, or loose boards?	Y N N/A
21. Are aisles and passageways kept clear and in good repair, with no obstructions that could create a hazard?	Y N N/A
22. Are covers and/or guardrails provided to protect people from falling into pits, tanks, vats, ditches, etc.?	Y N N/A
23. Are areas used for storage of materials marked with conspicuous signs that indicate the load-bearing capacity of the floor?	Y N N/A
24. Is the weight of stored materials assessed to ensure that it is below the load-bearing capacity of the floor?	Y N N/A

C. Guarding Floors, Stairs and Other Openings

	Circle the Appropriate Answer
1. Is every skylight floor opening and hole guarded by a standard skylight screen or a fixed standard railing on all exposed sides?	Y N N/A
2. Are all floor openings to stairways, ladderways, hatchways, chutes, or manholes guarded by a standard railing and toeboard (on all sides except the entrance) or other protective cover?	Y N N/A

	Circle the Appropriate Answer
3. Is every temporary floor opening guarded by a standard railing or constantly attended by someone?	Y N N/A
4. Is every floor hole into which a person could fall guarded by either a standard railing and toeboard or floor hole cover?	Y N N/A
5. Is every floor hole into which a person could not fall (because of fixed machinery, equipment, or walls) protected by a cover that leaves no openings more than 1 inch wide? <i>Note: The cover must be securely held in place to prevent tools or materials from falling through.</i>	Y N N/A
6. Where doors or gates open directly onto a stairway, does a platform allow an effective width of at least 20 inches when the door swings open?	Y N N/A
7. Is every open-sided floor or platform that is 4 feet or more above the adjacent floor ground level guarded by a standard railing on all open sides?	Y N N/A
8. Is every runway guarded by a standard railing on all open sides that are 4 feet or more above the floor or ground level?	Y N N/A
9. Regardless of height, are all open-sided floors, walkways, platforms, or runways guarded with a standard railing and toeboard if they are above or adjacent to any dangerous equipment or operation?	Y N N/A
10. Is every open-sided floor or platform that is 4 feet or more above the adjacent floor ground level guarded by a toeboard if, beneath the open sides: a. people could pass; b. machinery could move; or c. equipment could create a hazard of falling materials?	Y N N/A
11. Is every wall opening from which the drop is more than 4 feet guarded with a standard railing or other barriers?	Y N N/A
12. Is every window wall opening guarded by slats, grill work, or standard railing if: a. it is at a stairway landing, floor, platform, or balcony from which the drop is more than 4 feet; and b. the bottom of the opening is less than 3 feet above the platform or landing?	Y N N/A
13. Is every flight of stairs with four or more risers equipped with standard stair railings or standard handrails as specified below? a. On stairways less than 44 inches wide with both sides enclosed, at least one handrail is required, preferably on the right hand side descending. b. On stairways less than 44 inches wide with one open side, at least one stair railing must be on the open side. c. On stairways less than 44 inches wide with both sides open, one stair railing is required on each side. d. On stairways more than 44 inches wide but less than 88 inches wide, one handrail on each enclosed side and one stair railing on each open side is required. e. On stairways 88 or more inches wide, one handrail on each enclosed side, one side railing on each open side, and one intermediate stair railing located approximately midway of the width is required.	Y N N/A

	Circle the Appropriate Answer
14. Where standard railings are provided, do they meet the following specifications? a. The rail must consist of a top rail at a height of 42 inches and a mid rail at approximately 21 inches. b. The top rail must be smooth surfaced throughout the length of the railing. It must be able to withstand a force of 200 pounds in any direction with a deflection of less than 2 inches.	Y N N/A
15. Are all stair railings between 30 and 34 inches from the top of the rail to the surface of the tread in line with the face of the riser at the forward edge of tread?	Y N N/A
16. If wooded railings are used for guardrails, are the posts at least 2 inch by 4 inch and spaced less than 6 feet apart? <i>Note: The top rail and intermediate rails must also be at least 2 inches by 4 inches stock.</i>	Y N N/A
17. If pipe railings are used, are posts and top and intermediate rails at least 1 1/2 inches nominal diameter with posts spaced less than 8 feet on centers?	Y N N/A
18. If structural steel is used for guardrails, are the posts and top and intermediate rails: a. at least 2 inches by 3/8 inch angle irons; or b. other metal shapes of equivalent bending strength with posts spaced not more than 8 feet on centers?	Y N N/A
19. Is the guardrail anchored and of such construction that it is capable of withstanding a load of at least 200 pounds applied in any direction at any point on the top rail?	Y N N/A
20. Are standard toeboards at least 4 inches in height provided at the floor of the guardrail?	Y N N/A
21. Are handrails constructed so that they can be easily grasped (i.e., rounded)?	Y N N/A
22. Are all handrails and railings provided with a clearance of at least 3 inches between the handrail or railing and any other object? <i>Note: A distance less than this would make it difficult to get a good grasp in an emergency.</i>	Y N N/A
23. Are skylight screens constructed so that they are capable of withstanding a load of at least 200 pounds applied perpendicularly to any area on the screen? <i>Note: Sometimes people get on the roof and fall through skylight screens that are not designed to prevent this type of fall.</i>	Y N N/A
24. Are wall opening barriers (rails, rollers, picket fences, and half doors) constructed and mounted so that the barrier is capable of withstanding a load of at least 200 pounds applied in any direction (except upward) at any point on the top rail or corresponding member?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter C. Hazard Evaluation and Prioritization §2721. Relative Risk Factors

A. Introduction

1. This part of the worksheet enables the instructor to examine each of the potential hazards (the "N" answers) that were identified in Subchapter B of this Chapter 27, Hazard

Identification, and to assign it a value corresponding to its relative risk. Relative risk is usually defined in terms of three factors:

- a. severity
- b. frequency/probability; and
- c. exposure.

2. Each of the factors listed in Subparagraphs a-c is described in Subsections B-D.3 below, and the point values are provided for the corresponding degree of risk.

NOTE: The greater the risk, the higher the point value.

B. Severity. Consider the potential losses or destructive and disruptive consequences that are most likely to occur if any of the hazards that have been identified in Subchapter B of this Chapter 27, Hazard Identification, result in an actual incident. The following point values are suggested.

1. Four Points—Catastrophic:
 - a. loss of life;
 - b. permanent disability;
 - c. loss of entire facility;
 - d. permanent.
2. Three Points—Critical:
 - a. severe injury or illness with lost time;
 - b. major property damage;
 - c. no permanent disability or fatality;
 - d. interruption of activities for extended period of

time.

3. Two Points—Marginal:
 - a. minor injury or illness;
 - b. minor property damage;
 - c. interruption of activities for more than one day.
4. One Point—Negligible:
 - a. probably no injury or illness;
 - b. no loss other than interruption of activities for a short period of time.

C. Frequency/Probability (Likelihood of Occurrence)

1. Consider the probability that a loss would occur. Ask yourself the following key questions.

- a. How likely is it that things will go wrong as a result of the hazard that has been identified?
- b. How often is the activity which creates the hazard performed?
- c. How often is the hazard present?

2. Use the following point values.
 - a. Three Points—high probability of occurrence.
 - b. Two Points—moderate probability of occurrence.
 - c. One Point—low probability of occurrence.

D. Exposure. Consider the number of persons (students and faculty) who could be potentially affected by a worst case scenario caused by each of the potential hazards that have been identified. The following point values are suggested.

1. Three Points—many persons are affected frequently.
2. Two Points—a few persons are affected frequently.
3. One Point—a few persons are affected up to a few times per day.

E. Prioritization. Based on the analysis above, and using the hazard prioritization matrix below, prioritize the hazards identified in Subchapter B of this Chapter and evaluated in §2721.B-D.3.

1. Step One. List each of the hazardous conditions that were identified in Subchapter B of this Chapter 27 in the first column of the worksheet.

2. Step Two. Based on the criteria given above in §2721.B-D.3, assign a point value for each hazard in each of the three columns.

3. Step Three. Add up the point values, horizontally, for each of the hazards.

4. Step Four. Rearrange the hazards that were identified in descending order with the one having the highest total point value first, then the one with the next-highest point value; and so on.

Hazard Prioritization Matrix				
Hazard Identified	Severity	Probability	Exposure	Total Points

5. Step Five. A list has just been developed of the potentially hazardous conditions existing at the school facility based on their relative priority.

F. The items on the prioritized list with the highest point value will generally be those that are most serious, and should receive the greatest attention in terms of resources expended to eliminate it. As with all organizations, especially educational institutions, resources are not without limitations. There is a finite amount of money, time, and personnel available to solve these problems. By prioritizing the hazards and concentrating in order on those with the highest priority, concentration will be on the "worst first." This is the smart way to allocate limited resources. Even though instructors might not get all the way through the list, there will be the satisfaction and peace of mind that comes with dealing with the "really important" problems first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter D. Hazard Control Measures
§2933. Control Categories

A. This Subchapter D is to implement those control measures that will either eliminate or minimize hazards to the point where they will become acceptable. Also, these control measures will be applied to the most serious hazards first, then to the next-most-serious, and so on.

B. Most control measures fall into one or more of three categories. Paragraphs 1-3 below list the three types, and also outline the preferred sequence for applying the controls, as engineering controls are the most effective way to control a hazard, followed by administrative controls and finally by personal protective equipment. Many times, the most effective controls are a blending of all three types. They are:

1. engineering controls;
2. administrative controls; and
3. personal protective equipment (PPE).

C. Engineering Controls. Usually engineering controls are considered the most effective because, if they are successful, they eliminate the hazard, or remove it from the presence of people. When applying engineering controls, look for ways to:

1. design or redesign hazardous situations or equipment;

2. substitute safer materials in the place of dangerous ones; and

3. install guards or other protective devices.

D. Management/Administrative Controls. Management/administrative controls are next in line to be applied in the control of a hazard because they are the direct responsibility of the persons who are operating the facility. In an educational environment, that means the administration and faculty. These controls involve such things as:

1. implementation and enforcement of safe policies and procedures;

2. limitations on the exposure to hazards through work assignments, number of persons involved in an activity, etc.; and

3. similar approaches.

E. Personal Protective Equipment (PPE). The last approach to hazard control involves the use of PPE. This is because PPE does not eliminate the hazard but, rather, only establishes a barrier or shield between the hazard and the exposed person. If the exposed person does not have the correct type of PPE, or does not use it properly, then that person will be exposed to the full effect of the hazard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Chapter 29. Means of Egress/Escape

Subchapter A. General Provisions

§2901. Worksheet Instructions

A. Use this worksheet as a guide to conduct a survey of the instructional facilities. Answer each of the listed questions by circling the answer that applies to the condition at the facility. "Y" indicates "Yes," "N" indicates "No," and "N/A" indicates "Not Applicable." If any of the questions are answered "N" for "No," it is the sign of a condition that may indicate a possible hazard. For every "N" marked, write a brief description of the deficient condition observed in the space provided at the end of the worksheet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter B. General

§2911. Self-Inspection

A. Checklist

	Circle the Appropriate Answer
1. Are exits provided to permit the prompt escape of occupants in case of fire or other emergency?	Y N N/A

	Circle the Appropriate Answer
2. Is every exit, way of approach, and way to travel from the exit to the street continuously maintained and free of all obstructions or impediments? <i>Note: The following items, if they block fire exists, are examples of violations:</i> i. boxes of light tubes; ii. empty boxes; iii. a cart; iv. metal fence posts; v. lawnmowers; vi. steel racks; vii. wood; viii. tools; ix. scales; x. ball racks; xi. soccer balls; xii. stored equipment; xiii. machines on the floor; and xiv. tripping hazards such as electric cords, tools, lumber, and hoses.	Y N N/A
3. Are exits maintained so as to provide free and unobstructed egress or escape when the room is occupied? <i>Note: No locks, chains, or fastenings to prevent free escape from the inside are permitted.</i>	Y N N/A
4. Does every building or area have two exits if one exit could be blocked because of fire, smoke, or other emergency?	Y N N/A
5. Do exits discharge directly onto a street, yard, court, or other open space that gives safe access to a public way?	Y N N/A
6. Do exit doors swing in the direction of travel when an area is occupied by more than 50 people or where hazardous operations are conducted?	Y N N/A
7. Are all exit doors and paths of exit 28 inches or more in width? <i>Note: Examples of violations include a stack of wood restricting the exit to 14 inches, a space of only 17 inches between the desk and the wall, and a space of only 14 inches between desks.</i>	Y N N/A
8. Are means of egress or exit designed and maintained to provide adequate head room, with the ceiling height at least 7 1/2 feet and any projection from the ceiling more than 6 feet 8 inches from the floor?	Y N N/A
9. Is every exit clearly visible and the route to it conspicuously indicated so everyone readily knows the direction of escape from any point?	Y N N/A
10. In areas equipped for artificial illumination, do all exit paths have adequate and reliable illumination?	Y N N/A
11. Are exits prohibited through bathrooms or other rooms subject to locking?	Y N N/A
12. Is storage of flammable or combustible materials in exit corridors prohibited?	Y N N/A
13. Is the use of highly flammable furnishings or decorations prohibited?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

§2913. Exit Marking

A. Exit Signs

	Circle the Appropriate Answer
1. Is access to exits marked by readily visible signs and arrows when the way to reach it is not immediately visible?	Y N N/A
2. Are doors, passage ways or stairways that are neither exits nor a way to an exit, and which can be mistaken for an exit, marked with a sign reading "Not An Exit" or similar designation? <i>Note: Other appropriate markings would be:</i> i. "To Basement"; ii. "To Storeroom"; iii. "To Linen Closet"; iv. etc.	Y N N/A
3. Are exit signs clearly visible, distinctive in color, and easily distinguished from decorations, interior finish, and other signs? <i>Note: The following are prohibited:</i> i. decorations, furnishings or equipment that impair the visibility of exit signs; and ii. any brightly illuminated sign, display, or object in or near the line of vision of the egress sign that detracts attention from the egress sign so that it is not noticeable.	Y N N/A
4. Is every exit sign illuminated by a reliable light source?	Y N N/A
5. In areas where reduction of normal illumination is permitted, are exit signs internally illuminated?	Y N N/A
6. Does every exit sign have the word "Exit" in plain legible letters not less than 6 inches high, with the principal strokes of letters not less than 3/4 inch wide?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter C. Hazard Evaluation and Prioritization

§2923. Relative Risk Factors

A. Introduction

1. This part of the worksheet enables the instructor to examine each of the potential hazards (the "N" answers) that were identified in Subchapter B of this Chapter 29, Hazard Identification, and to assign it a value corresponding to its relative risk. Relative risk is usually defined in terms of three factors:

- a. severity
- b. frequency/probability; and
- c. exposure.

2. Each of the factors listed in Subparagraphs a - c is described in Subsections B-D.3 below, and the point values are provided for the corresponding degree of risk.

NOTE: The greater the risk, the higher the point value.

B. Severity. Consider the potential losses or destructive and disruptive consequences that are most likely to occur if any of the hazards that have been identified in Subchapter B

of this Chapter 29, Hazard Identification, result in an actual incident. The following point values are suggested.

1. Four Points—Catastrophic:
 - a. loss of life;
 - b. permanent disability;
 - c. loss of entire facility;
 - d. permanent.
2. Three Points—Critical:
 - a. severe injury or illness with lost time;
 - b. major property damage;
 - c. no permanent disability or fatality;
 - d. interruption of activities for extended period of time.
3. Two Points—Marginal:
 - a. minor injury or illness;
 - b. minor property damage;
 - c. interruption of activities for more than one day.
4. One Point—Negligible:
 - a. probably no injury or illness;
 - b. no loss other than interruption of activities for a short period of time.

C. Frequency/Probability (Likelihood of Occurrence)

1. Consider the probability that a loss would occur. Ask yourself the following key questions.
 - a. How likely is it that things will go wrong as a result of the hazard that has been identified?
 - b. How often is the activity which creates the hazard performed?
 - c. How often is the hazard present?
2. Use the following point values.
 - a. Three Points—high probability of occurrence.
 - b. Two Points—moderate probability of occurrence.
 - c. One Point—low probability of occurrence.

D. Exposure. Consider the number of persons (students and faculty) who could be potentially affected by a worst case scenario caused by each of the potential hazards that have been identified. The following point values are suggested.

1. Three Points—many persons are affected frequently.
2. Two Points—a few persons are affected frequently.
3. One Point—a few persons are affected up to a few times per day.

E. Prioritization. Based on the analysis above, and using the hazard prioritization matrix below, prioritize the hazards identified in Subchapter B of this Chapter and evaluated in §2923.B-D.3.

1. Step One. List each of the hazardous conditions that were identified in Subchapter B of this Chapter 29 in the first column of the worksheet.
2. Step Two. Based on the criteria given above in §2923.B-D.3, assign a point value for each hazard in each of the three columns.
3. Step Three. Add up the point values, horizontally, for each of the hazards.
4. Step Four. Rearrange the hazards that were identified in descending order with the one having the highest total point value first, then the one with the next-highest point value; and so on.

Hazard Prioritization Matrix				
Hazard Identified	Severity	Probability	Exposure	Total Points

5. Step Five. A list has just been developed of the potentially hazardous conditions existing at the school facility based on their relative priority.

F. The items on the prioritized list with the highest point value will generally be those that are most serious, and should receive the greatest attention in terms of resources expended to eliminate it. As with all organizations, especially educational institutions, resources are not without limitations. There is a finite amount of money, time, and personnel available to solve these problems. By prioritizing the hazards and concentrating in order on those with the highest priority, concentration will be on the "worst first." This is the smart way to allocate limited resources. Even though instructors might not get all the way through the list, there will be the satisfaction and peace of mind that comes with dealing with the "really important" problems first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter D. Hazard Control Measures

§2737. Control Categories

A. This Subchapter D is to implement those control measures that will either eliminate or minimize hazards to the point where they will become acceptable. Also, these control measures will be applied to the most serious hazards first, then to the next-most-serious, and so on.

B. Most control measures fall into one or more of three categories. Paragraphs 1-3 below list the three types, and also outline the preferred sequence for applying the controls, as engineering controls are the most effective way to control a hazard, followed by administrative controls and finally by personal protective equipment. Many times, the most effective controls are a blending of all three types. They are:

1. engineering controls;
2. administrative controls; and
3. personal protective equipment (PPE).

C. Engineering Controls. Usually engineering controls are considered the most effective because, if they are successful, they eliminate the hazard, or remove it from the presence of people. When applying engineering controls, look for ways to:

1. design or redesign hazardous situations or equipment;
2. substitute safer materials in the place of dangerous ones; and
3. install guards or other protective devices.

D. Management/Administrative Controls. Management/administrative controls are next in line to be applied in the control of a hazard because they are the direct responsibility of the persons who are operating the facility. In an

educational environment, that means the administration and faculty. These controls involve such things as:

1. implementation and enforcement of safe policies and procedures;
2. limitations on the exposure to hazards through work assignments, number of persons involved in an activity, etc.; and
3. similar approaches.

E. Personal Protective Equipment (PPE). The last approach to hazard control involves the use of PPE. This is because PPE does not eliminate the hazard but, rather, only establishes a barrier or shield between the hazard and the exposed person. If the exposed person does not have the correct type of PPE, or does not use it properly, then that person will be exposed to the full effect of the hazard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Chapter 31. Ergonomics Worksheet

Subchapter A. General Provisions

§3101. Worksheet Instructions

A. Use this worksheet as a guide to conduct a survey of the instructional facilities. Answer each of the listed questions by circling the answer that applies to the condition at the facility. "Y" indicates "Yes," "N" indicates "No," and "N/A" indicates "Not Applicable." If any of the questions are answered "N" for "No," it is the sign of a condition that may indicate a possible hazard. For every "N" marked, write a brief description of the deficient condition observed in the space provided at the end of the worksheet.

B. Additional guidance material may be found in Appendix G, Ergonomics, in the Safety and Health Manual on the Louisiana Department of Education website (<http://www.doe.state.la.us/lde/index.html>).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter B. Hazard Identification

§3111. Evaluation

A. Physical Stress

	Circle the Appropriate Answer
1. Does the job require contact of fingers or wrist with sharp edges?	Y N N/A
2. Do hand tools or process equipment vibrate the worker's hands, arms, or whole body?	Y N N/A

B. Force

	Circle the Appropriate Answer
1. Does the job require more than 10 pounds of force?	Y N N/A
2. Does the job require using a pinch grip (between thumb and finger)?	Y N N/A
3. Are gloves used, increasing the force needed for motion of the fingers?	Y N N/A
4. Does the job require frequent heavy lifting (> 40 pounds, two hours per day)?	Y N N/A

	Circle the Appropriate Answer
5. Does the job require occasional very heavy lifting (> 50 pounds)?	Y N N/A
6. Does the job require handling items that are difficult to grasp?	Y N N/A

C. Posture

	Circle the Appropriate Answer
1. Does the job require flexion or extension (bending up or down) of the wrist?	Y N N/A
2. Does the job require deviating the wrist side to side (ulnar or radial deviation)?	Y N N/A
3. Is the worker seated while performing the job?	Y N N/A
4. Does the job require "clothes wringing" motion?	Y N N/A
5. Does the job require extended reaches beyond normal arm reach?	Y N N/A
6. Does the job require awkward lifts or carries that are: a. near the floor; b. above the shoulders; or c. far in front of the body?	Y N N/A
7. Does the job require exertion of pushing, pulling, lifting, or lowering forces in awkward positions to side, overhead, or at extended reaches?	Y N N/A
8. Do workers sit on the front edges of chairs?	Y N N/A
9. Is the worker required to maintain the same posture, either sitting or standing, all of the time?	Y N N/A

D. Workstation

	Circle the Appropriate Answer
1. Is the orientation of the work surface nonadjustable?	Y N N/A
2. Does the work surface appear to be too high or too low for many operators?	Y N N/A
3. Is the location of the tool nonadjustable?	Y N N/A
4. Does the job require handling oversized objects that require two-person lifting?	Y N N/A
5. Is there an absence of material handling aids, such as air hoists and scissors tables?	Y N N/A
6. Do workers attempt to modify their chairs or work surfaces by adding cushions or pads?	Y N N/A

E. Repetitiveness

	Circle the Appropriate Answer
1. Does the job require that one motion pattern be repeated at a high frequency?	Y N N/A
2. Is the cycle time for repetitive operations less than 30 seconds?	Y N N/A
3. Is the work pace rapid and not under the operator's control?	Y N N/A

F. Tool Design

	Circle the Appropriate Answer
1. Is the handle too large for the thumb and finger to slightly overlap around a closed grip?	Y N N/A
2. Is the span of the tool's handle less than 5 cm (2 inches)?	Y N N/A
3. Is the handle of the tool made of metal?	Y N N/A
4. Is the weight of the tool greater than 10 pounds?	Y N N/A
5. Are heavy tools lacking devices to suspend some of their weight?	Y N N/A
6. Does the use of the tool require flexion or extension of the wrist (bending up or down)?	Y N N/A
7. Does the tool require ulnar or radial deviation of the wrist (bending to either side)?	Y N N/A

G. Work Environment

	Circle the Appropriate Answer
1. Are housekeeping practices poor, e.g., aisles cluttered, waste on the floor?	Y N N/A
2. Are floors uneven or slippery?	Y N N/A
3. Does the job require frequent (daily) stair or ladder climbing?	Y N N/A
4. Do the work tasks contain significant visual components, requiring good lighting?	Y N N/A
5. Does the worker's eye have to move periodically from dark to light areas?	Y N N/A
6. Is the air temperature uncomfortably hot or cold?	Y N N/A

H. Computer Work Stations

	Circle the Appropriate Answer
1. Are Video Display Terminals (VDT) Stations arranged so that lighting does not reflect directly off the screen?	Y N N/A
2. Do the seat and backrest of the chair support comfortable posture permitting occasional variation in the sitting positions?	Y N N/A
3. Is the seat height adjustable so that the entire sole of the foot rests on the floor or a footrest, and the back of the knee is slightly higher than the seat of the chair?	Y N N/A
4. Is the backrest height adjustable?	Y N N/A
5. Is the backrest angle adjustable?	Y N N/A
6. Is the workstation adjusted so that the wrist is in a straight line, i.e., not bent up or down?	Y N N/A
7. Is the topmost line of the screen slightly below eye level?	Y N N/A
8. Can the screen position be tilted?	Y N N/A
9. Is the document holder positioned at the same height and at the same distance from the viewer as the screen?	Y N N/A
10. Is the work surface large enough to hold all needed reference material (at least 35 inches wide)?	Y N N/A

	Circle the Appropriate Answer
11. Can paper be easily and conveniently loaded into printers without the need for lifting heavy boxes in awkward postures?	Y N N/A
12. Does the screen have color, brightness, and contrast satisfactory with the operator?	Y N N/A
13. Does excessive illumination at the VDT produce glare or distortion of the screen or does low illumination make it difficult to read documents?	Y N N/A
14. Are characters on the screen clear and free of flicker or jitter?	Y N N/A
15. Is there adequate room under the work table to permit movement of operator's legs and footrest where necessary?	Y N N/A
16. Do task schedules allow the operator at least a 15 minute break period during each two-hour period?	Y N N/A

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter C. Hazard Evaluation and Prioritization
§3121. Relative Risk Factors

A. Introduction

1. This part of the worksheet enables the instructor to examine each of the potential hazards (the "N" answers) that were identified in Subchapter B of this Chapter 31, Hazard Identification, and to assign it a value corresponding to its relative risk. Relative risk is usually defined in terms of three factors:

- a. severity
- b. frequency/probability; and
- c. exposure.

2. Each of the factors listed in Subparagraphs a-c is described in Subsections B-D.3 below, and the point values are provided for the corresponding degree of risk.

NOTE: The greater the risk, the higher the point value.

B. Severity. Consider the potential losses or destructive and disruptive consequences that are most likely to occur if any of the hazards that have been identified in Subchapter B of this Chapter 31, Hazard Identification, result in an actual incident. The following point values are suggested.

- 1. Four Points—Catastrophic:
 - a. loss of life;
 - b. permanent disability;
 - c. loss of entire facility;
 - d. permanent.
- 2. Three Points—Critical:
 - a. severe injury or illness with lost time;
 - b. major property damage;
 - c. no permanent disability or fatality;
 - d. interruption of activities for extended period of time.
- 3. Two Points—Marginal:
 - a. minor injury or illness;
 - b. minor property damage;
 - c. interruption of activities for more than one day.
- 4. One Point—Negligible:
 - a. probably no injury or illness;
 - b. no loss other than interruption of activities for a short period of time.

- C. Frequency/Probability (Likelihood of Occurrence)
 - 1. Consider the probability that a loss would occur. Ask yourself the following key questions.
 - a. How likely is it that things will go wrong as a result of the hazard that has been identified?
 - b. How often is the activity which creates the hazard performed?
 - c. How often is the hazard present?
 - 2. Use the following point values.
 - a. Three Points—high probability of occurrence;
 - b. Two Points—moderate probability of occurrence;
 - c. One Point—low probability of occurrence.
- D. Exposure. Consider the number of persons (students and faculty) who could be potentially affected by a worst case scenario caused by each of the potential hazards that have been identified. The following point values are suggested.

- 1. Three Points—many persons are affected frequently;
- 2. Two Points—a few persons are affected frequently;
- 3. One Point—a few persons are affected up to a few times per day.

E. Prioritization. Based on the analysis above, and using the hazard prioritization matrix below, prioritize the hazards identified in Subchapter B of this Chapter and evaluated in §3121.B-D.3.

- 1. Step One. List each of the hazardous conditions that were identified in Subchapter B of this Chapter 31 in the first column of the worksheet.
- 2. Step Two. Based on the criteria given above in §3121.B-D.3, assign a point value for each hazard in each of the three columns.
- 3. Step Three. Add up the point values, horizontally, for each of the hazards.
- 4. Step Four. Rearrange the hazards that were identified in descending order with the one having the highest total point value first, then the one with the next-highest point value; and so on.

Hazard Prioritization Matrix				
Hazard Identified	Severity	Probability	Exposure	Total Points

5. Step Five. A list has just been developed of the potentially hazardous conditions existing at the school facility based on their relative priority.

F. The items on the prioritized list with the highest point value will generally be those that are most serious, and should receive the greatest attention in terms of resources expended to eliminate it. As with all organizations, especially educational institutions, resources are not without limitations. There is a finite amount of money, time, and personnel available to solve these problems. By prioritizing the hazards and concentrating in order on those with the highest priority, concentration will be on the "worst first."

This is the smart way to allocate limited resources. Even though instructors might not get all the way through the list, there will be the satisfaction and peace of mind that comes with dealing with the "really important" problems first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Subchapter D. Hazard Control Measures **§3125. Control Categories**

A. This Subchapter D is to implement those control measures that will either eliminate or minimize hazards to the point where they will become acceptable. Also, these control measures will be applied to the most serious hazards first, then to the next-most-serious, and so on.

B. Most control measures fall into one or more of three categories. Paragraphs 1-3 below list the three types, and also outline the preferred sequence for applying the controls, as engineering controls are the most effective way to control a hazard, followed by administrative controls and finally by personal protective equipment. Many times, the most effective controls are a blending of all three types. They are:

1. engineering controls;
2. administrative controls; and
3. personal protective equipment (PPE).

C. Engineering Controls. Usually engineering controls are considered the most effective because, if they are successful, they eliminate the hazard, or remove it from the presence of people. When applying engineering controls, look for ways to:

1. design or redesign hazardous situations or equipment;
2. substitute safer materials in the place of dangerous ones; and
3. install guards or other protective devices.

D. Management/Administrative Controls. Management/administrative controls are next in line to be applied in the control of a hazard because they are the direct responsibility of the persons who are operating the facility. In an educational environment, that means the administration and faculty. These controls involve such things as:

1. implementation and enforcement of safe policies and procedures;
2. limitations on the exposure to hazards through work assignments, number of persons involved in an activity, etc.; and
3. similar approaches.

E. Personal Protective Equipment (PPE). The last approach to hazard control involves the use of PPE. This is because PPE does not eliminate the hazard but, rather, only establishes a barrier or shield between the hazard and the exposed person. If the exposed person does not have the correct type of PPE, or does not use it properly, then that person will be exposed to the full effect of the hazard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

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

Interested persons may submit written comments until 4:30 p.m., November 9, 2006, 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 1674—Safety Manual for** **Career and Technical Education Programs**

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

The proposed safety manual is not expected to increase the cost of implementing safety programs.

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

The proposed Safety Manual will have no effect on state or local revenue collections.

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

There are no economic costs or benefits to affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Safety training will benefit students by enhancing their employability.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0609#028

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Student Financial Assistance Commission **Office of Student Financial Assistance**

Scholarship/Grant Programs—Application Deadline
(LAC 28:IV.505)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1).

The proposed rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (SG0775NI)

Title 28 **EDUCATION**

Part IV. Student Financial Assistance—Higher **Education Scholarship and Grant Programs** **Chapter 5. Application; Application Deadlines, and** **Proof of Compliance**

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

A.1 - 3. ...

B. Deadline for Payment for the Academic Year (College) Immediately Following High School Graduation

1. Beginning with the 2007-2008 Academic Year (college), to be determined eligible for payment of TOPS

awards for the academic year (college) immediately following the academic year (high school) of high school graduation, students must submit the initial FAFSA or on-line application so that it is received no later than the July 1 immediately following the academic year (high school) of graduation.

2. Beginning with the 2007-2008 Academic Year (college), students will be eligible to receive the full benefits of a TOPS award as provided in §701.E beginning with the academic year (college) immediately after the student's one year anniversary of high school graduation if their initial FAFSA or on-line application is received after the July 1 immediately following the academic year (high school) of high school graduation and no later than the final deadline set forth in Subsection C, below, and the student has met the requirements for continuing eligibility.

3. Examples

a. A 2006-2007 Academic Year (high school) high school graduate, who enrolls in the fall semester of 2007, will be eligible to receive the full benefits of a TOPS award beginning the fall semester of 2007 if his initial FAFSA or on-line application is received on or before July 1, 2007.

b. A 2006-2007 Academic Year (high school) high school graduate, who enrolls during the 2007-2008 Academic Year, will be eligible to receive the full benefits of a TOPS award beginning the fall semester of 2008 if his initial FAFSA or On-Line Application is received after July 1, 2007 and no later than July 1, 2008, and if he has met the requirements for continuing eligibility.

C. Final Deadline for Full TOPS Award

1.a. Except as provided below, through the 2006-2007 Academic Year (college), in order to receive the full benefits of a TOPS award as provided in §701.E, the final deadline for receipt of a student's initial FAFSA or the on-line application is July 1 immediately prior to the academic year (college) he first enrolls as a first-time freshman in an eligible college or university.

b. Beginning with the 2007-2008 Academic Year (college), in order receive the full benefits of a TOPS award as provided in §701.E, the final deadline for receipt of a student's initial FAFSA or on-line application is July 1 immediately prior to the academic year (college) immediately following the one year anniversary of high school graduation.

c.i. Students who graduated from high school during the 2003-2004 Academic Year (high school) and enrolled as a first-time freshman in an eligible college or university during the 2004-2005 Academic Year (college) are eligible to receive the full benefits of a TOPS award as provided in §701.E beginning:

(a). with the 2004-2005 Academic Year (college) if their initial FAFSA or on-line application was received no later than October 29, 2004;

(b). with the 2005-2006 Academic Year (college) if their initial FAFSA or on-line application was received after October 29, 2004, and no later than July 1, 2005, and, if the student enrolled as a full time student during the 2004-2005 Academic Year (college), the student has met the requirements for continuing eligibility.

ii. Students who graduated from high school during the 2003-2004 Academic Year (high school) and enrolled as a first-time freshman in an eligible college or

university beginning the fall semester of 2005 are eligible to receive the full benefits of a TOPS award as provided in §701.E beginning the fall semester of 2005 if their initial FAFSA or on-line application was received no later than July 1, 2005.

iii. Students who graduated from high school during the 2003-2004 Academic Year (high school) and enrolled as a first-time freshman in an eligible college or university during either the 2004-2005 Academic Year (college) or fall semester of 2005 are eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2005, if their initial FAFSA or on-line application was received after July 1, 2005 and no later than October 31, 2005, and, if the student enrolled as a full time student during the 2004-2005 Academic Year (college), the student has met the requirements for continuing eligibility.

d.i. Students who graduated from high school during the 2004-2005 Academic Year (high school) and enrolled as a first-time freshman in an eligible college or university during the 2005-2006 Academic Year (college) will be eligible to receive the full benefits of a TOPS award as provided in §701.E beginning:

(a). with the 2005-2006 Academic Year (college) if their initial FAFSA or on-line application is received no later than October 31, 2005;

(b). with the 2006-2007 Academic Year (college) if their initial FAFSA or on-line application is received after October 31, 2005, and no later than July 1, 2006, and, if the student enrolled as a full time student during the 2005-2006 Academic Year (college), the student met the requirements for continuing eligibility.

ii. Students who graduated from high school during the 2004-2005 Academic Year (high school) and enrolled as a first-time freshman in an eligible college or university beginning the fall semester of 2006 are eligible to receive the full benefits of a TOPS award as provided in §701.E beginning the fall semester of 2006 if their initial FAFSA or on-line application was received no later than July 1, 2006.

iii. Students who graduated from high school during the 2004-2005 Academic Year (high school) and enrolled as a first-time freshman in an eligible college or university during either the 2005-2006 Academic Year (college) or fall semester of 2006 are eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2006, if their initial FAFSA or on-line application was received after July 1, 2006, and no later than October 30, 2006, and, if the student enrolled as a full time student during the 2005-2006 Academic Year (college), the student met the requirements for continuing eligibility.

e.i. Students who graduate from high school during the 2005-2006 Academic Year (high school) and enroll as a first-time freshman in an eligible college or university during the 2006-2007 Academic Year (college) will be eligible to receive the full benefits of a TOPS award as provided in §701.E beginning:

(a). with the 2006-2007 Academic Year (college) if their initial FAFSA or on-line application is received no later than October 30, 2006;

(b). with the 2007-2008 Academic Year (college) if their initial FAFSA or on-line application is received after October 30, 2006, and no later than July 1, 2007, and, if the

student enrolled as a full time student during the 2006-2007 Academic Year (college), the student met the requirements for continuing eligibility.

ii. Students who graduated from high school during the 2005-2006 Academic Year (high school) and enrolled as a first-time freshman in an eligible college or university beginning the fall semester of 2007 are eligible to receive the full benefits of a TOPS award as provided in §701.E beginning the fall semester of 2007 if their initial FAFSA or on-line application was received no later than July 1, 2007.

iii. Students who graduate from high school during the 2005-2006 Academic Year (high school) and enroll as a first-time freshman in an eligible college or university during either the 2006-2007 Academic Year (college) or the fall semester of 2007 are eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2007, if their initial FAFSA or on-line application is received after July 1, 2007, and no later than October 29, 2007, and, if the student enrolled as a full time student during the 2006-2007 Academic Year (college), the student met the requirements for continuing eligibility.

C.2.a. ...

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

3. Examples

a. A 2003-2004 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2004 or spring semester of 2005, will be eligible to receive the full benefits of a TOPS award beginning with the first semester of enrollment as a full-time student if his initial FAFSA or on-line application is received no later than July 1, 2004.

b. A 2003-2004 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2004 or spring semester of 2005, will be eligible for his full TOPS award beginning with the first semester of enrollment as a full-time student if his initial FAFSA or on-line application is received after July 1, 2004, but on or before October 29, 2004.

c. A 2003-2004 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2004 or spring semester of 2005, will be eligible for his full TOPS award beginning with the fall semester of 2005 if his initial FAFSA or on-line application is received after October 29, 2004, but on or before July 1, 2005, and if he has met the requirements for continuing eligibility.

d. A 2003-2004 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2005, will be eligible to receive the full benefits of a TOPS award if his initial FAFSA or on-line application is received no later than July 1, 2005.

e. A 2003-2004 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2005, will be

eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2005 if his initial FAFSA or on-line application is received after July 1, 2005, but on or before October 31, 2005.

f. A 2003-2004 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2005, will not be eligible for a TOPS award if his initial FAFSA or on-line application is received after October 31, 2005.

g. A 2004-2005 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2005 or spring semester of 2006, will be eligible to receive the full benefits of a TOPS award beginning with the first semester of enrollment as a full-time student if his initial FAFSA or on-line application is no received later than July 1, 2005.

h. A 2004-2005 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2005 or spring semester of 2005, will be eligible for his full TOPS award beginning with the first semester of enrollment as a full-time student if his initial FAFSA or on-line application is received after July 1, 2005, but on or before October 31, 2005.

i. A 2004-2005 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2005 or spring semester of 2006, will be eligible for his full TOPS award beginning with the fall semester of 2006 if his initial FAFSA or on-line application is received after October 31, 2005, but on or before July 1, 2006, and if he has met the requirements for continuing eligibility.

j. A 2004-2005 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2006, will be eligible to receive the full benefits of a TOPS award if his initial FAFSA or on-line application is received no later than July 1, 2006.

k. A 2004-2005 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2006, will be eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2006 if his initial FAFSA or on-line application is received after July 1, 2006, but on or before October 30, 2006.

l. A 2004-2005 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2006, will not be eligible for a TOPS award if his initial FAFSA or on-line application is received after October 30, 2006.

m. A 2005-2006 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2006 or spring semester of 2007, will be eligible to receive the full benefits of a TOPS award beginning with the first semester of enrollment as a full-time student if his initial FAFSA or on-line application is received no later than July 1, 2006.

n. A 2005-2006 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2006 or spring semester of 2007, will be eligible for his full TOPS award beginning with the first semester of enrollment as a full-time

student if his initial FAFSA or on-line application is received after July 1, 2006, but on or before October 30, 2006.

o. A 2005-2006 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2006 or spring semester of 2007, will be eligible for his full TOPS award beginning with the fall semester of 2007 if his initial FAFSA or on-line application is received after October 30, 2006, but on or before July 1, 2007, and if he has met the requirements for continuing eligibility.

p. A 2005-2006 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2007, will be eligible to receive the full benefits of a TOPS award if his initial FAFSA or on-line application is received no later than July 1, 2007.

q. A 2005-2006 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2007, will be eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2007 if his initial FAFSA or on-line application is received after July 1, 2007, but on or before October 29, 2007.

r. A 2005-2006 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2007, will not be eligible for a TOPS award if his initial FAFSA or on-line application is received after October 29, 2007.

s. A 2006-2007 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2007 or spring semester of 2008, will be eligible to receive the full benefits of a TOPS award beginning with the first semester of enrollment as a full-time student if his initial FAFSA or on-line application is received no later than July 1, 2007.

t. A 2006-2007 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2007 or spring semester of 2008, will be eligible to receive his full TOPS award beginning with the fall semester of 2008 if his initial FAFSA or on-line application is received after July 1, 2007, but on or before July 1, 2008, and if he has met the requirements for continuing eligibility.

u. A 2006-2007 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2008, will be eligible to receive the full benefits of a TOPS award if his initial FAFSA or on-line application is received no later than July 1, 2008.

v. A 2006-2007 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2008, will be eligible for a reduced TOPS award (See Subsection 505.D, below.) beginning with the fall semester of 2008 if his initial FAFSA or on-line application is received after July 1, 2008, but on or before October 29, 2008.

w. A 2006-2007 Academic Year (high school) high school graduate, who is a first-time freshman at an eligible college or university in the fall semester of 2008, will not be eligible for a TOPS award if his initial FAFSA or on-line application is received after October 29, 2008.

x. A student, who enrolls for the first time as a full time student at an accredited out-of-state college and subsequently returns to Louisiana and enrolls as a full-time student in an eligible college or university for the fall semester of 2006, will be eligible for his TOPS award beginning with the fall semester of 2007 if his initial FAFSA or the on-line application is received no later than July 1, 2007.

4. - 5. ...

D. Final Deadlines for Reduced Awards

1. If an application for an initial award under this Chapter is received after the final deadline provided in §503.C above, but not later than 60 days after that deadline, the time period of eligibility for the award shall be reduced by one semester, two quarters, or an equivalent number of units at an eligible institution which operates on a schedule based on units other than semesters or quarters.

2. If an application for an initial award under this Chapter is received more than 60 days after the final deadline provided in §503.C above, but not later than 120 days after that deadline, the time period of eligibility for the award shall be reduced by two semesters or three quarters, or an equivalent number of units at an eligible institution which operates on a schedule based on units other than semesters or quarters.

D.3 - G ...

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

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

Interested persons may submit written comments on the proposed changes until 4:30 p.m., October 10, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. 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—Application Deadline**

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

Local governmental units will not be affected. It is estimated that the proposed change will increase the expenditure of state general funding for TOPS for \$274,906 for the current fiscal year, SFY 2006-2007, to reimburse students for tuition paid during the 2005-2006 academic year and renew/pay TOPS awards for the 2006-2007 academic year. Since the annual TOPS appropriation is estimated and funded on a more or less basis, this increase should fall within the TOPS estimate because of the limited number of students affected.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

There will be an economic benefit to about 99 students who have been denied a TOPS award solely because their application was received after the deadline since these students will be made eligible for a TOPS award. There are no estimated effects on economic benefits to non-governmental groups resulting from these measures.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no anticipated effects on competition and employment resulting from these measures.

George Badge Eldredge
General Counsel
0609#004

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

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

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Solid Waste regulations, LAC 33:VII.529 (Log #SW041).

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

This 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 VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 5. Solid Waste Management System

Subchapter D. Solid Waste Fees

§529. Annual Monitoring and Maintenance Fee

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

c. for construction or demolition debris deposited at permitted construction or demolition debris facilities (Type III facilities), \$0.20/ton; and the fee is only applicable to construction or demolition debris that is subject to a fee imposed by the facility;

d. for surface impoundments, no tonnage fee;

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

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

B.3. - G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:18 (January 1996), LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:689 (May 2003), LR 29:2051 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

A public hearing will be held on October 25, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by SW041. Such comments must be received no later than November 1, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of SW041. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525

Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Construction and Demolition Debris Tonnage Fee**

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

There will be no implementation costs or savings to state governmental units. Construction or demolition debris landfills operated by local governmental units will be required to pay an annual maintenance and monitoring disposal fee of 20¢ per ton of construction or demolition debris, for which a tipping fee is charged, deposited in the facility, and to submit a solid waste annual disposer report to the department indicating the amount of construction and demolition debris disposed of each year.

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

This rule will generate \$400,000 annually from the 20¢ per ton fee on disposal of construction or demolition debris based on an annual average of approximately two million tons of construction/demolition debris disposed of in landfills in Louisiana over the past several years. An additional \$3.4 million over the next five years is anticipated to be collected from the 20¢ per ton fee on an estimated 17 million tons of construction and demolition debris remaining to be disposed statewide.

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

Persons and industries disposing of construction or demolition debris in these landfills may be required to pay an additional fee, if this cost is passed on to the consumer by the landfill facility.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment.

Herman Robinson, CPM
Executive Counsel
0609#037

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

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

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to adopt the Office of the Secretary regulations, LAC 33:I.801, 803, 805, and 807 (Log #OS054).

Delays in enforcement actions reduce the effectiveness of the department, unnecessarily utilize resources, and slow

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

This 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 1. Departmental Administrative Procedures Chapter 8. Expedited Penalty Agreement

§801. Definitions

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§803. Purpose

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

1. addresses common violations of minor or moderate gravity;

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

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

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

5. ensures expeditious compliance with environmental regulations.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§805. Applicability

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

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

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

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

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

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

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

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

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

c. The violation is easily identifiable and corrected.

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

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

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

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

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

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

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

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

F. Schedule. The respondent must return the signed expedited penalty agreement and payment for the assessed

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

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

H. Additional Rights of the Department

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

§807. Types of Violations and Expedited Penalty Amounts

A. The types of violations listed in the following table may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:1.805.E.

Expedited Penalties			
Violation	Citation	Amount	Frequency
ALL MEDIA			
Failure to provide timely notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition.	LAC 33:1.3917.A	\$500	Per occurrence
Failure to provide prompt notification of any unauthorized discharge that results in the contamination of the groundwaters of the state or that otherwise moves in, into, within, or on any saturated subsurface strata in accordance with LAC 33:1.3923.	LAC 33:1.3919.A	\$500	Per occurrence
Failure to provide timely written notification of the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition.	LAC 33:1.3925.A	\$500	Per occurrence
AIR QUALITY			
40 CFR Part 70 General Permit conditions (Part K, L, M, or R): Failure to timely submit any applicable annual, semiannual, or quarterly reports.	LAC 33:III.501.C.4	\$500	Per occurrence
Failure to submit an Annual Criteria Pollutant Emissions Inventory in a timely and complete manner when applicable.	LAC 33:III.919	\$500	Per occurrence
Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable.	LAC 33:III.5107	\$500	Per occurrence
Control of Fugitive Emissions, sandblasting facilities: Failure to take all reasonable precautions to prevent particulate matter from becoming airborne.	LAC 33:III.1305.A	\$250	Per occurrence
Failure to provide notice of change of ownership within 45 days after the change.	LAC 33:III.517.G	\$200	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report as specified in a minor source permit.	LAC 33:III.501.C.4	\$250	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report (other than those specified elsewhere in this Section) as specified in a Part 70 (Title V) air permit.	LAC 33:III.501.C.4	\$350	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to submit an updated Emission Point List, Emissions Inventory Questionnaire (EIQ), emissions calculations, and certification statement as described in LAC 33:III.517.B.1 within seven calendar days after effecting any modification to a facility authorized to operate under a standard oil and gas permit.	LAC 33:III.501.C.4	\$750	Per occurrence/ emission point
Failure to submit the Title V permit renewal application at least six months prior to the date of expiration, applicable only when the renewal application is submitted prior to permit expiration and a renewal permit is issued on or before the expiration date.	LAC 33:III.507.E.4	\$1,000	Per occurrence
Failure to maintain records for glycol dehydrators subject to LAC 33:III.2116.	LAC 33:III.2116.F	\$250	Per occurrence
Failure to submit an initial perchloroethylene inventory report.	LAC 33:III.5307.A	\$250	Per occurrence
Failure to submit a perchloroethylene usage report by July 1 for the preceding calendar year.	LAC 33:III.5307.B	\$250	Per occurrence
Stage II Vapor Recovery			
Note: LAC 33:III.2132 is only applicable to subject gasoline dispensing facilities in the parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee.			
Failure to submit an application to the administrative authority prior to installation of the Stage II vapor recovery system.	LAC 33:III.2132.B.6	\$500	Per occurrence
Failure to have at least one person trained as required by the regulations.	LAC 33:III.2132.C	\$300	Per occurrence
Failure to test the vapor recovery system prior to start-up of the facility and annually thereafter.	LAC 33:III.2132.D	\$750	Per occurrence
Failure to post operating instructions on each pump.	LAC 33:III.2132.E	\$100	Per occurrence
Failure to maintain equipment and tag defective equipment "out of order."	LAC 33:III.2132.F.1 and 3-4	\$500	Per inspection
Failure to perform daily inspections and accurately record results.	LAC 33:III.2132.F.2	\$300	Per inspection
Failure to maintain records on-site for at least two years and present them to an authorized representative upon request.	LAC 33:III.2132.G.1-7	\$300	Per compliance inspection
Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site.	LAC 33:III.905	\$100	Per occurrence
HAZARDOUS WASTE			
Used Oil			
Failure of a used oil generator to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4013.E	\$500	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure of a used oil transfer facility to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4035.H	\$500	Per occurrence
Failure of a used oil processor or re-refiner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4049.G	\$500	Per occurrence
Failure of a used oil burner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4069.G	\$500	Per occurrence
SOLID WASTE			
Failure to report any discharge, deposit, injection, spill, dumping, leaking, or placing of solid waste into or on the water, air, or land.	LAC 33:VII.315.K	\$500	Per occurrence
Waste Tires			
Storage of more than 20 whole tires without authorization from the administrative authority.	LAC 33:VII.10509.B	\$200	Per occurrence
Transporting more than 20 tires without first obtaining a transporter authorization certificate.	LAC 33:VII.10509.C	\$200	Per occurrence
Storing tires for greater than 365 days.	LAC 33:VII.10509.E	\$200	Per occurrence
Failure to maintain all required records for three years on-site or at an alternative site approved in writing by the administrative authority.	LAC 33:VII.10509.G	\$200	Per occurrence
Failure to obtain a waste tire generator identification number within 30 days of commencing business operations.	LAC 33:VII.10519.A	\$300	Per occurrence
Failure to accept one waste tire for every new tire sold unless the purchaser chooses to keep the waste tire.	LAC 33:VII.10519.B	\$100	Per occurrence
Failure to remit waste tire fees to the state on a monthly basis as specified.	LAC 33:VII.10519.D	\$100	Per occurrence
Failure to post required notifications to the public.	LAC 33:VII.10519.E	\$100	Per occurrence
Failure to list the waste tire fee on a separate line on the invoice so that no tax will be charged on the fee.	LAC 33:VII.10519.F	\$100	Per occurrence
Failure to keep waste tires or waste tire material covered as specified.	LAC 33:VII.10519.H	\$200	Per occurrence
Failure to segregate waste tires from new or used tires offered for sale.	LAC 33:VII.10519.M	\$200	Per occurrence
Failure to provide a manifest for all waste tire shipments containing more than 20 tires.	LAC 33:VII.10533.A	\$200	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to maintain completed manifests for three years and have them available for inspection.	LAC 33:VII.10533.D	\$200	Per occurrence
Failure to collect appropriate waste tire fee for each new tire sold.	LAC 33:VII.10519.C, 10535.B	\$200	Per occurrence
Failure to submit application and fees for transporter authorization.	LAC 33:VII.10523.A	\$300	Per occurrence
Failure to use a manifest when transporting greater than 20 waste tires.	LAC 33:VII.10523.C	\$200	Per occurrence
Failure of transporter to transport all waste tires to an authorized collection center or a permitted processing facility.	LAC 33:VII.10523.D	\$300	Per occurrence
Failure of out-of-state or out-of-country transporter to comply with state waste tire regulations.	LAC 33:VII.10523.E	\$200	Per occurrence
Failure to provide notification in writing within 10 days when any information on the authorization certificate form changes, or if the business closes and ceases transporting waste tires.	LAC 33:VII.10523.G	\$100	Per occurrence
Failure by a collector or collection center to follow the requirements for receipt of tires.	LAC 33:VII.10527.A	\$200	Per occurrence
Failure of collection center operator to meet the standards in LAC 33:VII.10525.D.1-10 and 12-24.	LAC 33:VII.10527.B	\$300	Per occurrence
Failure of recycler to provide notification of its existence and obtain an identification number.	LAC 33:VII.10531.A	\$300	Per occurrence
Failure of waste tire or waste tire material recycler to meet the requirements of LAC 33:VII.10525.D.	LAC 33:VII.10531.B	\$300	Per occurrence
Failure to follow the requirements for manifest discrepancies.	LAC 33:VII.10533.C	\$300	Per occurrence
WATER QUALITY			
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit.	LAC 33:IX.2701.A	\$200 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit.	LAC 33:IX.2701.A	\$300 and completion of a department-sponsored compliance class	10 or fewer violations

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

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to submit a Notice of Intent for coverage under the LAR050000 or LAR100000 LPDES Storm Water General Permit.	LAC 33:IX.2511.C.1	\$1,000	Per occurrence
Unauthorized discharge of oil field wastes, including produced water.	LAC 33:IX.1901.A	\$1,000	Per occurrence
Unauthorized discharge of oily fluids.	LAC 33:IX.1701.B	\$1,000	Per occurrence
UNDERGROUND STORAGE TANKS			
Failure to register an existing or new UST containing a regulated substance.	LAC 33:XI.301.A-B	\$300	Per inspection
Failure to certify and provide required information on the department's approved registration form.	LAC 33:XI.301.B.1-2	\$300	Per inspection
Failure to provide notification within 30 days after selling a UST system or acquiring a UST system; failure to keep a current copy of the registration form on-site or at the nearest staffed facility.	LAC 33:XI.301.C.1-3	\$300	Per inspection
Failure to provide corrosion protection to tanks that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.1	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to provide corrosion protection to piping that routinely contains regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$250 and completion of a department-sponsored compliance class	Per inspection
Failure to provide corrosion protection to flex hoses and/or sub-pumps that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$100 and completion of a department-sponsored compliance class	Per inspection
Failure to provide spill and/or overflow prevention equipment as specified.	LAC 33:XI.303.B.3	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to upgrade an existing UST system to new system standards as specified.	LAC 33:XI.303.C	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to pay fees by the required date.	LAC 33:XI.307.D	\$200	Per inspection
Failure to report, investigate, and/or clean up any spill and overflow.	LAC 33:XI.501.C	\$1,500	Per inspection

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:

A public hearing will be held on October 25, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS054. Such comments must be received no later than November 1, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS054. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Expedited Penalty Agreement

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

The pilot Expedited Penalty Agreement program has produced a significant decrease in the backlog of enforcement action referrals for the categories of violations this proposed rule addresses. Many of the enforcement referrals for minor and moderate violations were not previously addressed in a timely manner due to more complex enforcement issues taking precedence. The ability to address these classes of violations with the expedited enforcement process has resulted in savings in staff time and paperwork for this department.

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

No significant effect on revenue will occur as a result of this proposed rule. The violations addressed by the expedited enforcement process are for minor to moderate class violations. The expedited enforcement process is designed to assess lower penalties for specific violations and bring about compliance promptly.

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

No new costs will occur as a result of this proposed rule. The expedited enforcement process could benefit regulated entities by reducing staff time and cost due to a reduction in paperwork response and legal fees addressing formal enforcement actions, thereby making available more time and funds for compliance with environmental violations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment will result from this proposed rule.

Herman Robinson, CPM
Executive Counsel
0609#038

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Board of Certified Public Accountants

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

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and of the Louisiana Accountancy Act, R.S. 37:74, the Board of Certified Public Accountants of Louisiana hereby provides notice of its intent to amend LAC 46:XIX.505, 1105, 1301, 1501, 1700, 1701, 1703, 1705 and 1707. The objective of these revisions is to facilitate recognition of CPA exam passing grades of candidates of other states who seek to be licensed in Louisiana; to allow another method of reinstating an expired CPA license by completing board-approved continuing professional education (CPE); to allow CPE required of new licensees to be completed at any time in their first three-year CPE compliance period; to require that

certain information appear on CPA firm websites; and, to update rules of professional conduct in accordance with regulatory trends. The action is necessary in order to update these rules or to align them with corresponding requirements or standards of other state and national regulatory authorities and organizations that also impose requirements upon certified public accountants. No preamble has been prepared with respect to the revised rules which appear below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XIX. Certified Public Accountants

Chapter 5. Qualifications; Education and Examination

§505. Examination

A. - F.5. ...

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

a. - b. ...

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

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

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

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:6 (January 1980), amended LR 9:208 (April 1983), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:1119 (September 1997), LR 26:1970 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 29:1475 (August 2003), amended LR 32:

Chapter 11. Issuance and Renewal of Certificate

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

A. - C.6. ...

D. Reinstatement of Certificate of Certified Public Accountant

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

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

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

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

a. two hours of Ethics, including the board's Rules of Professional Conduct (LAC46:XIX.Chapter 17) or other Ethics program that is approved by the board, and

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

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

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

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

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

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

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

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

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended LR 9:209 (April 1983), LR 11:758 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:1124 (September 1997), LR 26:1974 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:

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

§1301. Basic Requirements

A. - D. ...

E. Effective Date

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

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

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

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

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

F. - F.1. ...

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:4 (January 1980), amended LR 9:208 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 15:614 (August 1989), LR 23:1116 (September

1997), LR 26:1976 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:

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

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

A. - E.5. ...

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

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

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

Chapter 17. Rules of Professional Conduct

§1700. General

A. - A.4. ...

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

Attest Engagement Team—firm owners, employees, and contractors participating in an attest engagement, including those who perform concurring and second reviews, irrespective of classification (e.g., audit, tax, advisory, consulting), but excluding specialists referenced in SAS No. 73 and those performing only routine clerical functions.

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

Close Relatives—parent, sibling, or nondependent child.

Covered Licensee—

- a. individual on the attest engagement team;
- b. individual in a position to influence the attest engagement;
- c. firm owner or manager who provides nonattest services to the attest client beginning once he or she provides 10 hours of such services within any fiscal year and ending on the later of the date:
 - i. the firm signs the report on the financial statements for the fiscal year during which those services were provided; or
 - ii. he or she no longer expects to provide 10 or more hours of nonattest services to the attest client on a recurring basis;
- d. firm owner in the office in which the lead attest engagement practitioner primarily practices in connection with the attest engagement;
- e. the firm, including its employee benefit plans; or
- f. an entity whose operating, financial, or accounting policies can be controlled by any of the individuals or entities described in Subparagraphs a through

e or by two or more such individuals or entities if they act together;

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

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

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

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

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

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

Permitted Personal Loans—

- a. automobile loans and leases collateralized by the automobile;
- b. loans of the surrender value of an insurance policy;
- c. borrowing fully collateralized by cash deposits at the same institution;
- d. credit cards, overdraft reserve accounts, and cash advances on checking accounts with an aggregate unpaid balance of \$10,000 or less, provided that these are obtained from a financial institution under its normal lending procedures, terms, and requirements and are at all times kept current as to all terms.

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

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

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

§1701. Independence, Integrity and Objectivity

A. Independence

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

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

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

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

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

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

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

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

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

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

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

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

2. With respect to a covered licensee's relatives, independence may be impaired depending on the nature of the financial interest, relationships, the strength of the family bond which depends on the degree of closeness, the

employment or audit sensitive activities of the individuals, or whether the individuals have significant influence over the engagement or the client, as applicable to the circumstances. Therefore, §1701.A.1 is applicable and independence would be impaired in the same manner as to the covered licensee, with respect to the following relatives:

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

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

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

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

B. - B.2. ...

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

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1114 (September 1997), LR 26:1983 (September 2000), repromulgated

LR 26:2240 (October 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:

§1703. Competence and Professional Standards

A. Definition

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

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

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

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

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

§1705. Responsibilities to Clients

A. - A.2. ...

B. Records

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§1707. Other Responsibilities and Practices

A. - A.11. ...

B. Acting through Others

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

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

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

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

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

d. affiliated entities for purpose of this rule refers to entities which offer to clients or the public professional services or products related to the skills associated with

CPAs. Conversely, entities that offer services or products that do not relate to matters of accounting and financial reporting, tax, finance, investment advice or financial planning, management, or consultation are excluded;

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

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

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

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

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

C. - I. ...

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

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 3:308 (July 1977), amended 4:358 (October 1978), LR 6:3 (January 1980), LR 9:207 (April 1983), amended by the Department of Economic

Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:1115 (September 1997), LR 26:1985 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:

Family Impact Statement

Implementation of the proposed Rule will have no known effect upon family stability, functioning, earnings, budgeting; the responsibility and behavior of children; or, upon parental rights and authority, as set forth in R.S. 49:972.

All interested persons may submit written comments through October 20, 2006, to Michael A. Henderson, Executive Director, State Board of Certified Public Accountants of Louisiana, 601 Poydras Street, Suite 1770, New Orleans, LA 70130.

A public hearing on the proposed Rule will be held on October 23, 2006, at 3 p.m. at the board's offices, 601 Poydras Street, Suite 1770, New Orleans, LA 70130. Interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at the hearing.

Michael A. Henderson
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Transfer of Grades, Reinstatements, Internet Practice, CPE and Rules of Professional Conduct

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

No costs or savings to governmental units are anticipated as a result of implementation of the proposed rule changes other than one-time costs for publication and dissemination.

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

The Board of CPAs application and license renewal fee revenue is estimated to increase by \$1,000 to \$2,700 per year as more applicants for licenses may be approved from the expanded recognition of exam grades from out of state applicants and from reinstatements of expired licenses by applicants who complete specific continuing professional education.

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

Transfer of grade license applicants, who would not have otherwise qualified for a Louisiana license because they passed the CPA exam in another state that had different exam passing requirements, will benefit by being able to obtain a Louisiana CPA license under the change allowing recognition of such grades. Applicants for reinstatement of an expired license will be able to qualify for a license with pre-approved continuing education even if they have not been recently employed or employed by a licensee. Rules of professional conduct are being changed to closely conform to professional standards and regulations of other state and national organizations. Thus, licensees in public practice will benefit as it will be less burdensome to comply with rules of conduct when more than one agency or organization's rules apply to an engagement. CPA firms who have ownership interests in other separate affiliated entities will have guidance on when it is necessary to obtain firm permits for these affiliated entities or how to otherwise comply with regulations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Persons formerly licensed who have been out of the workforce, or who have not been working for a licensed CPA, will not need to have recent qualifying experience in order to reinstate an expired license. Instead, they will be able to complete specific continuing professional education to qualify for a current license and to re-enter the public accounting field.

Michael A. Henderson, CPA
Executive Director
0609#027

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

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

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the PPO, EPO, and MCO plan documents to require prior authorization for hyperbaric oxygen therapy in order to identify unnecessary or inappropriate uses before the expenses are incurred. The proposed Rule has no known impact on family formation, stability, or autonomy.

Title 32

EMPLOYEE BENEFITS

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

Chapter 3. Medical Benefits

§309. Outpatient Procedure Certification (OPC)

- A. - B. ...
 - 1. cataract; and
 - 2. hyperbaric oxygen therapy.
 - 3. - 7. repealed.
- C. ...
- D. repealed.

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

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

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

Chapter 3. Medical Benefits

§309. Outpatient Procedure Certification (OPC)

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

D. repealed.

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

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

**Part IX. Managed Care Option (MCO) Plan of Benefits
Chapter 3. Medical Benefits**

§309. Outpatient Procedure Certification (OPC)

- A. - B.7 ...
 - 8. hyperbaric oxygen therapy.
- C. ...

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:891 (June 2003), amended LR 32:

Interested persons may present their views, in writing, to Tommy D. Teague, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Monday, October 23, 2006.

Tommy D. Teague
Chief Executive Officer

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

**RULE TITLE: PPO, EPO, and MCO Plans of Benefits
Hyperbaric Oxygen Therapy**

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

This rule is to amend and update the current PPO, EPO, and MCO Plan of Benefits to require pre-certification of Hyperbaric Oxygen Therapy to avoid the application of this therapy for procedures where it has not been found to be effective for treatment. While the cost savings for this change will be minimal this change will protect against potential misuse of this therapy and the potential for higher costs. It is anticipated \$3,000 in expenses will be incurred with the publishing of this rule in FY 06/07.

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

Revenue collections of State or Local Governmental units should not be affected by this rule.

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

This rule is to amend and update the current PPO, EPO, and MCO Plan of Benefits to require pre-certification of Hyperbaric Oxygen Therapy to avoid the application of this therapy for procedures where it has not been found to be effective for treatment. The actuary for OGB, Mercer Health Benefits, estimates that initial cost avoidance may be small (less than \$50,000) as a result of the proposed rule change but the long term effect will provide protection against possible misuse of Hyperbaric Oxygen Therapy and the higher costs associated with such misuse.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

Tommy D. Teague
Chief Executive Officer
0609#030

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Office of Group Benefits

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

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

Title 32

EMPLOYEE BENEFITS

Part III. Preferred Provider Organization (PPO)

Plan of Benefits

Chapter 3. Medical Benefits

§323. Prescription Drug Benefits

A. - C.4. ...

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

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

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

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

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

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

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

iv. Once the out-of-pocket threshold for *eligible expenses* for prescription drug is reached, the *plan member's* co-payment responsibility for brand drugs on the Pharmacy Benefits Manager's list of preferred drugs will be \$15 for a 1-30 days supply, \$30 for a 31-60 days supply, and \$45 for a

61-90 days supply, with no co-pay for up to a 90-days supply of generic drugs.

6. - 7. ...

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

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

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

Chapter 3. Medical Benefits

§325. Prescription Drug Benefits

A. - C.4. ...

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

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

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

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

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

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

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

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

6. - 7. ...

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

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

Part IX. Managed Care Option (MCO) Plan of Benefits Chapter 3. Medical Benefits

§323. Prescription Drug Benefits

A. - C.4. ...

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the

prescription benefits manager, including the following limitations.

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

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

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

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

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

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

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

6. - 7. ...

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:893 (June 2003), amended LR 32:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, except as follows: It will increase the out-of-pocket costs paid OGB plan participants who utilize prescription drug benefits.

Interested persons may present their views, in writing, to Tommy D. Teague, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Monday, October 23, 2006.

Tommy D. Teague
Chief Executive Officer

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

**RULE TITLE: PPO, EPO, and MCO Plans of Benefits
Prescription Drug Benefits Dispensing Limits**

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

This rule change is to amend the PPO, EPO, and MCO Plan of Benefits limit prescription drugs to be filled for 30, 60, or 90 days supply rather than the current 34, 68, or 102 days supply while utilizing the same co-payment structure. It is estimated this rule change will save to PPO, EPO, and MCO plans of OGB approximately \$225,000 in FY 06/07, \$450,000 in FY

07/08 and \$450,000 in FY 08/09. The reason for this action is to reduce waste and bring OGB into line with current insurance standards. This rule is not to restrict or prevent the filling of prescriptions. It is anticipated \$3,000 in expenses will be incurred with the publishing of this rule in FY 06/07.

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

Revenue collections of State or Local Governmental units should not be affected by this rule.

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

This rule modifies and updates the PPO, EPO, and MCO Plan of Benefits to provide for the filling of prescription drugs in 30, 60, or 90 days supply as opposed to the current 34, 68, or 102 days supply. This rule change may cause some members to get a smaller days supply for the same co-payment.

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

Competition and employment will not be affected.

Tommy D. Teague
Chief Executive Officer
0609#031

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Office of Homeland Security and
Emergency Preparedness**

Mandatory Evacuation of Designated Persons
by Local Government in Advance of Hurricanes
(LAC 55:XXI.Chapters 1 and 3)

Under the authority of R.S. 29:727(E)(13) and in accordance with R.S. 49:950 et seq., notice is hereby given that the Governor's Office of Homeland Security and Emergency Preparedness proposes to adopt regulations that provide for emergency assessments, evacuation, and sheltering plans. A preamble which explains the basis and rationale for the intended action and summarizes the information has been prepared and may be obtained upon written request to the Governor's Office of Homeland Security and Emergency Preparedness, 7667 Independence Boulevard, Baton Rouge, LA 70806.

**Title 55
PUBLIC SAFETY**

**Part XXI. Homeland Security and Emergency
Preparedness**

**Chapter 1. General Provisions
§101. Overview**

A. Act 35 of the First Extraordinary Session of 2006, effective on March 1, 2006, established the Governor's Office of Homeland Security and Emergency Preparedness in R.S. 29:725.

B. Revised Statutes 29:727(E)(13) added by Act 36 of the First Extraordinary Session of 2006, effective February 23, 2006, requires the Office of Homeland Security and Emergency Preparedness, prior to May 31, 2006 to promulgate standards and regulations in accordance with the Administrative Procedure Act for local governments when a mandatory evacuation has been ordered for evacuation of people located in high risk areas utilizing all available modes of transportation, including but not limited to school and

municipal buses, government-owned vehicles, vehicles provided by volunteer agencies, trains and ships in advance of the storm to public shelters located outside of the risk area with priority consideration being given to the special needs of the following classes of people:

1. people with specific special needs such as the elderly and the infirm;
2. tourists;
3. those who refuse to leave;
4. those without personal transportation.

C. Revised Statutes 29:727(E)(14) added by Act 36 of the First Extraordinary Session of 2006, effective February 23, 2006, requires the Office of Homeland Security and Emergency Preparedness, prior to May 31, 2006 to promulgate standards and regulations in accordance with the Administrative Procedure Act for local governments when a mandatory evacuation has been ordered for the evacuation or safe housing of essential workers located in high risk areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§103. Goals and Objectives

A. The goals of these regulations are:

1. to protect citizens who cannot protect themselves when threatened or endangered by an approaching hurricane;
2. to reduce loss of life due to impediments to self-evacuation from an approaching hurricane;
3. to protect essential workers whose jobs require that they remain in harm's way before, during and after a hurricane; and
4. to protect personal liberty while preserving law and order in areas evacuated due to imminent threat of a hurricane.

B. The objectives of these regulations are:

1. to identify the population which lacks means to self-evacuate;
2. to identify and provide for the use of available transportation resources for use by local governments during mandatory evacuations;
3. to identify and provide means of protection for essential workers whose employment or commission requires that they remain in areas susceptible to damage and destruction wrought by hurricanes; and
4. to provide for establishment of rules by local government for citizens in high risk areas who refuse to leave when a mandatory evacuation is ordered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§105. Definitions

At Risk Population—people who fall within the following non-exclusive categories:

1. those without means of personal transportation;
2. the infirm who are not living in a public or private health care facility;
3. nursing home residents;
4. private hospital patients;
5. other special needs who are not confined to a health care facility;

6. hotel and motel guests.

High Risk Area—any parish that is located in whole or in part below Interstate 10 or Interstate 12 in the state of Louisiana.

Local Government—a parish and municipality of the state of Louisiana.

Essential Worker—persons working in public safety, government, disaster response, health care, or private business as designated and deemed necessary and/or critical for disaster response by their employer or by virtue of their official commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

Chapter 3. Risk Assessment

§301. Biennial Risk Assessment

A. Every parish and municipality shall perform a biennial risk assessment for the at risk population with the results thereof to be provided to the Governor's Office of Homeland Security on or before December 1, 2006, and on or before that date every second year thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§303. Evacuating and Sheltering Private Nursing Home Residents

A. The evacuation and sheltering of private nursing home residents and private hospital patients is and shall remain the primary responsibility of the host health care facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§305. Municipal Risk Assessment

A. The municipal risk assessment shall consist of a survey of the people living within the corporate limits to identify the people in each category of the at risk population defined herein and the essential workers as defined herein, and to determine whether the individuals so identified may need sheltering in a general population shelter or a special needs shelter as those terms are defined by the Louisiana Department of Health and Hospitals. The results of the municipal survey shall be furnished to the parish Office of Homeland Security and Emergency Management established pursuant to R.S. 29:727(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§307. Parish Risk Assessment

A. The parish risk assessment shall consist of a survey of the people living outside the corporate limits of any municipality to identify the people in the each category of the at risk population defined herein and the essential workers as defined herein, and to determine whether the individuals so identified may need sheltering in a general population shelter or a special needs shelter as those terms

are defined by the Louisiana Department of Health and Hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§309. Transportation

A. Every parish and municipality shall prepare an inventory of all available modes of transportation, including but not limited to school and municipal buses, government-owned vehicles, vehicles provided by volunteer agencies, trains and ships for use in a mandatory evacuation. A copy of the municipal inventory shall be provided to the parish office of homeland security and emergency management established pursuant to R.S. 29:727(B). A copy of the combined parish and municipal inventory shall be submitted biennially beginning on or before December 1, 2006, and on or before that date in every second year thereafter to the Governor's Office of Homeland Security and Emergency Management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

§311. Evacuation and Sheltering Plan

A.1. The parish Office of Homeland Security and Emergency Management established pursuant to R.S. 29:727(B), using the combined list of at risk population and essential workers and the combined list of available means of transportation, shall develop an evacuation and sheltering plan for each category of at risk population to include at a minimum:

- a. use of available means of transportation for evacuation of at risk population;
- b. means of notification of the at risk population of a mandatory evacuation;
- c. means of notification of at risk population of available transportation;
- d. determination of individuals and facilities where risk of sheltering in place outweighs the risk of loss of life during the evacuation process;
- e. coordination of transportation resources with a shelter destination outside of the impact area;
- f. provisions for medical emergencies which occur during the evacuation process;
- g. ways and means to execute the evacuation and sheltering plan within 36 hours of declaration of voluntary evacuation and within 12 hours of declaration of mandatory evacuation.

2. The plan shall be submitted to GOHSEP on or before March 1, 2007. Early compliance is encouraged.

B. The parish Office of Homeland Security and Emergency Management shall develop an evacuation and sheltering plan for essential workers which shall include at a minimum provisions for food, water, and shelter for at least 72 hours post landfall of any hurricane.

C. Each parish and municipality shall make provisions for those citizens who refuse to leave when a mandatory evacuation is ordered, which provisions shall respect the rights of personal liberty and freedom of all citizens, while protecting and preserving law and order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 32:

Family Impact Statement

Pursuant to R.S. 49:972, the proposed rules promote family stability by providing for the safety and welfare of all citizens who reside in areas at risk for hurricanes and provides for local government to have plans for the evacuation of at risk populations using all available means of available transportation. The proposed Rule provides for the care of persons in need and have little or no impact on the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and budget, or the behavior and personal responsibility of children. Local governments are required by the Louisiana Disaster Act to provide for the evacuation of its citizens in times of emergency or disaster. The proposed Rule designates certain provisions for the local plans, in accordance with the mandates of Act 26 of the 2006 First Extraordinary Session of the Legislature.

The person responsible for responding to inquiries about the intended action is Col. Perry "Jeff" Smith, Acting Director of the Governor's Office of Homeland Security and Emergency Preparedness. Inquiries must be made in writing and received by October 10, 2006 in care of the Governor's Office of Homeland Security and Emergency Preparedness, 7667 Independence Boulevard, Baton Rouge, LA 70806.

Interested persons may present their views thereon in person on November 16, 2006 at 10 a.m. at the Governor's Office of Homeland Security and Emergency Preparedness, 7667 Independence Boulevard, Baton Rouge, LA.

Col. Perry "Jeff" Smith, CPA
Acting Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Mandatory Evacuation of Designated Persons by Local Government in Advance of Hurricanes

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There are no implementation costs or savings associated with this rule change.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no anticipated effect on revenue collections of state or local governmental units associated with this rule change. This action places into rule activities that are already performed by the parish offices.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed rule change will have no impact on directly affected person or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated impact on competition and employment.

Col. Perry "Jeff" Smith, CPA
Acting Director
0609#068

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Medical Examiners

Emergency Temporary Permits (LAC 46:XLV.412)

Notice is hereby given in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950, et seq., that pursuant to the authority vested in the Louisiana State Board of Medical Examiners (the "board") by the Louisiana Medical Practice Act, R.S. 37:1270(B) and 37:1275, the Louisiana Health Emergency Powers Act, R.S. 29:769(E), as amended by Act 207 of the Regular Session of Louisiana Legislature, and as the board is authorized with respect to the practice in this state: as a physician pursuant to R.S. 37:1261-1291; as an athletic trainer pursuant to R.S. 37:3301 through 3312; as a clinical exercise physiologist pursuant to R.S. 37:3421 through 3433; as a clinical laboratory scientist pursuant to R.S. 37:1311 through 1329; as a midwife pursuant to R.S. 37:3240 through 3257; as an occupational therapist or occupational therapy assistant pursuant to R.S. 37:3001 through 3014; as a perfusionist pursuant to R.S. 37:1331 through 37:1343; as a physician assistant pursuant to R.S. 37:1360.21 through 1360.38; as a podiatrist pursuant to R.S. 37:611 through 628; as a polysomnographic technologist or polysomnographic technician pursuant to R.S. 37:2861 through 2870; as a private radiological technologist pursuant to R.S. 37:1292; or as a respiratory therapist or respiratory therapy assistant pursuant to R.S. 37:3351 through 3361, the board intends to adopt LAC Title 46:XLV, Subpart 2, Chapter 3, Subchapter H, §412.

The proposed Rule creates and details the process whereby which the board may issue emergency temporary permits to physicians and allied health care practitioners, who hold a current, unrestricted license or other authority to practice their profession in another state, to provide emergency medical services in Louisiana during a public health emergency, as declared by the governor of this state, and thereafter for such period as the Louisiana Department of Health and Hospitals deems the need for such services continues to exist.

The proposed amendment has no known impact on family formation, stability or autonomy as described in R.S. 49:972.

This Rule is currently in effect as an Emergency Rule adopted by the board on July 17, 2006, effective July 21, 2006 and for 120 days thereafter or until adoption of a final Rule, whichever occurs first.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 3. Physicians

Subchapter H. Restricted Licensure, Permits

§412. Emergency Temporary Permits

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

Allied Health Care Practitioner—an individual, other than a physician, authorized by the board to practice in this state as an athletic trainer pursuant to R.S. 37:3301 through 3312; as a clinical exercise physiologist pursuant to R.S.

37:3421 through 3433; as a clinical laboratory scientist pursuant to R.S. 37:1311 through 1329; as a midwife pursuant to R.S. 37:3240 through 3257; as an occupational therapist or occupational therapy assistant pursuant to R.S. 37:3001 through 3014; as a perfusionist pursuant to R.S. 37:1331 through 37:1343; as a physician assistant pursuant to R.S. 37:1360.21 through 1360.38; as a podiatrist pursuant to R.S. 37:611 through 628; as a polysomnographic technologist or polysomnographic technician pursuant to R.S. 37:2861 through 2870; as a private radiological technologist pursuant to R.S. 37:1292; or as a respiratory therapist or respiratory therapy assistant pursuant to R.S. 37:3351 through 3361.

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

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

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

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

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

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

a. indisputable personal identification;

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

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

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

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

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

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

F. An emergency temporary permit entitles the holder to engage in the practice of his profession in the state of Louisiana only for the period specified by such permit and

creates no right or entitlement to licensing, registration, certification or renewal of the permit after its expiration.

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

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

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

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

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

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

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

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

Interested persons may submit written data, views, arguments, information or comments on the proposed Rule until 4 p.m., October 12, 2006, to Rita Arceneaux, Executive Assistant, Louisiana State Board of Medical Examiners, at Post Office Box 30250, New Orleans, LA, 70190-0250 (630 Camp Street, New Orleans, LA, 70130).

Robert Marier, M.D.
Executive Director

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

RULE TITLE: Emergency Temporary Permits

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

Other than notice and rule publication costs estimated at a combined total of \$556, which costs will be absorbed within the board's budget during FY 2006-FY 2007, it is not anticipated that the proposed rule will result in any additional costs or savings to the board or any other state or local governmental unit.

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

There will be no effect on the board's revenue collections or those of any other state or governmental unit.

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

The proposed rule creates and details the process whereby which the board may issue emergency temporary permits to physicians and allied health care practitioners, who hold a current, unrestricted license or other authority to practice their profession in another state, to provide emergency medical services in Louisiana during a public health emergency, as declared by the Governor of this state, and thereafter for such period as the Louisiana Department of Health and Hospitals deems the need for such services continues to exist. The board does not anticipate that implementation of the proposed rule will result in any costs or impose an adverse economic impact on licensees, volunteers or any other non-governmental group. Louisiana citizens and others located in this state who receive health care services from individuals issued emergency temporary permits under the proposed rule will receive an economic benefit as it is anticipated that most, if not all, of the services rendered will be provided free of charge.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rule will have any material impact on competition or employment in either the public or private sector.

Robert Marier, M.D.
Executive Director
0609#040

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

The Louisiana State Board of Nursing proposes to amend LAC 46:XLVII.3305 and 3339 in accordance with R.S. 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

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

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

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS
Part XLVII. Nurses

Subpart 2. Registered Nurses

Chapter 33. General

Subchapter A. Board of Nursing

§3305. Official Office of the Board

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

B. ...

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

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

Subchapter C. Registration and Registered Nurse Licensure

§3339. Verification of Licensure

A. - B. ...

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

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

E. - G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:77 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), LR 32:

Family Impact Statement

In compliance with R.S. 49:953 and 974, the following Family Impact Statement of the proposed amendments to rules is provided. The proposed Rule amendments may have an impact on some families or employees of the board; however, there should be no adverse effect on the stability of the family; the authority and rights of parents regarding the education and supervision of their children; or the ability of the family or a local government to perform the function as contained in the proposed Rule amendments.

Interested persons may submit written comments on the proposed Rules until 5 pm, October 25, 2006, to Barbara L. Morvant, Executive Director, 5207 Essen Lane, Suite 6, Baton Rouge, LA, 70809.

Barbara L. Morvant
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Domicile of Board and
Verification of License

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

There is no anticipated increase in expenditure or savings due to these proposed rules except for the publication of the proposed rules estimated at \$300.00 in FY 06-07.

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

There is no estimated effect on revenue collections.

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

There is no estimated cost or economic benefit to affected persons or non-governmental groups. Implementation of on-line verification will provide more timely information to employers of registered nurses. Additionally, the proposed rule provides that the domicile of the board is Baton Rouge, Louisiana, but offices for the purpose of administering the provisions of this Part may be established by the board in any of the principal cities or metropolitan areas of such principal cities in Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Barbara L. Morvant
Executive Director
0609#032

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Pharmacy

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

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

Title 46

PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LIII. Pharmacists

Chapter 5. Pharmacists

Subchapter A. Licensure Procedures

§513. Certified Pharmacist Preceptor Program

Repealed.

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

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

Chapter 7. Pharmacy Interns

§705. Practical Experience

A. - B. ...

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

B.2 - C.1. ...

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

b. ...

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

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

3.a. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:1211.

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Interested persons may submit written comments to Malcolm J. Broussard, Louisiana Board of Pharmacy, 5615 Corporate Blvd., Suite 8-E, Baton Rouge, LA 70808-2537. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Monday, October 30, 2006 at 9 a.m. in the board office. 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 receipt of all written comments is 12 noon that day.

Malcolm J. Broussard
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Certified Pharmacist Preceptor Program and Intern Practical Experience

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

It is estimated that implementation of the proposed rule will cost the agency \$1,200 (\$400 each for printing emergency rule, notice of intent, and final rule) during FY 06-07. The agency

has sufficient self-generated funds budgeted and available to implement the proposed rule.

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

The proposed change relates to the qualifications of pharmacists supervising pharmacy interns, as well as requirements of pharmacy interns as they earn their required hours of practical experience. No change in revenue collection is anticipated as a result of the proposed rule.

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

The proposed rule will repeal the requirement for preceptor certification by pharmacists, resulting in an opportunity for cost avoidance. Pharmacy interns will benefit by their easier access to more pharmacists with whom to earn their required hours of practical experience. The easier access will assist the intern to achieve licensure in a timely manner.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Due to the shortage of certified pharmacist preceptors, the repeal of the rule will permit pharmacy interns to earn their required hours of practical experience in a timely manner, which should have a stabilizing effect on the pharmacy manpower supply.

Malcolm J. Broussard
Executive Director
0609#041

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions amending the prospective payment system for nursing facilities to provide clarifications on cost report submissions and to adopt provisions governing verification of minimum data set assessments (MDS) and the appeal process for dispute of MDS review findings (*Louisiana Register*, Volume 28, Number 12).

Act 848 of the 2006 Regular Session of the Louisiana Legislature directed the department to adjust individual nursing facility rates quarterly based on the case mix score for all patients of the nursing facility. Act 824 of the 2006 Regular Session of the Louisiana Legislature mandated that all nursing facilities have a supervised automatic fire sprinkler system and/or a two-hour rated wall and provided for the offset of costs associated with the installation of these systems in Medicaid-certified nursing facilities. In compliance with Acts 848 and 824, the department proposes to amend the provisions governing the reimbursement

methodology for nursing facilities to allow for a quarterly adjustment of individual nursing facility rates based on overall case mix and to allow for the offset of installation costs for automatic fire sprinkler systems and two-hour rated walls in Medicaid-certified nursing facilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1301. Definitions

* * *

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

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

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

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

* * *

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

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

* * *

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

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

§1303. Cost Reports

A. ...

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

the later of the first day of the facility's fiscal period or the facility's certification date. The cost reporting end date shall be the last day of the facility's fiscal period.

2. In addition to filing the Medicare cost report, nursing facility providers must also file supplemental schedules designated by the bureau. Nursing facility providers shall submit three copies of the Medicare cost report and supplemental schedules on 3.5 inch double sided, high density personal computer diskettes and one hard copy of the Medicare cost report and supplement schedules or other electronic media designated by the department.

3. Providers of skilled nursing-infectious disease (SN-ID), skilled nursing-technology dependent care (SN-TDC) and skilled nursing neurological rehabilitation and complex (SN-NRTP) services must file additional supplemental schedules designated by the bureau documenting the incremental cost of providing SN-ID, SN-TDC and SN-NRTP services to Medicaid recipients.

4. ...

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

1. - 2. ...

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

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

§1305. Rate Determination

A. ...

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

C. - C.2. ...

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

D. - D.1d. ...

e. The statewide direct care and care related floor is established at 94 percent of the direct care and care related resident-day-weighted median cost. For periods prior to October 1, 2006, the statewide direct care and care related floor shall be reduced to 90 percent of the direct care and care related resident-day-weighted median cost in the event that the nursing wage and staffing enhancement add-on is removed. Effective October 1, 2006, the statewide direct care and care related floor shall be reduced by one

percentage point for each 30 cent reduction in the average Medicaid rate due to a budget reduction implemented by the department. The floor cannot be reduced below 90 percent of the direct care and care related resident-day-weighted median cost.

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

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

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

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

2. - 3. ...

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

b. Effective January 1, 2003, the new value per square foot shall be \$97.47. This value per square foot shall be increased by \$9.75 for land plus an additional \$4,000 per

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

i. - ii. ...

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

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

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

(a). Major renovation/improvement costs must be documented through cost reports, depreciation schedules, construction receipts or other auditable records. Costs must be capitalized in compliance with the Medicare provider reimbursement manual in order to be considered in a major renovation/improvement project. The cost of the project

shall only include the cost of items placed into service during a time period not to exceed the previous 24 months prior to a re-aging. Entities that also provide non-nursing facility services or conduct other non-nursing facility business activities must allocate their renovation cost between the nursing facility and non-nursing facility business activities. Documentation must be provided to the department or its designee to substantiate the accuracy of the allocation of cost. If sufficient documentation is not provided, the renovation/improvement project will not be used to re-age the nursing facility.

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

4. - 4.a. ...

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

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

E. All capitalized costs related to the installation or extension of supervised automatic fire sprinkler systems or two-hour walls placed in service on or after July 1, 2006 will be excluded from the renovation/improvement costs used to calculate the FRV.

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

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

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

A. Services Provided on or Before June 30, 2005

1. Non-state government-owned or operated nursing facilities will be paid a prospective reimbursement rate. Each facility will receive a Medicaid base rate calculated in accordance with other sections of this rule. Nonstate government-owned or operated nursing facilities may also

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

B. Services after June 30, 2005

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

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

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

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

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

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

property insurance rate until the facility has a cost report included in a base year rate setting. New facilities will also receive a provider fee that has been determined by the department.

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

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

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

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

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

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

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

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

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

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

B. Nursing Facility Procedure and Documentation Requirements

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

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

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

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

July 1, 2007 or the date of installation. The Medicaid reimbursement shall be determined as follows.

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

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

3. A fair rental value per diem increase is calculated based on all of the nursing facility's duplicated fire sprinkler system and two-hour rated wall costs previously included in their fair rental value per diem calculation.

4. An adjusted per diem cost is calculated as the per diem cost less the fair rental value per diem increase. This adjusted per diem cost amount shall be paid to each qualifying nursing facility as an additional component of their Medicaid daily rate.

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

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

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

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

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, October 26, 2006 at 9:30 a.m. in Room 118, Bienville Building, 628 North 4th Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Nursing Facilities Reimbursement Methodology

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

It is anticipated that the implementation of this proposed rule will result in an estimated increase in expenses to the state of \$109,288 for FY 06-07, \$156,416 for FY 07-08, and

\$1,072,568 for FY 08-09. It is anticipated that \$1,632 (\$816 SGF and \$816 FED) will be expended in FY 06-07 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$250,573 for FY 06-07, \$360,150 for FY 07-08, and \$2,469,597 for FY 08-09. It is anticipated that \$816 will be expended in FY 06-07 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This proposed rule amends the provisions governing the reimbursement methodology for nursing facilities (approximately 280) to allow for a quarterly adjustment of individual nursing facility rates based on overall case mix and to allow for the offset of installation costs for automatic fire sprinkler systems and two-hour rated walls in Medicaid-certified nursing facilities (approximately 30). It is anticipated that implementation of this proposed rule will increase program expenditures for nursing facility reimbursements by approximately \$358,229 for FY 06-07 and \$516,566 for FY 07-08 and \$3,542,165 for FY 08-09.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Jerry Phillips
Acting Medicaid Director
0609#061

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

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

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

Title 37

INSURANCE

Part XIII. Regulations

Chapter 117. Regulation Number 89—Suitability in Annuity Transactions

§11701. Purpose

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§11703. Scope

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§11705. Authority

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§11707. Exemptions

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

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

2. contracts used to fund:

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

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

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

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

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

f. formal prepaid funeral contracts.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§11709. Definitions

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

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

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

Recommendation—advice provided by an insurance producer, or an insurer where no producer is involved, to an

individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§11711. Duties of Insurers and of Insurance Producers

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

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

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

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

C.1. Except as provided under Paragraph 2 of this Subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under Subsection A related to any recommendation if a consumer:

- a. refuses to provide relevant information requested by the insurer or insurance producer;
- b. decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or
- c. fails to provide complete or accurate information.

2. An insurer or insurance producer's recommendation subject to Paragraph 1 shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

D.1. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this regulation is established and maintained by complying with Paragraphs 3 to 5 of this Subsection, or shall establish and maintain such a system, including, but not limited to:

- a. maintaining written procedures; and
- b. conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.

2. A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this regulation, or shall establish and maintain such a system, including, but not limited to:

- a. maintaining written procedures; and
- b. conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.

3. An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Paragraph 1 with respect to insurance producers under contract with or employed by the third party.

4. An insurer shall make reasonable inquiry to assure that the third party contracting under Paragraph 3 of this Subsection is performing the functions required under Paragraph 1 of this Subsection and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

a. the insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

b. the insurer, based on reasonable selection criteria, periodically selects third parties contracting under Paragraph 3 of this Subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

5. An insurer that contracts with a third party pursuant to Paragraph 3 of this Subsection and that complies with the requirements to supervise in Paragraph 4 of this Subsection shall have fulfilled its responsibilities under Paragraph 1 of this Subsection.

6. An insurer, general agent or independent agency is not required by Paragraph 1 or 2 of this Subsection to:

- a. review, or provide for review of, all insurance producer solicited transactions; or
- b. include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

7. A general agent or independent agency contracting with an insurer pursuant to Paragraph 3 of this Subsection shall promptly, when requested by the insurer pursuant to Paragraph 4 of this Subsection, give a certification as described in Paragraph 4 of this Subsection or give a clear statement that it is unable to meet the certification criteria.

8. No person may provide a certification under Paragraph 4.a of this Subsection unless:

- a. the person is a senior manager with responsibility for the delegated functions; and
- b. the person has a reasonable basis for making the certification.

E. Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this Subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§11713. Mitigation of Responsibility

A. The commissioner may order:

1. an insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;

2. an insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation; and

3. a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation.

B. Any applicable penalty under L.R.S. 22:1217 for a violation of Section 11711 A, B, or C.2 of this regulation may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§11715. Recordkeeping

A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 3 years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

B. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§11717. Severability

A. If any provision or item of this regulation, or the application thereof, is held to be invalid, such invalidity shall not affect other provisions, items, or applications of the regulation, which can be given effect without the invalid provisions, item, or application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

Persons interested in obtaining copies of the proposed Rule or in making comments relative to these proposals may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Written comments will be accepted through the close of business on October 27, 2006.

On Thursday, October 26, 2006, beginning at 10 a.m., the Department of Insurance will hold a public hearing in the plaza hearing room of the Poydras Building located at 1702 N. 3rd Street, Baton Rouge, LA, 70802. The purpose of the hearing is to allow for public commentary concerning the proposed promulgation of Regulation 89.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Regulation Number 89 Suitability in Annuity Transactions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

DOI does not expect any implementation costs as a result of the adoption of this regulation. The regulation is intended to assure that the financial needs and objectives of consumers at the time of the transaction are appropriately addressed by the producer, or if no producer is involved, by the insurer.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is not anticipated that implementation of this regulation will have any impact upon the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The adoption of this regulation is expected to benefit consumers by assuring that their financial needs and objectives are addressed at the time of the transaction involving annuity products.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The implementation of this regulation should have no direct impact upon employment and competition in the state.

Chad M. Brown
Deputy Commissioner
0609#069

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Corrections Services

Death Penalty (LAC 22:I.103)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), the Louisiana Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend the contents of LAC 22:I.103, Death Penalty.

The purpose of the amendment of the aforementioned regulation is to clarify the requirements regarding the number of witnesses at an execution.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT Part I. Corrections

Chapter 1. Secretary's Office

§103. Death Penalty

A. - I.3.a. ...

b. The number of victim relationship witnesses may be limited to two. If more than two victim relationship witnesses desire to attend the execution, the secretary is authorized to select from the interested parties the two victim relationship witnesses who will be authorized to attend. In the case of multiple victim's families, the secretary shall determine the number of witnesses, subject to the availability of appropriate physical space.

NOTICE OF INTENT

**Department of Public Safety and Corrections
Gaming Control Board**

**Minimum Standards for Electronic Gaming Devices
(LAC 42:VII.4203)**

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42:VII.4203 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

**Part VII. Pari-Mutuel Live Racing Facility Slot Machine
Gaming**

**Chapter 42. RaceTracks: Electronic Gaming Devices
§4203. Minimum Standards for Electronic Gaming
Devices**

A. All EGD's submitted for approval:

1. - 25. ...

26. shall not offer a game which resembles a game the play of which requires, or typically includes, the participation of another natural person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:775 (April 2000), amended LR 32:

Family Impact Statement

Pursuant to the provisions of R.S. 49:953.A, the Louisiana Gaming Control Board, through its chairman, has considered the potential family impact of amending LAC 42:VII.4203.

It is accordingly concluded that amending LAC 42:VII.4203 would appear to have a positive yet inestimable impact on the following:

1. the effect on stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the effect on the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

All interested persons may contact Tom Warner, Attorney General's Gaming Division, Telephone (225) 326-6500, and may submit comments relative to this proposed Rule, through October 10, 2006, to 1885 North Third Street, Suite 500, Baton Rouge, LA 70802.

H. Charles Gaudin
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Minimum Standards for Electronic
Gaming Devices**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no implementation costs to state or local government units estimated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:567-571 (as amended by Act No. 717 of the 1990 Regular Session of the Louisiana Legislature, by Act No. 159 of the 1991 Regular Session, Act No. 145 of the 2002 First Extraordinary Session and Act No. 283 of the 2003 Regular Session and as amended by Act 31 of the 2006 Regular Session of the Louisiana Legislature).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary, LR 6:10 (January 1980), amended LR 7:177 (April 1981), amended by the Department of Public Safety and Corrections, Corrections Services, LR 17:202 (February 1991), LR 18:77 (January 1992), LR 24:342 (February 1998), LR 25:2410 (December 1999), LR 28:2552 (December 2002), LR 29:2847 (December 2003), LR 31:2032 (August 2005), LR 32:

Family Impact Statement

In accordance with the Administrative Procedures Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Amendment to the current LAC 22:I:103 by the Department of Public Safety and Corrections, Corrections Services, will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule rescission.

Interested persons may submit their comments in writing to Ms. Melinda L. Long, Attorney for Secretary Richard L. Stalder, LA Department of Public Safety and Corrections, P.O. Box 94304, Baton Rouge, LA 70804, until 4:30 p.m. on, October 10, 2006.

Richard L. Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Death Penalty

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no estimated costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

B.E. "Trey" Boudreaux, III
Undersecretary
0609#036

Robert E. Hosse
Staff Director
Legislative Fiscal Office

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no determinable effect on revenue collections of state or local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No significant costs and/or economic benefit to directly affected persons or non-governmental groups is estimated.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No significant effect on competition or employment is estimated.

H. Charles Gaudin
Chairman
0609#071

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
State Uniform Construction Code Council**

Uniform Construction Code
(LAC 55:VI.Chapters 1-11)

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730:22(C) and (D), R.S. 40:1730.26(1), R.S. 40:1730.34(B) and 40:1730.35(E) relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce Rules, the Louisiana State Uniform Construction Code Council hereby proposes to enact the following Rules which will establish a new Part of the Louisiana Administrative Code.

**Title 55
PUBLIC SAFETY**

Part VI. Uniform Construction Code

Chapter 1. Preliminary Provisions

§101. Request for Rule Change

A. Anyone petitioning the Undersecretary, Department of Public Safety, for the adoption of, or change of, any rule shall submit in writing to the Council Administrator at 8181 Independence Boulevard, Baton Rouge, LA 70806, an application containing the following basic information organized and captioned:

1. the name, address, telephone number and email address of the applicant;
2. a brief description of the facts supporting the applicant's request for the adoption of a rule or the change of a rule that has already been adopted;
3. suggested specific language or language setting forth the substance of the rule or rule change which is being requested;
4. an indication as to whether or not a public hearing is requested;
5. a copy of each and every document upon which the applicant bases his request for a rule or a citation of the information and where it can be easily obtained for review by this office.

B. Whenever the council administrator determines that a public hearing or public hearings should be held prior to the adoption of any rule or rule change, a notice of the meeting date and place and the agenda will be recorded in the

Louisiana Register; however, whenever that is not possible, a copy of the meeting notice including the date, time, and place, and agenda of the meeting will be mailed to the official journals of the cities of Lafayette, Alexandria, Shreveport, Monroe, Lake Charles, Baton Rouge and New Orleans.

C. Within 90 days of the request for adoption of or change of a rule, the council administrator will notify the applicant and each individual who request a copy of either his denial of the application or notice of intent to adopt the requested rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

Chapter 3. Adoption of the Louisiana State Uniform Construction Code

§301. Louisiana State Uniform Construction Code

A. In accordance with the requirements set forth in R.S. 40:1730.28, effective, January 1, 2007, the following is hereby adopted as the Louisiana State Uniform Construction Code.

1. International Building Code, 2006 Edition, not including Chapter 1-Administration, Chapter 11-Accessibility, Chapter 27-Electrical and Chapter 29-Plumbing Systems. The applicable standards referenced in that code are included for regulation of construction within this state.

2. International Existing Building Code, 2006 Edition, not including Chapter 1-Administration, and the standards referenced in that code for regulation of construction within this state.

3. International Residential Code, 2006 Edition, not including Parts I-Administrative, V-Mechanical, VII-Plumbing and VIII-Electrical. The applicable standards referenced in that code are included for regulation of construction within this state. Appendix J, Existing Buildings and Structures, is also included for mandatory regulation. For the purposes of this Part, IRC R301.2.1.1 (Design Criteria) shall be amended as follows and shall only apply to the International Residential Code, 2006 edition:

- a. Amendment of R301.2.1.1 (Design Criteria);
- b. item 6, the American Concrete Institute, *Guide to Concrete Masonry Residential Construction in High Winds Areas*, shall be added;
- c. item 7, Institute for Business and Home Safety, *Optional Code-plus Fortified for Safer Living*, shall be added;
- d. item 8, Federal Alliance for Safe Homes, *Optional Code-plus Blueprint for Safety*, shall be added.

4. International Mechanical Code, 2006 Edition, and the standards referenced in that code for regulation of construction within this state.

5. The Louisiana State Plumbing Code [Part XIV (Plumbing) of the State Sanitary Code] as amended by the state health officer acting through the Office of Public Health of the Department of Health and Hospitals. Nothing in this Part shall be construed so as to prevent the state health officer from enforcing Part XIV (Plumbing) of the State Sanitary Code, the enforcement of which is his statutory and regulatory responsibility.

6. International Fuel Gas Code, 2006 Edition, and the standards referenced in that code for regulation of construction within this state.

7. National Electrical Code, 2005 Edition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

Chapter 5. Enforcement of Louisiana State Uniform Construction Code

§501. General

A. Effective January 1, 2007, all municipalities and parishes shall enforce the Louisiana State Uniform Construction Code. Municipalities and parishes may establish agreements with other governmental entities or registered and certified third party providers to issue permits and enforce the state uniform construction code. No municipality or parish shall require that residential building plans for one and two family dwellings be prepared or stamped by a licensed architect or engineer if the dwelling falls within the prescriptive codes of the Louisiana State Uniform Construction Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

§503. Farm or Recreational Structures

A. Definitions

1. For the purposes of these regulations the words defined in this Section have the following meaning.

Farm Structure—a structure which is constructed on a farm, other than a residence or structure attached to it, for use on the farm including, but not limited to barns, sheds and poultry houses.

Private Outdoor Recreational Structure—a hunting or fishing camp not used as a residence nor attached to a residence.

B. Exemptions to State Uniform Construction Code

1. The governing authority of a parish or municipality may not enforce the Louisiana State Uniform Construction Code pertaining to the construction or improvement of a farm structure or private outdoor recreational structure. The property owner of record, in applying for an exemption, shall execute an affidavit attesting to the property's or structure's exempt status. The affidavit shall be filed into the parish conveyance records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

Chapter 7. Certificates of Registration

§701. General

A. On and after January 1, 2007, no person shall practice as a code enforcement officer in this state unless registered with the Louisiana State Uniform Construction Code Council (council). A person desiring to be registered as a parish or municipality building code enforcement officer or a third party provider shall apply to the council for a Certificate of Registration. The applicant shall apply on the application form prescribed by the council. An applicant shall furnish satisfactory proof to the council of valid

certification. A Certificate of Registration is valid for one year and expires on the last day of the month of issuance. Those possessing Certificates of Registration must timely renew their certificates in order to remain in good standing with the council.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

§703. Classifications and Required Certifications for Municipal or Parish Building Code Enforcement Officers

A. General

1. In order to obtain a Certificate of Registration from the council for a particular classification, an individual must meet the following qualifications.

B. Definitions

Building Code Enforcement Officer (BCEO)—a person employed by a public entity who is primarily responsible for the overall inspection or enforcement of applicable building code requirements within the jurisdiction of the employer.

Building Official—the BCEO employed and charged by a local government with the administration and enforcement of the Louisiana State Uniform Construction Code (LSUCC).

Inspector—a BCEO, who under the authority of the building official, is charged with the inspection of structures for compliance with his or her specialty classification(s) of the LSUCC.

Plans Examiner or Reviewer—a BCEO, who under the authority of the Building Official, is charged with the inspection of construction documents for compliance with his or her specialty classification(s) of the LSUCC.

Third-Party Provider (TPP)—any individual, entity or an individual employed by an entity contracted by a municipality, parish or licensed contractor to act in the capacity of a BCEO.

C. BCEO Registration Classifications/Requirements

1. General Classifications

a. *Building Official (BO)*—requirements; possess a current ICC Certified Building Official certificate or a current ICC Master Code Professional certificate and have two years experience as an architect, engineer, inspector, plans examiner, contractor or superintendent of construction or any combination of these. General classifications are not restricted and may enforce all classified specialties of the LSUCC.

2. Specialty Classifications

a. Commercial Inspectors

i. **Commercial Building Inspector Requirements**—possess a current ICC Commercial Building Inspector certificate.

ii. **Commercial Electrical Inspector Requirements**—possess a current ICC Commercial Electrical Inspector certificate.

iii. **Commercial Mechanical Inspector Requirements**—possess a current ICC Commercial Mechanical Inspector certificate.

iv. **Commercial Plumbing Inspector Requirements**—possess a current ICC Commercial Plumbing Inspector certificate.

v. Commercial Energy Requirements—shall be enforced by the Office of the State Fire Marshal.

b. Commercial and Residential Plan Examiners or Reviewers

i. Building Plans Examiner Requirements possess a current ICC Commercial Building Plans Examiner certificate.

ii. Electrical Plans Examiner Requirements—possess a current ICC Commercial Electrical Plans Examiner certificate.

iii. Mechanical Plans Examiner Requirements—possess a current ICC Commercial Mechanical Plans Examiner certificate.

iv. Plumbing Plans Examiner Requirements—possess a current ICC Commercial Plumbing Plans Examiner certificate.

v. Commercial Energy Requirements—possess a current ICC Commercial Energy Plans Examiner certificate.

c. Residential Inspectors

i. Residential Building Inspector Requirements—possess a current ICC Residential Inspector certificate.

ii. Residential Electrical Inspector Requirements—possess a current ICC Residential Electrical Inspector certificate.

iii. Residential Mechanical Inspector Requirements—possess a current ICC Residential Mechanical Inspector certificate.

iv. Residential Plumbing Inspector Requirements—possess a current ICC Residential Plumbing Inspector certificate.

v. Residential Energy Inspector Requirements—possess a current ICC Residential Energy Inspector/Plans Examiner certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.34(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

§705. Third Party Providers

A. General

1. A third party provider shall register with the council. Third party providers shall meet the requirements of the general or specialty classification(s) whichever applicable and as contracted with the parish or municipality. Furthermore, any individual employed by a third party provider who is also performing work for the parish or municipality, shall also be council certified.

B. Insurance

1. All third party providers shall carry at least \$100,000 in general liability insurance. Proof of valid and current insurance coverage must be provided to the council upon registration and renewal of registration.

C. Restrictions

1. Third party providers shall not provide plan review or inspections on projects of their own design and/or construction.

D. Code Enforcement Services for Non-Governmental Entities

1. Third party providers providing plan review services for non-governmental entities shall provide written copies of the plan review to the code enforcement officer of

the municipality or parish prior to issuance of construction permits.

2. Where a third party provider provides services in a jurisdiction which has a building department, third party providers shall adhere to the permitting and inspection procedures of said jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.34(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

Chapter 9. Temporary Exemption to Certification Requirement

§901. Employment after January 1, 2007

A. Upon employment by a parish, municipality, or other political subdivision, an individual must be granted a provisional certificate of registration without certification by a recognized code organization or testing agency, provided that such individual is under the supervision of a registered code enforcement officer who is certified by the International Code Council. This provisional certificate of registration is valid for 12 months. Thereafter, anyone renewing this Certificate of Registration shall satisfy the certification requirement(s) as set forth in §703.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

§903. Employment prior to January 1, 2007

A. Certificates of Registration may be issued without certification by a recognized code organization or testing agency to building code enforcement officers already employed in code enforcement on January 1, 2007 only for the position and locality held at the time of registration. This registration is valid for three years for building officials and six months for building inspectors and plans reviewers. Additionally, inspectors and plan reviews who were employed by an authority having jurisdiction before July 1, 2006, and remain employed by that authority having jurisdiction, an additional 30 month provisional certificate or registration may be granted provided the individual can demonstrate an annual minimum of 3 continuing education units for a core discipline as require in §703. Thereafter, anyone renewing this Certificate of Registration shall satisfy the certification requirement(s) as set forth in §703.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

Chapter 11. Disciplinary Proceedings

§1101. General

A. The council shall have the authority to suspend, revoke or deny renewal of Certificates of Registration upon any violation of R.S. 40:1730.21 et seq. after notice and proper hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

§1102. Informal Proceedings

A. Notice. If the council receives written information indicating that a person holding a Certificate of Registration (registrant) is violating or has violated any provision of R.S. 40:1730.21 et seq. or this Part, the council, after an investigation, may, in writing, order the person to immediately refrain from the conduct or violation.

B. Response. The registrant shall respond in writing to the council's informal notice within 10 days of receipt by providing the council with a written statement containing any information related to the allegations of the informal notice which would show compliance with all requirements for retention or renewal of his or her Certificate of Registration. In lieu of providing a written statement, the registrant may request an informal conference with the council administrator and council chair.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

§1103. Formal Proceedings

A. Complaint. In the event that the matter is not resolved during the informal proceedings, the council shall file a formal complaint which then shall be forwarded to the registrant, via certified mail, to the address on file with the council.

B. Hearing. No hearing shall be conducted prior to 20 business days following the filing of the formal complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

§1105. Procedures

A. Hearings. All hearings conducted before the council or a designated committee shall be in accordance with the Administrative Procedure Act.

B. Notice. The hearing notice shall include:

1. a statement of the time, place and nature of the hearing;

2. a statement of the legal authority under which the hearing is to be had;

3. a reference to the particular sections of the statutes and rules involved;

4. a short plain statement of the matters asserted.

C. Opportunity shall be afforded to all parties to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross examination as may be required for a full and true disclosure of the facts.

D. Unless precluded by law, informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order or default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

§1107. Decisions and Orders

A. A final decision or order adverse to a party in an adjudication proceeding shall be in writing. A final decision shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be

accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified by mail of the decision or order. A copy of the decision or order shall be sent via certified mail forthwith to each party and, if applicable, to his attorney of record. The parties by written stipulation may waive compliance with this Section. The council, in the event there is no contest, may eliminate compliance with this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

§1109. Rehearings

A. A decision or order in a case of adjudication are subject to rehearing, reopening, or reconsideration by the council, within ten days from the date of its entry. The grounds for such action shall be either that:

1. the decision or order is clearly contrary to the law and the evidence;

2. the party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

3. there is a showing that issues not previously considered ought to be examined in order properly to dispose of the matter; or

4. there is other good ground for further consideration of the issues and the evidence in the public interest.

B. The petition of a party for rehearing, reconsideration, or review, and the order of the council granting it, shall set forth the grounds which justify such action. On reconsideration, reopening, or rehearing, the matter may be heard by the council, or it may be referred to a subordinate committee. The hearing shall be confined to those grounds upon which the reconsideration, reopening, or rehearing was ordered. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

§1111. Judicial Review of Adjudication

A. A registrant who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review whether or not he has applied to the agency for rehearing, without limiting, however, utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate action or ruling is immediately reviewable if review of the final council decision would not provide an adequate remedy and would inflict irreparable injury.

B. Proceedings for review may be instituted by filing a petition in the District Court of East Baton Rouge Parish within thirty days after mailing of notice of the final decision or, if a rehearing is requested, within 30 days after the decision thereon. Copies of the petition shall be served upon the council and all parties of record.

C. The filing of the petition does not itself stay enforcement of the council decision. The council may grant,

or the reviewing court may order, a stay ex parte upon appropriate terms, relative to professions and occupations. The court may require that the stay be granted in accordance with the local rules of the reviewing court pertaining to injunctive relief and the issuance of temporary restraining orders.

D. Within 30 days after the service of the petition, or within further time allowed by the court, the council shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

E. If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the council, the court may order that the additional evidence be taken before the council upon conditions determined by the court. The council may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

F. The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the council, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

G. The court may affirm the decision of the council or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

1. in violation of constitutional or statutory provisions;
2. in excess of the statutory authority of the agency;
3. made upon unlawful procedure;
4. affected by other error of law;
5. arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

6. not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this Rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the Rule, where the council has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.35(E).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 32:

Family Impact Statement

1. The Effect of these Rules on the Stability of the Family. These Rules will have no effect on the stability of the family, except that it will greatly increase the structural safety of affected family homes.

2. The Effect of these Rules on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. These Rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of these Rules on the Functioning of the Family. These Rules will have no effect on the functioning of the family.

4. The Effect of these Rules on Family Earnings and Family Budget. These Rules will have no effect on family earning and family budget.

5. The Effect of these Rules on the Behavior and Personal Responsibility of Children. These Rules will have no effect on the behavior and personal responsibility of children.

6. The Effect of these Rules on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. These Rules will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rules. However, the state law, on which these Rules are based, will have an effect on the ability of local government to perform the function as mandated by the state law, in that, local governments that previously had no code enforcement office or officers in place will have a much more difficult time establishing a code enforcement program.

Interested persons may submit written comments on these proposed Rules to Curt McCarty at 8181 Independence Boulevard, Baton Rouge, LA 70806. Comments will be accepted through close of business October 10, 2006.

Stephen J. Hymel
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Uniform Construction Code

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

These rules, which only mirror the enactment of the Louisiana State Uniform Construction Code by state law, will not result in an increase in costs or savings to local governmental units for those local governments that currently utilize code enforcement. Local government units that have no code enforcement department or personnel in place prior to the effective date of this law enacted by the state legislature will most likely realize an increase in costs in implementing a building regulation department. However, the proposed rule does not add any additional expenditures apart from or in addition to those that will result from the enactment of the state law.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will have no effect on revenue collections of state or local governmental units as the local

government may impose necessary fees to implement building code enforcement pursuant to La. R.S.40:1730.32.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No commercial or residential building may be constructed, altered or repaired until plans have been reviewed and the structure inspected for compliance with the Louisiana Uniform Construction Code. These rules are being adopted to mirror Act 12 of the 2005 First Extraordinary Session. There will be no additional cost or benefit to affected persons imposed by these rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment as the proposed rules apply to all residential and commercial buildings to be constructed, altered or repaired.

Stephen J. Hymel
Undersecretary
0609#014

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

No Wake Zone Signage (LAC 76:XI.303)

The Wildlife and Fisheries Commission does hereby give notice of its intent to enact rules governing the physical construction of no wake zone signage to be placed at boat launches accessible to the public in the state of Louisiana.

Title 76

WILDLIFE AND FISHERIES

Part XI. Boating

Chapter 3. Boating Safety

§303. Signage Identifying "No Wake Zone(s)" at Boat Launches Accessible by the Public and Docking Facilities Adjacent to a Boat Launch Accessible by the Public

A. The following regulations shall prescribe the dimensions and physical appearance of signage indicating a "no wake zone" to be placed at boat launches accessible to the public and docking facilities adjacent to boat launches accessible by the public as required by R. S. 34:851.27.

B. For the purposes of being recognized under state law, "no wake zone" signage shall be clearly visible and posted upon a board not less than 3 feet by 3 feet square in size having a white colored background. The signage shall have 2 inch reflective orange borders along each edge and shall contain a circle in the middle of the sign having border of reflective orange 2 inches wide. Within the orange circle shall be the words "SLOW NO WAKE ZONE" in black characters no less than 5 inches high, with the words "SLOW" on the first line, "NO WAKE" on the second line, and "ZONE" on the third line as depicted on Figure 1 in this Season. On the top right hand corner of the signage shall be listed "LA R.S. 34:851.27" or the applicable local ordinance.

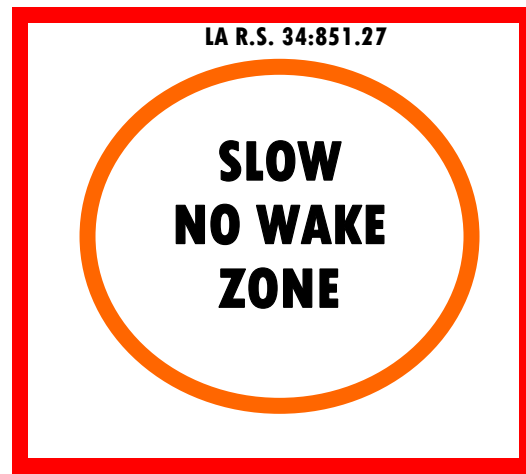


Figure 1

C. No wake zones established pursuant to this Section shall be clearly marked with prescribed signage, 300 feet in all directions from a boat launch or docking facility adjacent to the boat launch which is open to the general public. Signs shall be posted so as to be read both from the launch and the waterway.

D. Local and parish authorities in their respective jurisdictions shall place and maintain signage as prescribed by "LA R.S. 34:851.27" at the start and end of the no wake zones in safe and visible locations. No wake zone endings may be designated on the rear of a sign indicating "end no wake zone" and, signs may indicate the established distance of a no wake zone.

E. Regulatory buoys visible no less than 30 inches high above the water line placed in safe and visible locations may be used to identify start and end points of no wake zones. Regulatory buoys shall have proportionate orange markings as described in Subsection B with the words "SLOW NO WAKE ZONE" in black lettering.

F. No person operating a vessel shall violate the provisions of properly established and marked no wake zones. A violation of this Section shall constitute a Class One violation as provided in R.S. 56:851.31 and R.S. 56:31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:851.27.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 32:

Family Impact Statement

In accordance with Act No. 1183 of 1999, the Department of Wildlife and Fisheries/Office of Secretary hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: this Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Interested parties may submit comments relative to the proposed Rule to Colonel Winton Vidrine, Law Enforcement Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, November 2, 2006.

Terry D. Denmon
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: No Wake Zone Signage**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule will have no implementation costs to state governmental units. Local and parish governmental units will be responsible for placing and maintaining no wake zone signs at public boat launches and docking facilities in their respective jurisdictions, which will result in increased costs and workload. The magnitude of the increases cannot be determined at this time, as it will depend upon the number of public boat launches and adjacent docking facilities in their respective jurisdictions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is expected to have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Boaters using public boat launches and adjacent docking facilities will benefit from a uniform system of identifying no wake zones. The establishment of no wake zones can help prevent damage to boats or property, reduce shoreline erosion, and reduce the risk of injury to boaters.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is anticipated to have no effect on competition or employment in the public and private sectors.

Janice A. Lansing
Undersecretary
0609#044

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Removal of Abandoned Crab Traps (LAC 76:VII. 367)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend a Rule, LAC 76:VII.367, which provides for an abandoned crab trap removal program. Authority to establish these regulations is vested in the Commission by R.S. 56:332(N). Said Rule is attached and made a part of this Notice of Intent.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§367. Removal of Abandoned Crab Traps

A. The use of crab traps shall be prohibited from 6 a.m., March 3, 2007 through 6 a.m. March 12, 2007 within that

portion of Lafourche Parish, Jefferson Parish, and Plaquemines Parish as described below.

1. From a point originating from the intersection of the Gulf Intracoastal Waterway and the northern shoreline of Hero Canal; thence due north to a point along the northern shoreline of the Gulf Intracoastal Waterway; thence southward and then westward along the northern shoreline of the Gulf Intracoastal Waterway to a point opposite the western shoreline of Bayou Perot; thence due south to the western shoreline of Bayou Perot; thence southward along the western shoreline of Bayou Perot to Little Lake; thence southward along the western shoreline of Little Lake to 29 degrees, 30 minutes, 00 seconds north latitude; thence eastward along 29 degrees, 30 minutes, 00 seconds north latitude to the eastern shoreline of Wilkinson Canal; thence northward along the eastern shoreline of Wilkinson Canal to its termination; thence due north to the western shore of the Mississippi River; thence northwestward along the western shore of the Mississippi River to a point due east of the northern shoreline of Hero Canal; thence due west to the northern shoreline of Hero Canal; thence westward along the northern shoreline of Hero Canal and terminating at its intersection with the Gulf Intracoastal Waterway.

B. The use of crab traps shall be prohibited from 6 a.m., February 24, 2007 through 6 a.m., March 5, 2007 within that portion of Jefferson Parish, Orleans Parish, St. Bernard Parish, and St. Tammany Parish as described below.

1. From a point originating from the intersection of the Lake Pontchartrain Causeway Bridge and the southern shoreline of Lake Pontchartrain; thence eastward along the southern shoreline of Lake Pontchartrain to Chef Menteur Pass; thence southward along the western shoreline of Chef Menteur Pass to Lake Borgne; thence due south a distance of 1/2 mile from the Lake Borgne shoreline; thence eastward and then northward a distance of 1/2 mile from the Lake Borgne shoreline to a point due east of Catfish Point; thence northwesterly across Rigolets Pass to the southeastern most point of land on Hog Island; thence westward along the northern shoreline of Rigolets Pass to its intersection with U.S. Highway 90; thence northward along U.S. Highway 90 to its intersection with U.S. Highway 190 (Fremaux Avenue); thence westerly along U.S. Highway 190 to Military Road; thence northward on Military Road to U.S. Highway 190 (Gause Boulevard); thence westward on U.S. Highway 190 (Gause Boulevard) to Causeway Boulevard; thence southward along Causeway Boulevard and then the Lake Pontchartrain Causeway Bridge and terminating at its intersection with the southern shoreline of Lake Pontchartrain.

C. All crab traps remaining in the closed areas during the specified periods shall be considered abandoned. These trap removal regulations do not provide authorization for access to private property; authorization to access private property can only be provided by individual landowners. Crab traps may be removed only between one-half hour before sunrise to one-half hour after sunset. Anyone is authorized to remove these abandoned crab traps within the closed areas. No person removing crab traps from the designated closed areas shall possess these traps outside of the closed areas. The Wildlife and Fisheries Commission authorizes the Secretary of the Department of Wildlife and Fisheries to designate disposal sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:332(N).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, and Wildlife and Fisheries Commission LR 30:101 (January 2004), amended LR 31:108 (January 2005), LR 32:266 (February 2006), LR 32:

Family Impact Statement

In accordance with Act No. 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments relative to the proposed rule to Vincent Guillory, Marine Fisheries Biologist Manager, Marine Fisheries Division, Box 189, Bourg, LA 70343, prior to Thursday, November 2, 2006.

Terry D. Denmon
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Removal of Abandoned Crab Traps

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Total cost to implement the proposed rule to the state, aside from staff time, is estimated to be \$39,625. No local governmental implementation costs are anticipated.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is expected to have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule would prohibit the use of crab traps in two specified fishing areas during designated periods in February and March 2007. Crab fishermen who have traps within the proposed area closures will experience lost fishing time and incur additional costs of having to temporarily remove their traps from these areas. They may choose to move their traps to adjacent open fishing areas or choose to remove their traps from the fishery for the duration of each closure (9 days). Local seafood dealers and processors may experience a decrease in availability of fresh crabs during the closures. The overall impact is expected to be slight, since the closures occur in the lowest harvest time of the year and most fishermen who fish during this period are anticipated to move their traps to adjacent waters and continue to fish.

The crab resource will not be lost or harmed in any way and will be available for harvest when the closed areas are reopened. Mortality or injuries to crabs and bycatch will be reduced with the removal of abandoned crab traps. Recreational saltwater anglers, commercial fishermen and individuals who operate vessels within the proposed area closure will benefit from the removal of abandoned crab traps, since encounters with abandoned traps often result in lost fishing time and damage to the vessel's lower unit and/or fishing gear.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Effects on competition and employment are expected to be negligible, since adjacent waters will remain open for crab harvest and fishermen who fish during this time period are expected to relocate their traps.

Janice A. Lansing
Undersecretary
0609#045

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Spring Squirrel Hunting Season (LAC 76:XIX.103)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission do hereby advertise their intent to create and establish rules for a spring squirrel season on private lands and on selected wildlife management areas.

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Seasons

§103. Resident Game Birds and Animals 2006-2007, 2007-2008

A. - G.1.

H. Spring Squirrel Hunting

1. Season Dates: May 5-May 27, 2007 and May 3-May 25, 2008

2. Closed Areas: Kisatchie National Forest, National Wildlife Refuges, and U.S. Army Corps of Engineers property and all WMAs except as provided in Paragraph 3 below.

3. Wildlife Management Area Schedule: Open May 5-May 13, 2007 and May 3-11, 2008 on Bodcau, Boeuf, Clear Creek, Little River, Maurepas Swamp (East Tract), Russell Sage, and Sherburne WMAs only. Dogs are allowed during this season for squirrel hunting. Feral hogs may not be taken on Wildlife Management Areas during this season.

4. Limits: Daily bag limit is 3 and possession limit is 6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115, R.S. 56:109(B) and R.S. 56:141(C).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:1324 (July 1998), LR 25:1290 (July 1999), repromulgated LR 25:1526 (August 1999), amended LR 26:1506 (July 2000), LR 27:1061 (July 2001), LR 28:1615 (July 2002), LR 29:1122 (July 2003), repromulgated LR 29:1521 (August 2003), amended LR 30:1494 (July 2004), LR 31:1627 (July 2005), LR 32:1254 (July 2006), LR 32:

Family Impact Statement

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of

Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments on the proposed Rule to David Moreland, Administrator, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than November 2, 2006.

Terry D. Denmon
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Spring Squirrel Hunting Season

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation of the proposed rule will be carried out using existing staff and funding levels. No increase or decrease in costs is anticipated to implement the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is anticipated to have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule establishes a spring squirrel hunting season for private land and selected wildlife management areas. Hunters will benefit from the increased opportunity to hunt for squirrels during the spring hunting season. Businesses that supply goods and services to hunters may also benefit from the expanded hunting season through the sale of outdoor-related equipment and associated items (foods, fuel, clothing, shotgun shells, etc.). No additional costs, permits, fees, workload or paperwork will occur from the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is anticipated to have little or no effect on competition and employment in the public and private sectors.

Janice A. Lansing
Undersecretary
0609#046

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 4-5, 2006, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates:	September 1, 2006
Re-Take Candidates:	September 22, 2006
Reciprocity Candidates:	November 10, 2006

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to September 2, 2006. Questions may be directed to (225) 952-8100.

Bob Odom
Commissioner

0609#009

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Extension of Comment Period and Supporting Documentation for Wetlands Assimilation, WQ068 (LAC 33:IX.1105, 1109, and 1113)

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 the comment period is being extended for the proposed amendments to the Water Quality regulations, LAC 33:IX.1105, 1109, and 1113 (Log #WQ068).

Supporting documentation concerning wetlands assimilation has been made available for proposed rule WQ068 at DEQ office locations listed below and on the Internet at www.deq.louisiana.gov under Rules and Regulations, as of September 11, 2006. The Notice of Intent for WQ068 was published on pages 1473 - 1476 of the August 20, 2006, issue of the *Louisiana Register*. The proposed rule will amend the water quality standards in LAC 33:IX.Chapter 11 to protect wetland areas that may receive treated wastewater effluent. A public hearing on the proposed rule will be held on September 26, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. The

comment period for the proposed rule has been extended until October 11, 2006, to allow a 30-day review of the supporting documentation.

Written comments must be received no later than October 11, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation and supporting documentation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for all copies.

The regulation and supporting documentation are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

0609#072

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Request for Comments on Regulatory Permits

Act 115 of the 2006 Regular Session of the Louisiana Legislature authorized the Department of Environmental Quality to develop regulatory permits for certain air emissions and water discharges. Act 115 requires the secretary to consider which activities are appropriate for coverage under regulatory permits and to publish an initial list of such activities no later than January 1, 2007.

The department seeks written comments from interested parties regarding activities appropriate for consideration of coverage under regulatory permits as the required list is being developed. The comments may suggest activities or sources appropriate for regulatory permits, or those for which regulatory permits should not be considered.

Comments related to air emissions should be submitted to Cheryl Sonnier Nolan, Office of Environmental Services, Air Permits Division, Box 4313, Baton Rouge, LA 70821-4313.

Comments related to water discharges should be submitted to Lenny Young, Office of Environmental Services, Water Permits Division, Box 4313, Baton Rouge, LA 70821-4313.

Comments are due no later than 4:30 p.m., October 27, 2006. For further information, contact Cheryl Sonnier

Nolan, Office of Environmental Services, Air Permits Division, at 225-219-3010 or cheryl.nolan@la.gov.

Herman Robinson, CPM
Executive Counsel

0609#023

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Section 111(d) Plan for Other Solid Waste Incineration (OSWI) Units

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the Office of Environmental Assessment, Air Quality Assessment Division, is proposing a Section 111(d) plan for Other Solid Waste Incineration (OSWI) Units in Louisiana.

Sections 111(d) and 129 of the Clean Air Act Amendments of 1990 require states to submit to EPA a plan which establishes performance standards for each category of combustion units that indicate the application of strict emissions controls known as maximum achievable control technology. EPA publishes guidelines to assist states with this plan. On December 16, 2005, EPA promulgated 40 CFR Part 60, Subpart EEEE, Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006, and Subpart FFFF, Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004 (70 FR 74870-74924). These federal regulations were incorporated by reference by the department into LAC 33:Part III in Rule AQ258ft, published on page 809 of the May 20, 2006, issue of the *Louisiana Register*. The public comment period for the proposed Section 111(d) plan that includes 40 CFR Part 60, Subpart FFFF, begins on September 20, 2006 and ends on October 25, 2006.

The public hearing for this proposed Section 111(d) plan will be held on October 25, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed 111(d) plan. Should individuals need an accommodation in order to participate, contact Jodie L. Alexis at the address given below or at (225) 219-3581. Parking in the Galvez Garage is free with a validated parking ticket.

Written comments concerning the Section 111(d) plan should be received no later than 4:30 p.m., October 25, 2006, and should be sent to Jodie L. Alexis, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by e-mail to jodie.alexis@la.gov. The proposed Section 111(d) plan is available on the Internet at <http://www.deq.louisiana.gov/portal/tabid/2381/Default.aspx> under Louisiana SIP Revisions.

A copy of the plan may be viewed at the following DEQ office locations from 8 a.m. to 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

0609#022

POTPOURRI

Office of the Governor Oil Spill Coordinator's Office

Draft Damage Assessment and Restoration Plan East Lake Palourde

Action: Notice of availability of a Draft Damage Assessment and Restoration Plan (Draft DARP) with a 30-day public review and comment period.

Agencies: Louisiana Oil Spill Coordinator's Office, Office of the Governor (LOSCO); Louisiana Department of Environmental Quality (LDEQ); and Louisiana Department of Wildlife and Fisheries (LDWF).

Authorities: The Oil Pollution Act of 1990 (OPA) (33 USC 2701 et seq.) and the Louisiana Oil Spill Prevention and Response Act of 1991 (OSPRA) (R.S. 30:2451 et seq.) are the principal federal and state statutes, respectively, authorizing federal and state agencies and tribal officials to act as natural resource trustees for the recovery of damages for injuries to trust resources and services resulting from oil-spill incidents in Louisiana. In accordance with OPA and OSPRA, the agencies listed above (hereafter referred to as the "Trustees") have conducted a Natural Resource Damage Assessment (NRDA) for the reported discharges of crude oil into the swamp of East Lake Palourde, Assumption Parish, Louisiana, on June 11, 2002 (hereafter referred to as the "incident"), in which Union Oil Company of California (Unocal) was identified by the Trustees as the Responsible Party.

Summary: Pursuant to 15 C.F.R. §990.23 and 15 C.F.R. §990.55(c) and LAC 43:XXIX, Chapter 1, notice is hereby given that a document entitled, "Draft Damage Assessment and Restoration Plan for Two Crude Oil Discharges Reported on June 11, 2002 into the Swamp of East Lake Palourde, Assumption Parish, Louisiana" will become available for public review and comment on September 20, 2006. The Draft DARP was prepared by the Trustees to address injuries to natural resources and services resulting from the incident. On March 20, 2004, the Trustees published a Notice of Intent (NOI) to conduct restoration planning in the *Louisiana Register* (Vol. 30, No. 03, pp. 702-704) for the incident in order to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of the incident. The Draft DARP identifies the natural resources and services that were

determined to be injured by the incident, describes the assessment procedures used to quantify injury, outlines the scaling techniques and restoration alternative selection process, and presents the proposed plan to restore, replace, or acquire resources or services equivalent to those lost as a basis for compensating the public for injuries to natural resources and services resulting from the incident. The Trustees will consider comments received during the public comment period before finalizing the DARP. Public review of the Draft DARP is consistent with all State and Federal laws and regulations that apply to the NRDA process, including Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. §2706; the regulations for NRDA under OPA, 15 C.F.R. Part 990; Section 2480 of the Louisiana Oil Spill Prevention and Response Act (OSPRA), R.S. 30:2480; and the regulations for NRDA under OSPRA, LAC 43:XXIX, Chapter 1.

Interested members of the public are invited to view the Draft DARP via the internet at <http://www.losco.state.la.us> (look under News Flash for East Lake Palourde Oil Spill) or by requesting a copy of the document from Gina Muhs Saizan at the address provided below:

Gina Muhs Saizan
Louisiana Oil Spill Coordinator's Office, Office of the Governor
150 Third Street, Suite 405
Baton Rouge, LA 70801
gina.saizan@la.gov

Comment Submittals: Comments must be submitted in writing or digitally to Gina Muhs Saizan on or before the end of the 30-day comment period.

For Further Information: Contact Gina Muhs Saizan at (225) 219-5800 or by email at gina.saizan@la.gov.

Roland Guidry
Oil Spill Coordinator

0609#029

POTPOURRI

**Department of Labor
Office of Workers' Compensation**

Weekly Compensation Benefit Limits

Pursuant to R.S. 23:1202 and based on the statewide average weekly wage as determined by the Department of Labor, the following limits shall apply to weekly compensation benefits for claimants injured during the period September 1, 2006 through August 31, 2007.

Average Weekly Wage	Maximum Compensation	Minimum Compensation	Mileage Reimbursement
\$637.19	\$478.00	\$127.00	40 cents per mile*

*Effective July 1, 2006, the mileage reimbursement is 40 cents per mile pursuant to R.S. 23:1203.D.

Karen Reiners Winfrey
Assistant Secretary/Secretary

0609#006

**POTPOURRI
Department of Labor
Office of Workers' Compensation**

Weekly Wage Rate

Pursuant to Act 583 of the Regular Session of the 1975 Louisiana Legislature, this state's average weekly wage upon which the maximum workers' compensation weekly benefit amount will be based, effective September 1, 2006 has been determined by the Department of Labor to be \$637.19.

This information updates R.S. 23:1202 of the Louisiana Workers' Compensation Act.

	Average Weekly Wage	Maximum Comp	Minimum Comp
Sept 1, 1985 - Aug 31, 1986	339.24	254.00	68.00
Sept 1, 1986 - Aug 31, 1987	347.65	261.00	70.00
Sept 1, 1987 - Aug 31, 1988	348.80	262.00	70.00
Sept 1, 1988 - Aug 31, 1989	356.40	267.00	71.00
Sept 1, 1989 - Aug 31, 1990	367.90	276.00	74.00
Sept 1, 1990 - Aug 31, 1991	376.02	282.00	75.00
Sept 1, 1991 - Aug 31, 1992	393.08	295.00	79.00
Sept 1, 1992 - Aug 31, 1993	409.30	307.00	82.00
Sept 1, 1993 - Aug 31, 1994	424.91	319.00	85.00
Sept 1, 1994 - Aug 31, 1995	430.21	323.00	86.00
Sept 1, 1995 - Aug 31, 1996	440.55	330.00	88.00
Sept 1, 1996 - Aug 31, 1997	454.67	341.00	91.00
Sept 1, 1997 - Aug 31, 1998	466.57	350.00	93.00
Sept 1, 1998 - Aug 31, 1999	489.95	367.00	98.00
Sept 1, 1999 - Aug 31, 2000	512.47	384.00	102.00
Sept 1, 2000 - Aug 31, 2001	517.93	388.00	104.00
Sept 1, 2001 - Aug 31, 2002	530.43	398.00	106.00
Sept 1, 2002 - Aug 31, 2003	554.31	416.00	111.00
Sept 1, 2003 - Aug 31, 2004	572.53	429.00	114.00
Sept 1, 2004 - Aug 31, 2005	584.40	438.00	117.00
Sept 1, 2005 - Aug 31, 2006	605.46	454.00	121.00
Sept 1, 2006 - Aug 31, 2007	637.19	478.00	127.00

Actual wages are to be paid if the wages are less than the minimum.

Approved "Mileage Rate" as of July 1, 2006 is 40 cents per mile.

Karen Reiners Winfrey
Assistant Secretary/Director

0609#005

**POTPOURRI
Department of Natural Resources
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
D & J Producing Company	Black Hawk	M	Peabody	002	213803
D & J Producing Company	Black Hawk	M	Peabody Swd	001	214315
D & J Producing Company	Black Hawk	M	Peabody	003	214328
D & J Producing Company	Five Mile Bayou	M	West Catfish Bayou Swd	002	123097
D & J Producing Company	Five Mile Bayou	M	Walker Suu; E W Ellis	015	124961
D & J Producing Company	Five Mile Bayou	M	Walker Suv; E W Ellis	017	125835
D & J Producing Company	Five Mile Bayou	M	E W Ellis	019	126612
D & J Producing Company	Five Mile Bayou	M	Minter B Sue; E W Ellis	026	156744
D & J Producing Company	Five Mile Bayou	M	E W Ellis	027	166675

Operator	Field	District	Well Name	Well Number	Serial Number
D & J Producing Company	Kincaid Bayou	M	E 5 Su29; Pinhook	002	84039
D & J Producing Company	Kincaid Bayou	M	White et al Swd	001	203892
D & J Producing Company	Kincaid Bayou	M	E 5 Su46; White et al	002	204281
D & J Producing Company	Kincaid Bayou	M	E 5 Su46; White et al	003-ALT	209900
D & J Producing Company	Kincaid Bayou	M	Pinhook Swd	006	971238
Magnolia Producers	Wildcat	S	Herndon	2	4639

James H. Welsh
Commissioner

0609#070

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